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## INTRODUCTION

The Constitution of Ghana 1992 sets out important provisions relating to elections. Among these provisions are the right to vote, the establishment, composition and functions of the Electoral Commission, and the demarcation of constituencies.

The Electoral Commission Act 1993 re-enacted the constitutional provisions with some elaborations on the Commission's scope of operation.

This presentation deals mainly with parliamentary elections, but covers briefly presidential elections. It therefore draws on the provisions of the Representation of the People Law 1992, the Political Parties Law 1992 and the Public Elections (Parliament) Regulations 1992.

### — *Section 1* —

#### RELEVANT CONSTITUTIONAL PROVISIONS

##### **1.01 Right to Vote**

Every citizen of Ghana of eighteen years of age or above and of sound mind has the right to vote and is entitled to be registered as a voter for the purposes of public elections and referenda.<sup>1</sup>

##### **1.02 Electoral Commission**

There shall be an Electoral Commission which shall consist of:

- (a) a Chairman;
- (b) two deputy chairmen; and
- (c) four other members.

The members of the Commission shall be appointed by the President, acting on the advice of the Council of State.

A person is not qualified to be appointed a member of the Electoral Commission unless he is qualified to be elected as a Member of Parliament.

The Chairman of the Electoral Commission shall have the same terms and conditions of service as a Justice of the Court of Appeal. The two deputy chairmen of the Commission shall have the same terms and conditions of service as are applicable to a Justice of the High Court.

The Chairman and the two deputy chairmen of the Commission shall not, while they hold office on the Commission, hold any other public office.

The other four members of the Commission shall be paid such allowances as Parliament may determine.

If a member is absent or dies, the Commission shall continue its work until the President, acting on the advice of the Council of State, appoints a qualified person to fill the vacancy.<sup>2</sup>

### **1.03 Functions of Electoral Commission**

The Electoral Commission shall have the following functions:

- (a) to compile the register of voters and revise it at such periods as may be determined by law;
- (b) to demarcate the electoral boundaries for both national and local government elections;
- (c) to conduct and supervise all public elections and referenda;
- (d) to educate the people on the electoral process and its purpose;
- (e) to undertake programmes for the expansion of the registration of voters; and
- (f) to perform such other functions as may be prescribed by law.<sup>3</sup>

### **1.04 Independence of the Commission**

Except as provided in the Constitution and any other law not inconsistent with the Constitution, in the performance of its functions, the Electoral Commission, shall not be subject to the direction or control of any person or authority.<sup>4</sup>

### **1.05 Constituencies**

Ghana shall be divided into as many constituencies for the purpose of election of Members of Parliament as the Electoral Commission may prescribe, and each constituency shall be represented by one Member of Parliament.

No constituency shall fall within more than one region. The boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota.

The number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features, density of population and area and boundaries of the regions and other administrative or traditional areas.

The Electoral Commission shall review the division of Ghana into constituencies at intervals of not less than seven years, or within twelve months after the publication of enumeration figures after the holding of a census of the population of Ghana, whichever is earlier, and may, as a result, alter the constituencies.

Where the boundaries of a constituency established under these provisions are altered as

a result of a review, the alteration shall come into effect upon the next dissolution of Parliament.

“Population quota” means the number obtained by dividing the number of inhabitants by the number of constituencies into which Ghana is divided.

A person aggrieved by a decision of the Electoral Commission in respect of a demarcation of a boundary, may appeal to a tribunal consisting of three persons appointed by the Chief Justice and the Electoral Commission shall give effect to the decision of the tribunal.

A person aggrieved by a decision of the tribunal may appeal to the Court of Appeal whose decision on the matter shall be final.<sup>5</sup>

### **1.06 Voting at Elections and Referenda**

At any public election or referendum, voting shall be by secret ballot.

Immediately after the close of poll, the presiding officer shall, in presence of such of the candidates or their representatives and their polling agents as are present, proceed to count, at that polling station, the ballot papers of that station and record the votes cast in favour of each candidate.

The presiding officer, the candidates or their representatives and, in the case of a referendum, the parties contesting or their agents and the polling agents if any, shall then sign a declaration stating:

- (a) the polling station; and
  - (b) the number of votes cast in favour of each candidate,
- and the presiding officer shall, there and then, announce the results of the voting at that polling station before communicating them to the returning officer.<sup>6</sup>

### **1.07 Election of Candidates**

Where at the close of nominations and on the day before a public election:

- (a) two or more candidates have been nominated, the election shall be held and the candidate who receives the largest number of votes cast shall be declared elected; or
- (b) only one candidate is nominated, there shall be no election and that candidate shall be declared elected.

Where for the purposes of a public election two or more candidates are nominated but at the close of nominations and on the day before the election only one candidate stands nominated, a further period of ten days shall be allowed for nomination of other candidates, and it shall not be lawful for any person nominated within that period of ten days to withdraw his nomination.

Where at the close of nominations and after the expiry of the further period of ten days only

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one candidate stands nominated, there shall be no election and that candidate shall be declared elected.

Where at the close of nominations, but before the election, one of the candidates dies, a further period of ten days shall be allowed for nominations; and where the death occurs at any time within twenty-five days before the elections, the election in that constituency or unit shall be postponed for twenty-one days.<sup>7</sup>

### **1.08 Regulations for Elections**

The Electoral Commission shall, by constitutional instrument, make regulations for the effective performance of its functions and in particular, for the registration of voters, the conduct of public elections and referenda, including provision for voting by proxy.<sup>8</sup>

### **1.09 Regional and District Representatives of Commission**

There shall be in every region and district a representative of the Electoral Commission who shall perform such functions as shall be assigned to him by the Commission.<sup>9</sup>

### **1.10 Appointment of Staff of Commission**

The appointment of officers and other employees of the Electoral Commission shall be made by the Commission acting in consultation with the Public Services Commission.<sup>10</sup>

### **1.11 Expenses of Commission**

The administrative expenses of the Electoral Commission, including salaries, allowances and pensions payable to, or in respect of, persons serving with the Commission, shall be charged on the Consolidated Fund.<sup>11</sup>

### **1.12 Political Parties**

The right to form political parties is guaranteed. Every citizen of Ghana of voting age has the right to join a political party.

A political party is free to participate in shaping the political will of the people, to disseminate information on political ideas, social and economic programmes of a national character, and sponsor candidates for elections to any public office other than to District Assemblies or lower local government units.

Every political party shall have a national character, and membership shall not be based on ethnic, religious, regional or other sectional divisions.

The internal organisation of a political party shall conform to democratic principles and its actions and purposes shall not contravene or be inconsistent with the Constitution or any other law.

An organisation shall not operate as a political party unless it is registered as such under the law for the time being in force for the purpose.

For the purposes of registration, a prospective political party shall furnish the Electoral Commission with a copy of its Constitution and the names and addresses of its national officers; and shall satisfy the Commission that:

- (a) there is ordinarily resident, or registered as a voter, in each district of Ghana, at least one founding member of the party;
- (b) the party has branches in all the regions of Ghana and is, in addition, organised in not less than two-thirds of the districts in each region; and
- (c) the party's name, emblem, colour, motto or any other symbol has no ethnic, regional, religious or other sectional connotation nor gives the appearance that its activities are confined only to a part of Ghana.

A political party shall not have as a founding member, a leader or a member of its executive, a person who is not qualified to be elected as a Member of Parliament or to hold any other public office.

The members of the national executive committee of a political party shall be chosen from all the regions of Ghana.

Every citizen of voting age has the right to participate in political activity intended to influence the composition and policies of the Government.

The State shall provide fair opportunity to all political parties to present their programmes to the public by ensuring equal access to the state-owned media.

All presidential candidates shall be given the same amount of time and space on the state-owned media to present their programmes to the people.

Every candidate for election to Parliament has the right to conduct his campaign freely and in accordance with law.

Political parties shall be required by law:

- (a) to declare to the public their revenues and assets and the sources of those revenues and assets; and
- (b) to publish to the public annually their audited accounts.

Only a citizen of Ghana may make a contribution or donation to a political party registered in Ghana.

A member of an organisation or interest group shall not be required to join a particular political party by virtue of his membership of the organisation or group.

Subject to these provisions, Parliament shall by law regulate the establishment and functioning of political parties.<sup>12</sup>

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— *Section 2* —

**ADMINISTRATION OF ELECTIONS**

**2.01 The Electoral Commission**

Pursuant to the Constitution an Electoral Commission was established by the Electoral Commission Act 1993. Its functions followed those set out above under the Constitution to which have been added the preparation of identity cards and the storage of election material.<sup>13</sup>

**2.02 Meetings of the Commission**

The Commission shall meet at such times and such places as the Chairman shall determine but shall meet at least once in every two months.

The Chairman shall preside over every meeting of the Commission at which he is present and in his absence, one of the deputy chairmen shall preside. The quorum at every meeting of the Commission shall be four and shall include the Chairman or one of the deputy chairmen. There shall be given to members a notice of four clear days for every meeting called by the Commission.

Decisions at meetings of the Commission shall be that of the majority of the members present and voting and in the event of equality of votes the person presiding at the meeting shall have a second or casting vote.

Subject to these provisions, the Commission shall regulate the procedure for the conduct of its meetings.

The Commission may appoint such committees as it considers necessary for the discharge of its functions. A committee appointed by the Commission may include non-members of the Commission but shall be chaired by a member of the Commission.<sup>14</sup>

(The other provisions of the Electoral Commission Act 1993 follow closely the relevant provisions of the Constitution set out above.)

**2.03 Appointment of Returning and Deputy Returning Officers**

The Commission for each election appoints a returning officer and two deputy returning officers for each constituency. The Commission charges them with overall responsibility for the conduct of the election in the constituency.<sup>15</sup>

**2.04 Presiding Officers and Polling Assistants**

The Commission shall appoint a presiding officer for each polling division and such number of assistants as it considers necessary. Subject to such directions as may be given by the Commission, the duties imposed by the Representation of the People Law 1992 on a presiding officer may be performed by his assistant.<sup>16</sup>

— *Section 3* —

**REGISTRATION OF VOTERS**

**3.01 Qualification of Voters**

A person qualifies to be registered as a voter if:

- (a) he is a citizen of Ghana of eighteen years of age or above; and
- (b) he is of sound mind; and
- (c) he is resident in the polling division; and
- (d) he is not otherwise disqualified to be registered as a voter by any law for the time being in force.

No person shall be entitled to have his name included at any one time in the register of more than one constituency or in more than one divisional register in a constituency.

A person shall be deemed to be resident in a polling division on the qualifying date if he has a place of abode in the division on the date. A person shall not be deemed to be resident in a polling division if he has been absent from his place of abode for a continuous period of six months ending on the qualifying date.

A person who is a patient in an establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness or who is detained in legal custody in any place shall not be treated as resident there for the purposes of these provisions.

A person who is resident in more than one place and who would be entitled to have his name included in the register of more than one constituency or in more than one divisional register in a constituency shall select one constituency and one polling division for the purposes of registration and voting.<sup>17</sup>

**3.02 Registration of Officials Abroad**

A person who is a citizen of Ghana employed in a post outside Ghana:

- (a) in the service of the Republic; or
  - (b) in the service of the United Nations or of any other international organisation,
- shall be entitled to be registered as a voter if he satisfies the requirements for registration prescribed other than those relating to residence in a polling division. These provisions also apply to the spouse of a person covered by them where the spouse is resident outside Ghana with the employed spouse.

Unless otherwise disqualified, a person employed on Government duty outside Ghana who is a citizen of Ghana, shall be entitled to be registered as a voter notwithstanding that the person does not satisfy the requirements of the Law relating to residence in a polling division.

The Commission may appoint the Head of a Ghana Mission or Embassy abroad as a registration officer for the purposes of receiving claims from a person entitled to be registered as a voter.

The Commission may give such directions as it thinks fit to a person appointed as a registration officer and the person shall comply with the directions.<sup>18</sup>

## — Section 4 —

### REGISTRATION OF POLITICAL PARTIES

#### 4.01 Formation of Political Parties

Political parties may be formed in Ghana to further purposes which are not contrary to the laws of Ghana. Every citizen of Ghana of voting age has the right to form or join a political party.

No political party shall be formed:

- (a) on ethnic, regional, professional or religious basis; or
- (b) which uses words, slogans or symbols which could arouse ethnic, regional, professional or religious divisions.

For the purposes of the foregoing provisions, a political party is formed on ethnic, religious, regional or professional basis if its membership or leadership is restricted to members of any particular community, region, ethnic group, profession or religious faith or if its structure and mode of operation are not national in character.<sup>19</sup>

#### 4.02 Registration Procedure

Every political party in Ghana shall be registered in accordance with the Law and shall pay in respect of the registration such fees as the Commission shall determine.

A political party registered under the Law is a body corporate and has perpetual succession and may sue and be sued in its corporate name.

No person shall:

- (a) canvass for votes; or
- (b) put forward a person for public election, on behalf of or in the name of a political party unless the political party is registered under the Law (Political Parties Law 1992).

No political party shall organise or hold public meetings unless it has been issued with a final certificate of registration by the Commission.

A political party shall not have as a leader of the party or a member of its executive a person who:

- (a) is not qualified to be elected as a Member of Parliament;
- (b) is not qualified to hold public office; or
- (c) has not complied with the provisions of the Public and Political Party Office Holders (Declaration of Assets and Eligibility) Law.

No political party shall have as a founding member of the party a person who:

- (a) is not qualified to be elected as a Member of Parliament; or
- (b) is not qualified to hold public office.

A political party shall not be registered unless it has on its national executive committee secretariat a member ordinarily resident or registered as a voter in each region.

Every citizen of voting age has the right to participate in political activity intended to influence the composition and policies of the Government.

Any person who suppresses or attempts to suppress the lawful political activity of another person commits an offence and shall on summary conviction be liable to a minimum fine of C50,000 or to imprisonment for a term not exceeding two years or to both.

An application to register a political party shall be made to the Commission and shall be accompanied with:

- (a) two copies of the constitution and rules or regulations, if any, of the political party duly signed by the interim national chairman or leader and by the interim national or general secretary of the party;
- (b) a list of the full names and addresses of at least one founding member of the political party from each district and such other particulars as the Commission may reasonably require;
- (c) a full description of identifying symbols, slogans and colours, if any, of the political party; and
- (d) the registration fee specified.

The Commission shall, not later than seven days after the receipt of the application, issue the political party with a provisional certificate of registration and shall cause a notice of the application to be published in the Gazette as soon as practicable after receiving it, inviting objections from any person concerning the name, aim, objects, constitution, rules, symbols, slogans or colours of the party.

The Commission may in addition to inviting objections to the application, cause independent enquiries to be made so as to ascertain the truth or correctness of the particulars submitted with the application for registration.

On expiration of thirty days after the date of the publication of the Gazette notice the

Commission shall, if satisfied that all the provisions of the law with respect to registration have been complied with, register the political party.

Where within the thirty day period an objection has been brought to the notice of the Commission it shall not register the political party until the objection has been disposed of to the satisfaction of the Commission.

If the Commission upholds the objection or if enquiries made disclose that any of the particulars submitted with the application for registration are false, the Commission shall refuse to register the political party and cancel the provisional certificate issued to that political party.

The Commission upon registering a political party shall issue to that party a final certificate of registration which shall be evidence that the provisions of the law with respect to registration have been complied with.<sup>20</sup>

#### **4.03 Power of Commission to Refuse Registration**

The Commission shall not register a political party unless it is satisfied:

- (a) that its constitution and any rules or regulations submitted to the Commission for registration conform to democratic principles;
- (b) that there is in each district of Ghana a founding member of the party who is ordinarily resident in the district or is a registered voter in the district;
- (c) that the party has branches in all the regions of Ghana and is, in addition, organised in not less than two-thirds of the districts in each region;
- (d) that the party's name, emblem, colour, motto or any other symbol has no ethnic, regional, religious or other sectional connotation nor gives the appearance that its activities are confined only to a part of Ghana;
- (e) that the executive officers of the political party have been elected under the supervision of the Commission in accordance with the law;
- (f) that it is not in breach of any of the provisions of the Law; and
- (g) that the purpose of the prospective political party is lawful.

The membership of the national executive committee of a political party shall reflect membership from all regions of Ghana.<sup>21</sup>

#### **4.04 Appeal on Refusal of Registration**

Any political party whose application for registration is refused by the Commission may at any time apply to the Commission for it to reconsider its decision not to register the political party.

If within fourteen days after an application has been made to it, the Commission refuses or fails to register the political party, the party may appeal to the Court of Appeal against the decision of the Commission and the decision of the Court of Appeal shall be final.

The appeal shall be on notice to the Commission and such other persons as the Court of Appeal may direct.<sup>22</sup>

— *Section 5* —

**PRESIDENTIAL ELECTIONS**

**5.01 Qualification for Election as President**

A person is not qualified to be a candidate for the office of President of Ghana unless:

- (a) he is a citizen of Ghana by birth;
- (b) he has attained the age of forty years;
- (c) he is a registered voter;
- (d) he is resident in a constituency for which he can stand as a candidate for election to Parliament or has resided there for a total period of not less than five years out of the ten years immediately preceding the election for which he stands or he hails from that constituency; and
- (e) he has paid all his taxes or made arrangements satisfactory to the appropriate authority for the payment of his taxes.<sup>23</sup>

**5.02 Nomination and Election of President**

No person shall be a candidate in a presidential election unless he is nominated for election as President by a document which:

- (a) is signed by him;
- (b) is signed by not less than two persons who are registered voters resident in the area of authority of each district assembly;
- (c) is delivered to the Commission on or before the day appointed as nomination day in relation to the election; and
- (d) designates a person to serve as Vice-President.

The foregoing document must be accompanied with:

- (a) a statutory declaration in the prescribed form made by the candidate; and
- (b) a deposit of such sum as the Commission shall direct.

The statutory declaration shall also be made by the person seeking election as Vice-President.

A person who makes a statutory declaration which he knows to be false in a material particular or recklessly whether it is true or not, shall be guilty of an offence and liable on summary conviction to a fine or a term of imprisonment not exceeding two years or to both and his deposit shall be forfeited to the State.

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A deposit made by a candidate shall be refunded to him if he polls more than twenty-five per cent of the total votes cast in the election.<sup>24</sup>

### **5.03 Election Result for Presidency**

A person shall not be elected as President of Ghana unless at the presidential election the number of votes cast in his favour is more than fifty per cent of the total number of valid votes cast at the election.

Where at a presidential election there are more than two candidates and no candidate obtains the number or percentage of votes specified in the foregoing provisions, a second election shall be held within twenty-one days after the previous election.

The candidates for this election shall be the candidates who obtained the two highest number of votes at the previous election, and the candidate who obtains the highest number of votes shall be declared elected.

An instrument which:

- (a) is executed under the hand of the Chairman of the Commission; and
  - (b) states that the person named in the instrument was declared elected as the President of Ghana at the election of the President,
- shall be prima facie evidence that the person named was so elected.<sup>25</sup>

## **— Section 6 —**

### **PREPARING FOR ELECTIONS**

#### **6.01 Nominations**

Where in any election at the close of nominations and on the day before the election:

- (a) two or more candidates have been nominated, the election shall be held and the candidate who receives the largest number of votes cast shall be declared elected; or
- (b) only one candidate is nominated, there shall be no election and that candidate shall be declared elected.

Where for the purpose of the election two or more candidates are nominated but at the close of nominations and on the day before the election only one candidate stands nominated, a further period of ten days shall be allowed for nomination of other candidates, and it shall not be lawful for a person nominated within that period of ten days to withdraw his nomination.

Where at the close of nominations and after the expiry of the further period of ten days only one candidate stands nominated, there shall be no election and that candidate shall be declared elected.

Where at the close of nominations, but before the election, one of the candidates dies, a further period of ten days shall be allowed for nominations; and where the death occurs at any time within twenty-five days before the election, the election of that constituency shall be postponed for twenty-one days.

The Commission shall by regulations prescribe the procedure for the nomination of candidates and shall in particular provide for:

- (a) conditions of nomination;
- (b) declaration to be made by candidates; and
- (c) deposit to be paid and whether it is refundable or not and the conditions for such refund.<sup>26</sup>

### **6.02 Allocation of Symbols and Colours**

Where an election is contested, the Commission shall as soon as practicable after the nomination day:

- (a) allocate to each candidate the symbol of his party in the case of a candidate sponsored by a registered political party;
- (b) allocate to a candidate who is not sponsored by a political party a symbol or colour chosen by him; or
- (c) in any other case allocate such symbols or colours as it considers appropriate.

A symbol or colour shall be chosen or assigned for the purpose of these provisions from among symbols and colours approved by the Commission for the purposes of the election.

No person shall be allocated a symbol which is connected with or is attached to the name, status or dignity of a chief or a symbol or a colour which is connected with any religious or racial association within the meaning of the Avoidance of Discrimination Act 1957.<sup>27</sup>

### **6.03 Notice of Poll**

Whenever an election is to be held, the Commission shall, as soon as practicable after the allocation of symbols or colours, publish in the Gazette and in such places in the constituencies as it may direct a notice in the prescribed form, stating:

- (a) the day on which and the time at which the poll is to be taken;
- (b) the location of the polling stations for each polling division; and
- (c) the full names, addresses, occupations and symbols or colours of the candidates nominated for the election.<sup>28</sup>

### **6.04 Adjournment of Poll**

The Commission may, at any time between the issue of a writ and the day specified in the writ as polling day, by executive instrument adjourn the taking of the poll to a day not more than thirty days after the day specified earlier.

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Where an executive instrument is issued, the writ for the constituency to which the instrument relates shall be deemed to be amended by the substitution of the day to which the taking of the poll is adjourned for the day specified in the writ as polling day.<sup>29</sup>

### **6.05 Death of Candidate**

Where an election is to be held and proof of the death of a candidate is given to the returning officer before the poll is commenced, he shall inform the Commission of this and the Commission shall revoke notice of the poll; and all proceedings with reference to the election shall be started afresh as if the writ had been received by the returning officer on the day on which the proof was given to him.

Where proceedings are started afresh, the Commission shall appoint:

- (a) a fresh nomination day, which shall be not less than fourteen days and not more than twenty-one days after the day on which proof of the candidate's death was given to the returning officer; and
- (b) a fresh polling day, which shall not be more than fourteen days after the nomination day.<sup>30</sup>

### **6.06 Polling Stations**

For the purpose of taking the poll, the returning officer shall establish one or more polling stations for each polling division.

The Commission may direct the returning officer to establish more polling stations for a polling division.

Any convenient building, except a dwelling house or a building or class of buildings exempted by the Commission may be established by the returning officer as a polling station and used without charge for that purpose.

The Government shall repair out of public funds any damage done to a building as a result of its being used as a polling station.

Where two or more polling stations are established for a polling division, the returning officer shall:

- (a) assign to each of the stations such number of voters registered in the division as the Commission considers appropriate; and
- (b) give notice in the polling division in such manner as the Commission may direct, of the polling stations to which the voters registered in the division have been assigned.<sup>31</sup>

### **6.07 Equipment of Polling Stations**

The returning officer shall provide each presiding officer with such number of ballot boxes and ballot papers as the Commission may direct.

Every ballot box shall be so constructed that the ballot papers can be put in it by the person voting but cannot be withdrawn by him.

The returning officer shall provide each polling station with:

- (a) materials for voting;
- (b) instruments for perforating or stamping the ballot papers with the official mark;
- (c) instruments for marking the means of identification of a voter; and
- (d) a copy of the divisional register, the transferred voters' list, the proxy voters' list and the absent voters' list relating to the polling station.

A notice giving directions for the guidance of the voters in voting shall be exhibited inside and outside every polling station in as many languages as the Commission may direct for the benefit of the voters.<sup>32</sup>

### **6.08 Presiding Officer, Polling Assistants and Polling Agents**

The Commission shall appoint a presiding officer to preside at each polling station and such number of polling assistants as it considers necessary to assist the presiding officer in carrying out his duties.

A polling assistant may act as the presiding officer of a polling station during the absence or incapacity of the presiding officer.

A candidate may appoint two polling agents to attend at each polling station in the constituency for which he is seeking election for the purpose of detecting personation.

Each candidate shall submit in duplicate to the returning officer in charge of the polling station to which he intends to assign the polling agent, a letter of appointment stating the name and address and other relevant particulars of the polling agent and the polling station to which he is to be assigned.

The returning officer shall upon receipt of the letter of appointment sign both the original and duplicate copies and stamp it and retain the original and return the duplicate to the polling agent.

If a polling agent dies or becomes incapacitated from acting as such the candidate who appointed him may appoint another polling agent in his place.<sup>33</sup>

### **6.09 Transferred Voters' List**

A registered voter who at any time before elections to Parliament, is resident for not less than two months in a constituency other than that in which he is registered, may apply to the returning officer of the constituency where he is resident for his name to be entered on the transferred voters' list for the constituency.

An application shall be made not less than twenty-one days before nomination day.

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A returning officer to whom an application is made shall enter the applicant's name in the transferred voters' list for his constituency if he is satisfied that the applicant is resident in a polling division in his constituency and is registered in another constituency.

Whenever a returning officer enters the name of any person on the transferred voters' list for his constituency, he shall:

- (a) assign that person to a polling station or a polling division in his constituency and indicate in the list the polling division or polling station to which that person is assigned; and
- (b) send a copy of the entry to the returning officer of the constituency where the person whose name has been entered is registered.

A person whose name is entered in the transferred voters' list for a constituency is entitled to vote at the election in the polling station or polling division to which he is assigned in the list as if it were the polling division where he is registered.<sup>34</sup>

#### **6.10 Special Voters' List**

A special voter who because of his duties will be unable to be present on the polling day at the polling station where his is registered, may apply to the returning officer for his name to be entered on the special voters' list.

Every application shall be made not later than seven days before the polling day in the constituency of the applicant and, except in the case of an applicant who is a returning officer, shall be accompanied by a certificate from the applicant's superior officer stating that:

- (a) the applicant is registered at a polling station in the constituency of the returning officer to whom the application is made; and
- (b) the applicant's duties will prevent him from being present on the polling day at the polling station where he is registered.

A returning officer to whom an application is made shall enter the name of the applicant in the special voters' list for his constituency and shall issue to the applicant a certificate authorising him to vote at a polling station other than the polling station at which he is registered.

Every person whose name is entered on the special voters' list for a constituency:

- (a) is entitled to vote at a polling station and on a day which is not more than seven days before the polling day, appointed by the returning officer and advertised in such manner as the Commission may direct; and
- (b) is not entitled to vote otherwise at the election in respect of which his name has been entered on the special voters' list.

Voting at a polling station for special voters shall be conducted in the same manner as voting on polling day.<sup>35</sup>

### **6.11 Absent Voters' List**

Each returning officer shall, before polling day, prepare for each polling division in his constituency an absent voters' list containing the names of any persons registered in the division whose names have been entered on the transferred voters' list for another constituency or on the special voters' list for his constituency.

A person whose name is entered on the absent voters' list for a polling division shall not be entitled to vote in that division.<sup>36</sup>

### **6.12 Voting by Proxy**

A registered voter who because of ill-health or absence from his constituency will be unable to present himself to vote on polling day may, not less than fourteen days before the poll in the constituency where he is registered apply to the returning officer of the constituency where he is registered or to any representative of the Commission for his name to be entered on the proxy list.

The applicant shall complete the proxy form in the prescribed form in quadruplicate.

The application form shall be endorsed by the returning officer of the constituency of the applicant or the representative of the Commission to whom the application is made and distributed as follows:

- (a) the original copy to the returning officer of the constituency where the applicant wishes the proxy to vote;
- (b) the duplicate copy to the Commission;
- (c) the triplicate copy to the person appointed as proxy;
- (d) the quadruplicate to the applicant.

The returning officer or any representative of the Commission to whom the application is made shall, if satisfied that the proxy is qualified to be registered as a voter and the applicant is a registered voter, enter the names and the particulars of the applicant and the proxy on the proxy list and:

- (a) assign the proxy to a polling station in the constituency;
- (b) indicate on the proxy list the polling station to which the proxy is assigned; and
- (c) forward a copy of the list to the presiding officer for the polling station to which the proxy is assigned.

Every person whose name is entered on the proxy list may vote in the elections at the polling station where he is registered to vote and the provision relating to voting procedure shall have effect accordingly.

No person shall be entitled to have more than one person at a time appointed as a proxy to vote for him at the election.

A person whose application to vote by proxy is accepted and endorsed by the returning

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officer of the constituency or the Commission shall not vote at the election in respect of which the application was granted.

The appointment of a proxy shall be cancelled by the returning officer or the Commission where an application for cancellation is made by the person who made the application for the appointment of the proxy.

An application for the cancellation of a proxy shall be in the prescribed form and shall be made not less than seven days before the election to which it relates.

A proxy whose appointment is cancelled shall cease to have the right to vote for the applicant whether or not he is aware of the cancellation.<sup>37</sup>

## — Section 7 —

### THE POLL

#### 7.01 Number of Votes and Place of Voting

No voter shall cast more than one vote when a poll is taken.

Subject to the provisions relating to transferred voters' list, special voters' list and absent voters' list, a voter shall vote at the polling station allotted to him.

Where at an election in any constituency it is inconvenient or difficult for a voter to vote at his allotted station because he is a candidate for the constituency or is to be employed in an official capacity as an election officer or police officer or otherwise at a polling station in the constituency, the returning officer may, by a certificate under his hand, authorise the voter to cast his vote not at his allotted station but at another polling station in the constituency.

The certificate issued under the foregoing provisions shall be in triplicate and shall specify the name of the voter to whom it relates, his number and description in the register, the reason for the giving of the certificate and the alternate station at which he is authorised to vote.

Copies of the certificate shall be sent by the returning officer to the presiding officers of the allotted station and the alternate station; and for the purposes of the election to which the certificate relates:

- (a) the copy sent to the presiding officer of the allotted station shall be treated as if it formed part of the absent voters' list; and
- (b) the copy sent to the presiding officer of the alternate station shall be treated as if it formed part of the copy of the register provided by the returning officer.

The votes at the poll shall be given by ballot, the result shall be ascertained by counting the votes cast for each candidate and the candidate to whom the largest number of the votes have been cast shall be declared elected.<sup>38</sup>

## **7.02 Ballot Papers and Polling Hours**

The ballot of every voter shall consist of a ballot paper.

Each ballot paper shall:

- (a) contain the names and symbols of all the candidates contesting the election in the constituency;
- (b) be capable of being folded up;
- (c) have a number printed on it; and
- (d) have attached to it a counterfoil with the same number printed on it.

A ballot paper shall not be void because it does not bear any number if it is certified by the Commission that it is a ballot paper issued by it.

The poll shall be taken between the hours of seven in the morning and five in the evening.

The presiding officer shall regulate the number of voters to be admitted to the polling station at each time, and shall exclude all other persons except:

- (a) the candidates and their spouses and their polling agents;
- (b) election officers;
- (c) police or military officers on duty;
- (d) persons authorised by the Commission; and
- (e) the companions of voters who are blind or otherwise physically incapacitated.<sup>39</sup>

## **7.03 Polling Station Procedures**

It is the duty of the presiding officer to keep order at his polling station.

If a person misconducts himself in a polling station or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by a police or military officer; and a person so removed shall not, without the permission of the presiding officer, again enter the polling station on the polling day.

Any person so removed may, if charged with the commission in the polling station of an offence, be dealt with as a person taken into custody by a police officer for an offence without a warrant.

The powers conferred by the foregoing provisions shall not be exercised so as to prevent a voter who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

Immediately before the commencement of the poll, the presiding officer shall show the ballot boxes empty to the persons present in the polling station so that they can see that the ballot boxes are empty and shall then:

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- (a) close the ballot boxes and place his seal upon them in such a manner as to prevent their being opened without breaking the seal; and
  - (b) place them in the view of the public for the receipt of ballot papers.

A presiding officer may, before delivering a ballot paper to a person applying to vote at the election require the person:

- (a) to make a declaration of identity in the prescribed form and to furnish such other evidence of identity as may be determined by the Commission or as the presiding officer thinks necessary; and
- (b) to make a declaration in the prescribed form that he has not already voted at the election in the constituency or, in the case of a general election, in any other constituency.<sup>40</sup>

#### **7.04 Voting Procedure**

Every voter desiring to record his vote shall present himself at his allotted station, and the presiding officer or a polling assistant after satisfying himself that the voter is registered in the divisional register or in the case of a polling division for which two or more polling stations have been established, in that part of the divisional register which relates to his allotted station and has not already voted, and that any other means of identification determined by the Commission in the possession of the voter is valid shall deliver the ballot paper to the voter. Immediately before the ballot paper is delivered:

- (a) the ballot paper shall be perforated or stamped with an official mark selected by the Commission;
- (b) a mark shall be placed in the copy of the register against the number of the voter to indicate that the ballot paper has been received; and
- (c) a mark, which shall, so far as is possible, be permanent shall be made on the voter or any other means of identification as may be determined by the Commission.

The voter on receiving the ballot paper shall immediately proceed to one of the places set aside in the polling station for marking of the ballot paper and shall there secretly make on the ballot paper an imprint of his thumb in the box and column provided for that purpose directly against the name and symbol of the candidate for whom he wishes to vote.

The voter shall then fold up the ballot paper and in the presence of the presiding officer and the polling agents and in the full view of the general public cast or record his vote by putting the folded ballot paper into the ballot box standing in an open place.

The voter shall vote without undue delay, and shall leave the polling station as soon as he has put his ballot paper into the ballot box.

These provisions shall apply subject to the provisions relating to transferred voters' list, special voters' list and absent voters' list.

The presiding officer, on the application of a voter who is incapacitated by blindness or other

physical cause from voting in the manner directed, shall cause a ballot paper as directed by the voter to be put in the ballot box.

When he accedes to the request of a voter pursuant to the foregoing provision, the presiding officer shall record in the register opposite the name of the voter the fact that the vote was recorded by him on the application of the voter and the reason why it was so recorded.

Where a person representing himself to be a particular voter in the register applies for a ballot paper after another person had voted as such voter, the applicant shall, on making a declaration in the prescribed form, be entitled to vote in the same manner as any other voter. A tendered ballot paper shall:

- (a) be of a different colour from the ballot paper; and
- (b) instead of being put into the ballot box:
  - (i) be given to the presiding officer and endorsed by him with the name of the voter and his number in the register; and
  - (ii) be set aside by the presiding officer in a separate packet.

The name of any person voting in the above manner shall be entered by the presiding officer on a list of such voters.

A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper may on delivering it to the presiding officer and proving to his satisfaction the fact of the inadvertence, obtain another ballot paper in place of the ballot paper delivered and the spoilt ballot paper shall be immediately cancelled and the counterfoil marked accordingly.<sup>41</sup>

### **7.05 Adjournment of Poll in Case of Riot, etc**

When the proceedings at any polling station are interrupted or obstructed by riot, open violence, storm, flood or other natural catastrophe, the presiding officer shall adjourn the proceedings to the following day and shall forthwith give notice to the returning officer.

When the returning officer is satisfied that because of an interruption or obstruction of kind mentioned above it is or will be impossible or impracticable for proceedings which have been adjourned to be continued on the day which they have been so adjourned, he may, with the concurrence of the Commission further adjourn the proceedings for not more than seven days.

Where the poll is adjourned, the hours of polling on the day to which it is adjourned shall be the same as on the original polling day.<sup>42</sup>

### **7.06 Counting of Votes**

Each candidate may appoint not more than three agents to attend at the collation of the votes, and shall give written notice to the returning officer of the names and addresses of the appointed agents.

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The returning officer shall make arrangements for collating the votes in his constituency, in the presence of the agents as soon as practicable after the close of the poll, and shall take such steps as he considers reasonable to give to the agents notice of the time at which the collation of the votes will commence.

No person other than:

- (a) the presiding officer and persons appointed to assist him in collating the votes;
  - (b) the candidates and their wives or husbands; and
  - (c) the agents,
- shall be present at the collation of the votes, unless permitted by the presiding officer to attend.

Immediately after the close of the poll the presiding officer shall, in the presence of the polling agents and such other persons that are permitted to attend the count:

- (a) open each ballot box, take out all the ballot papers in the box; and
- (b) proceed to count the ballot papers; and
- (c) record the total number of votes cast in favour of each candidate.

The presiding officer, the candidates or their representatives and their polling agents shall then sign a declaration stating:

- (a) the total number of persons entitled to vote at the polling station; and
  - (b) the number of votes cast in favour of each candidate,
- and the presiding officer shall there and then announce the results of the voting at that polling station.

A candidate or any of his agents may, if present when the counting of the votes is completed, require the presiding officer to have the votes recounted or again recounted, but the presiding officer may refuse to do so if in his opinion the request is unreasonable.

As soon as practicable after the announcement of the results of the voting at the polling station, the presiding officer shall, in the presence of such of the candidates and their polling agents as are present, make up into separate packets sealed with his own seal and the seals of such polling agents as desire to affix their seals:

- (a) each ballot box in use at the station, sealed so as to prevent the introduction of additional ballot papers;
  - (b) the unused and spoilt ballot papers placed together;
  - (c) the tendered ballot papers, the tendered voters' list and any declarations made pursuant to the relevant regulation; and
  - (d) the marked copies of the register and the counterfoils of the used ballot papers,
- and shall deliver the packets and the ballot boxes, to the returning officer to be taken charge of by him.

The packets shall be accompanied by a statement made by the presiding officer showing the

number of ballot papers entrusted to him and accounting for them under the heads of ballot papers in the ballot box and unused, spoilt and tendered ballot papers.

Any ballot paper:

- (a) which does not bear the official mark; or
  - (b) on which anything is written or marked other than the printed number and the imprint of the voter's thumb; or
  - (c) which is not marked with the imprint of the thumb of the voter or is so marked as to make it impossible to determine the candidate for whom the vote was cast; or
  - (d) which is void for uncertainty,
- shall be void and not counted.

A ballot paper shall not be void merely because it was not marked with the imprint of the voter, if it is otherwise sufficiently marked by the voter so as to identify the candidate for whom the vote was cast.

Before rejecting a ballot paper as void, the presiding officer shall, taking all proper precautions to prevent any person from seeing the number printed on it, show the paper to each candidate or to one of his polling agents, if present, and give him an opportunity to express an opinion on the matter.

The presiding officer shall endorse the word "rejected" on any ballot paper which is not to be counted, and shall add to the endorsement the words "rejection objected to" if an objection is made by a candidate or polling agent to his decision.

The presiding officer shall draw up a statement showing the number of ballot papers rejected under the several heads of:

- (a) want of official mark;
  - (b) voting for more than one candidate;
  - (c) writing or mark by which a voter could be identified; or
  - (d) unmarked or void for uncertainty,
- and any candidate or polling agent may copy the statement.

The decision of the returning officer on any question arising in respect of a ballot paper shall be final, but shall be subject to review on an election petition.<sup>43</sup>

### **7.07 Equality of Votes**

Where after the completion of the counting of the votes, including any recount, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer shall certify that fact by endorsing the writ and forwarding the writ so endorsed to the Commission.

Within thirty days after the receipt by the Commission of a writ so endorsed, a fresh writ shall be issued for an election in that constituency.<sup>44</sup>

### **7.08 Publication of Results**

The returning officer shall immediately after the result of the poll from all the stations in his constituency have been given to him:

- (a) assemble the results from the polling stations without recounting the ballots in the ballot boxes except where there is a challenge by a candidate or his agent in respect of a ballot box;
- (b) publicly declare to be elected the candidate to whom the largest number of votes has been given;
- (c) give public notice of the total number of votes cast for each candidate;
- (d) endorse on the writ the name of the person elected; and
- (e) forward to the Commission the endorsed writ and a note of the total number of votes cast for each candidate.

On receipt of a writ endorsed as prescribed, the Commission shall:

- (a) publish in the Gazette a notice stating the name of the person elected and the total number of votes cast for each candidate; and
- (b) inform the Clerk of Parliament soon thereafter of the name of the candidate elected.<sup>45</sup>

## **— Section 8 —**

### **ELECTION PETITIONS**

#### **8.01 Method of Questioning Election**

The validity of an election to Parliament may be questioned only by a petition. Every election petition shall be presented before the High Court for hearing.<sup>46</sup>

#### **8.02 Presentation of Election Petition**

An election petition may be presented 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 petition relates;
- (b) a person claiming to have had a right to be elected at the election;
- (c) a person alleging himself to have been a candidate at the election;
- (d) a person claiming to have had a right to be nominated as a candidate at the election.

An election petition shall be presented within twenty-one days after the date of the publication in the Gazette of the result of the election to which it relates, except that a petition questioning an election on an allegation of corrupt practice and specifically alleging a payment of money or other award to have been made on his (the respondent's) behalf to his knowledge, may be presented within twenty-one days after the date of the alleged payment.

The presentation of an election petition shall not be valid unless within the time specified, the petitioner gives C20,000 as security for costs.

The time limit provided for the presentation of an election petition shall not be extended.<sup>47</sup>

### **8.03 Relief Which May be Granted**

After the hearing of an election petition, the High Court may make any of the following orders:

- (a) declare that the election to which the petition relates is void;
- (b) declare that a candidate other than the member whose election is questioned was duly elected.<sup>48</sup>

### **8.04 Grounds for Cancelling Election Results**

The election of a candidate shall be declared void on an election petition if the High Court is satisfied:

- (a) that general bribery, general treating, general intimidation or other misconduct or circumstances, whether similar to those specified in the Law or not, have so extensively prevailed that they may be reasonably supposed to have affected the result of the election;
- (b) that there had been non-compliance with any provision of the Law or of regulations made pursuant to the Law and that it appears that the election was not conducted in accordance with the principles laid down and that such non-compliance affected the result of the election;
- (c) that a corrupt or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate; or
- (d) that the candidate was at the time of his election a person not qualified or a person disqualified for election.

Where at the hearing of an election petition the High Court finds that a candidate has been guilty through his agent or representative of a corrupt or illegal practice, and the High Court further finds that the candidate has proved to the High Court:

- (i) that no corrupt or illegal practice was committed by the candidate himself or with his knowledge or consent or approval; or
- (ii) that even though there was corrupt or illegal practice the candidate took all reasonable steps to prevent the commission of corrupt or illegal practice at the election; and
- (iii) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate,

then, if the High Court so recommends, the election of the candidate shall not because of the corrupt practice be void or illegal and the candidate shall not be subject to any incapacity under the Law.

Where at the hearing of an election petition the High Court finds that there has been failure

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to comply with any provision of the Law or of regulations made thereunder, and the High Court further finds:

- (i) that the election was conducted in accordance with the Law; and
  - (ii) that the failure did not affect the result of the election,
- the election of the successful candidate shall not because of the failure be void and the successful candidate shall not be subject to any incapacity under the Law.<sup>49</sup>

### **8.05 Scrutiny**

Where on an election petition the election is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes, the High Court may direct an examination of the votes cast at the election by the Commission or such other person as the Court may determine.

On scrutiny, the following votes shall be struck off:

- (a) the vote of a person:
  - (i) whose name was not included in the divisional register of the polling division in which the vote was recorded;
  - (ii) whose name was not included in that part of the register which contained the names of the voters assigned to the polling station at which the vote was recorded;
  - (iii) who had no right under the Law to vote at the polling station at which his vote was recorded;
- (b) the vote of a person whose vote was procured by bribery, treating or undue influence;
- (c) the vote of a person who committed or procured the commission of personation at the election;
- (d) the vote of a person proved to have voted more than once at the election or in more than one constituency; and
- (e) the vote of a person who has been disqualified from voting at the election because of a conviction for a corrupt or illegal practice or because of a report made by a court under the Law.

A tendered ballot paper, proved on scrutiny to be a valid vote shall be added to the poll.<sup>50</sup>

### **8.06 Certification of Decision**

At the conclusion of the hearing of an election petition the High Court shall certify its decision to the Commission which shall request the return by the returning officer in respect of the election to which the petition relates to be confirmed or altered accordingly.

Where the decision certified by the High Court is to the effect that the election to which the petition relates is void, a writ shall be issued for a fresh election in the constituency concerned.<sup>51</sup>

### **8.07 Report of High Court as to Corrupt or Illegal Practices**

At the conclusion of the hearings of an election petition, the High Court shall, if it is of the opinion that a person has been proved to have committed the offence of corrupt or illegal practice in connection with the election to which the petition relates, send a written report to the Attorney-General giving the name and description of the person and the nature of the practice and such other information as the High Court considers relevant and appropriate.<sup>52</sup>

### **8.08 Prohibition of Disclosure of Vote**

A person who has voted at an election shall not be required to state for whom he has voted in any proceedings questioning an election.<sup>53</sup>

### **8.09 Procedure**

The rules of procedure for presentation and hearing of an election petition shall be the same as the rules of procedure applicable to a civil cause or matter before the High Court.<sup>54</sup>

## **— Section 9 —**

### **ELECTION OFFENCES**

#### **9.01 Registration Offences**

A person who:

- (a) knowingly makes a false statement in or in connection with an application to have his name included in a register; or
- (b) having applied to have his name included in a divisional register, without withdrawing his application, applies to have his name included in another divisional register; or
- (c) by the use of force or threats prevents or attempts to prevent a person from exercising his right to register as a voter,

commits an offence and is liable on conviction to a fine not exceeding C1 million or to imprisonment for a term not exceeding two years or both, and shall, for a period of five years from the date of the expiration of his term of imprisonment be disqualified from being registered as a voter or voting at an election.<sup>55</sup>

#### **9.02 Offences Relating to Nomination Papers**

A person who:

- (a) forges, fraudulently defaces, or destroys a nomination paper, or any other document relating to the registration of a voter, or delivers to a returning officer any nomination paper, knowing it to be forged; or
- (b) forges or counterfeits or fraudulently destroys a ballot paper or the official mark on a ballot paper; or

- (c) without authority supplies a ballot paper to any person; or
- (d) sells or offers to sell a ballot paper to any person or purchases or offers to purchase a ballot paper from any person; or
- (e) not being a person entitled to be in possession of a ballot paper which has been marked with the official mark, has such a ballot paper in his possession; or
- (f) knowingly and intentionally puts into a ballot box anything other than the ballot paper which he is authorised by law to put in; or
- (g) without authority, destroys, takes, opens or otherwise interferes with a ballot box, ballot paper or packet of ballot papers in use or intended to be used for the purposes of an election; or
- (h) without authority, prints a ballot paper or what purports to be or is capable of being used as a ballot paper at an election; or
- (i) not being authorised to do so, makes a mark on a ballot paper issued to a person, other than himself, with intent that the ballot paper shall be used to record the vote of the person,

commits an offence and is liable on conviction to a fine not exceeding C1 million or to imprisonment for a term not exceeding two years or both; and shall, for a period of five years from the date of the expiration of his term of imprisonment be disqualified from being registered as a voter or voting at an election.<sup>56</sup>

### **9.03 Unauthorised Voting**

A person who knowingly:

- (a) votes at an election at which he is not entitled to vote; or
- (b) votes more than once at an election,

commits an offence and is liable on conviction to a fine not exceeding C1 million or to imprisonment for a term not exceeding two years or both; and shall, for a period of five years from the date of the expiration of his term of imprisonment be disqualified from being registered as a voter or voting at an election.<sup>57</sup>

### **9.04 Offences by Election Officers**

An election officer, clerk, interpreter or other person who has a duty to perform, whether under the Law or otherwise, in relation to an election and who:

- (a) makes in any record, return or other document, which he is required to keep or make in pursuance of the Law, any entry which he knows or has reasonable cause to believe to be false, or does not believe to be true; or
- (b) permits a person whom he knows or has reasonable cause to believe not to be a person who is blind or incapacitated from voting by other physical cause to vote in the manner provided for such persons; or
- (c) refuses to permit a person whom he knows or has reasonable cause to believe to be a person who is blind or incapacitated from voting by other physical cause to vote in the manner provided for such persons; or
- (d) wilfully prevents a person from voting at the polling station at which he knows or has reasonable cause to believe the person is entitled to vote; or

- (e) wilfully counts a ballot paper as being cast for a candidate which he knows or has reasonable cause to believe was not validly cast for the candidate; or
- (f) without reasonable cause acts or fails to act in breach of his official duty, commits an offence and is liable on conviction to a fine not exceeding C1 million or to imprisonment for a term not exceeding two years or both.<sup>58</sup>

### **9.05 Requirement of Secrecy**

Every election officer, clerk, interpreter, candidate, election agent or polling agent on duty at a polling station shall maintain and aid in maintaining the secrecy of voting and shall not, except for a purpose authorised by law, communicate to any person any information as to:

- (a) the name of a voter who has or has not applied for a ballot paper or voted at a polling station; or
- (b) the number on the register of a voter who has or has not applied for a ballot paper or voted at a polling station; or
- (c) the official mark.

Every person present at the counting of votes shall maintain and help in maintaining the secrecy of voting and shall not communicate any information obtained at the counting of the votes as to the candidate for whom a vote is given on any particular ballot paper.

No person shall:

- (a) interfere with or attempt to interfere with a voter when recording his vote; or
- (b) obtain or attempt to obtain in a polling station information about the candidate for whom a voter at that station is about to vote or has voted; or
- (c) communicate at any time to any person any information obtained in a polling station about the candidate for whom a voter in that station has voted or is about to vote, or about the number, if any, on the ballot paper given to a voter at that station; or
- (d) directly or indirectly induce a voter to display his ballot paper after he has marked or selected it so as to make known to another person the name of the candidate for whom he has or has not voted.

A person who has undertaken to assist:

- (a) a blind voter to vote; or
  - (b) a voter who is incapacitated from voting by any other physical cause to vote,
- shall not communicate at any time to another person information as to the candidate for whom that disabled voter intends to vote or has voted, or as to the number, if any, on the ballot paper given for use of the disabled voter.

A person who contravenes any of these provisions commits an offence.<sup>59</sup>

### **9.06 Personation**

A person commits the offence of personation if he:

- 
- (a) votes as another person, whether that other person is living or dead or is a fictitious person; or
  - (b) votes for a person whom he knows or has reasonable grounds to believe to be dead or to be a fictitious person.<sup>60</sup>

### **9.07 Bribery**

A person commits the offence of bribery:

- (a) if he directly or acting through another person:
  - (i) gives money or obtains an office for a voter in order to induce the voter to vote or refrain from voting; or
  - (ii) corruptly does such an act on account of a voter having voted or refrained from voting; or
  - (iii) makes a gift or provides something of value to a voter to induce the voter to vote in a certain way or to obtain the election of a candidate; or
- (b) if he advances or pays money or causes money to be paid to or for the use of a person with the intent that the money or part of it shall be expended in bribery at an election, or knowingly pays money or causes money to be paid to a person in discharge or repayment of money wholly or in part expended in bribery at an election; or
- (c) if before or during an election he directly or indirectly, by himself or through another person acting on his behalf, receives, agrees or contracts for money, gift, a loan or valuable consideration or an office, place or employment for himself or for another person for voting or agreeing to vote or for refraining or agreeing to refrain from voting; or
- (d) if after an election he directly or through another person receives money or valuable consideration on account of a person having voted or refrained from voting or having induced another person to vote or to refrain from voting.

For the purposes of the foregoing provisions:

- (a) references to giving money include giving, tendering, agreeing to give or lend, offering, promising and promising to procure or to endeavour to procure money or valuable consideration; and
- (b) references to procuring office include giving, procuring, agreeing to procure or give, offering, promising and promising to procure or to endeavour to procure an office, place or employment.<sup>61</sup>

### **9.08 Treating**

A person commits the offence of treating:

- (a) if he corruptly either himself or through another person, before, during or after an election gives or provides or pays wholly or in part the expenses of giving or providing meat, drink, entertainment or provision to or for any person:
  - (i) for the purpose of corruptly influencing that person or another person to vote or refrain from voting; or

- (ii) on account of that person or another person having voted or refrained from voting or being about to vote or refrain from voting; or
- (b) if he corruptly accepts or takes any meat, drink, entertainment or provision offered in the circumstances and for the purposes mentioned in the foregoing provisions.<sup>62</sup>

### **9.09 Undue Influence**

A person commits the offence of undue influence:

- (a) if he directly or indirectly or through another person acting on his behalf:
  - (i) makes use of or threatens to make use of force, violence or restraint; or
  - (ii) inflicts or threatens to inflict on another person a temporal or spiritual injury, damage, harm or loss,  
in order to induce or compel that person to vote or refrain from voting, or an account of that person having voted or refrained from voting; or
- (b) if by abduction, duress or any fraudulent method he impedes or prevents the free exercise of the franchise of a voter.<sup>63</sup>

### **9.10 Interference with Election Activities**

A person who, before or during an election for the purpose of effecting or preventing the return of a candidate either directly or indirectly:

- (a) by words, whether spoken or written, song, sign or any other representation or in any manner whatsoever seeks to excite or promote disharmony, enmity or hatred against another person, group of persons or political party on grounds of religious, tribal, professional, regional or political affiliation; or
- (b) organises a group of persons with the intention of training the group in the use of force, violence, abusive, insulting, corrupt or vituperative songs or language calculated to discredit, malign, disparage, condemn, insult or abuse another person or candidate or with a view to causing disharmony or a breach of the peace or to disturbing public tranquillity so as to gain unfair advantage in the election over that other person or candidate; or
- (c) obstructs or interferes or attempts to obstruct or interfere with the free exercise of the franchise of a voter or compels or induces or attempts to compel or induce a voter to vote or to refrain from voting; or
- (d) compels, induces or attempts to compel or induce a candidate to withdraw his candidature; or
- (e) in any manner whatsoever threatens any candidate or voter with injury or harm of any kind; or
- (f) induces or attempts to induce any candidate or voter to fear or believe that he will suffer illness or will become an object of divine, spiritual or fetish displeasure or censure, commits an offence and is liable on conviction to a fine not exceeding C1 million or to imprisonment for a term not exceeding two years or both; and shall for a period of five years from the date of the expiration of his term of imprisonment be disqualified from being registered as a voter at a public election and in the case of a political party that political party shall be declared a prohibited organisation.<sup>64</sup>

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### **9.11 Prohibited Activities on Polling Day**

During the hours when a poll is open on polling day, no person shall, within five hundred metres of any polling station, seek to influence, in whatever manner, any person to vote for any candidate or to ascertain for which candidate any voter intends to vote or has voted.

During the hours when a poll is open on polling day no person shall, within five hundred metres of any polling station, sell any intoxicating liquor.

Any person who contravenes any of these provisions commits an offence and is liable on conviction to a fine not exceeding C500,000 or to a term of imprisonment not exceeding twelve months or both.<sup>65</sup>

### **9.12 False Statements**

A person who before or during an election for the purpose of effecting or preventing the election of a candidate makes or publishes or causes to be made or published by words whether written or spoken, or by song a statement which is false or which he knows or has reason to believe to be false in relation to the personal character of another candidate or the conduct of a political party commits an offence.

A person who before or during an election knowingly publishes a false statement of the withdrawal of a candidate for the purpose of prompting or procuring the return of another candidate commits an offence.

A person who commits an offence under these provisions is liable on conviction to a fine not exceeding C1 million or to imprisonment for a term not exceeding two years or both.<sup>66</sup>

### **9.13 Obstruction of Election Officers**

A person who wilfully obstructs or interferes with an election officer in the execution of his duty commits an offence.<sup>67</sup>

### **9.14 Penalty and Incapacity for Corrupt and Illegal Practices**

A person convicted of the offence of personation, bribery, treating or undue influence shall be liable on conviction to a fine not exceeding C1 million or to a term of imprisonment not exceeding two years or both; and shall for a period of five years after the date of the expiration of his term of imprisonment be disqualified from being registered as a voter or voting at a public election.

Where a court convicts a person of a corrupt or illegal practice, it shall report the conviction in writing to the Commission.<sup>68</sup>

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## NOTES

1. Constitution of Ghana 1992, see article 42
2. Ibid., see articles 43 and 44
3. Ibid., see article 45
4. Ibid., see article 46
5. Ibid., see articles 47 and 48
6. Ibid., see article 49
7. Ibid., see article 50
8. Ibid., see article 51
9. Ibid., see article 52
10. Ibid., see article 53
11. Ibid., see article 54
12. Ibid., see article 55
13. Electoral Commission Act 1993, see sections 1 and 2
14. Ibid., see sections 6 and 7
15. Note supplied by the Electoral Commission
16. Representation of the People Law 1992, see section 6
17. Ibid., see section 7
18. Ibid., see section 8
19. Political Parties Law 1992, see sections 1 and 2
20. Ibid., see sections 3-8
21. Ibid., see section 9
22. Ibid., see section 12
23. Presidential Elections Law 1992, see section 1
24. Ibid., see section 3
25. Ibid., see section 4
26. Representation of the People Law 1992, see section 11
27. Public Elections (Parliament) Regulations 1992, see regulation 10
28. Ibid., see regulation 11
29. Ibid., see regulation 12
30. Ibid., see regulation 13
31. Ibid., see regulation 14
32. Ibid., see regulation 16
33. Ibid., see regulations 15 and 17
34. Ibid., see regulation 18
35. Ibid., see regulation 19
36. Ibid., see regulation 20
37. Ibid., see regulation 21
38. Ibid., see regulations 22 and 23
39. Ibid., see regulations 24 and 25
40. Ibid., see regulations 26 and 28
41. Ibid., see regulations 29-32
42. Ibid., see regulation 33
43. Ibid., see regulations 34-37
44. Ibid., see regulation 38
45. Ibid., see regulation 39
46. Representation of the People Law 1992, see section 16
47. Ibid., see sections 17 and 18
48. Ibid., see section 19
49. Ibid., see section 20
50. Ibid., see section 21
51. Ibid., see section 22
52. Ibid., see section 23
53. Ibid., see section 24
54. Ibid., see section 26
55. Ibid., see section 27
56. Ibid., see section 28
57. Ibid., see section 29
58. Ibid., see section 30
59. Ibid., see section 31
60. Ibid., see section 32
61. Ibid., see section 33
62. Ibid., see section 34
63. Ibid., see section 35
64. Ibid., see section 36
65. Ibid., see section 37
66. Ibid., see section 39
67. Ibid., see section 40
68. Ibid., see section 41