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INTRODUCTION

The Constitution of Botswana deals with the franchise, its conferment and exercise by electors. The Constitution also deals with the appointment of a Supervisor of Elections and the management of election organisation and conduct in Botswana. The Constitution provides for the establishment of a Delimitation Commission for the purposes of delimiting the boundaries of constituencies and contains clear guidelines on the number and creation of new constituencies.

The principal law regulating the organisation and conduct of elections is the Electoral Act, herein referred to as “the Act”.

— *Section 1* —

RELEVANT CONSTITUTIONAL PROVISIONS

1.01 The Franchise

A person who –

- (a) is a citizen of Botswana or of any other country to which these provisions are applied by Parliament;
- (b) has attained the age of 21 years; and
- (c) has either resided in Botswana for a continuous period of at least 12 months immediately preceding the date on which he applies for registration as a voter or was born in Botswana and is domiciled in Botswana on the date on which he applies for registration as a voter,

shall unless he is disqualified for registration as a voter under any law, be entitled, upon his making application in that behalf at such time and in such manner as may be prescribed by any law, to be registered as a voter for the purposes of elections of elected members of the National Assembly, and no other person may be so registered.

A person who has not continuously resided in Botswana for the required period but has during the whole period retained his residence (or if he has more than one residence, his principal residence) in Botswana and has been absent therefrom for some temporary purpose only shall be deemed for the purpose of sub-paragraph (c) to have been resident in Botswana during such absence.

A person shall be entitled to be registered as a voter –

- (a) in the constituency in which he has his residence or if he has more than one

- residence in Botswana in the constituency in which he has his principal residence;
or
- (b) in the case of a person who does not have a residence in Botswana, the constituency he was born.

A person is entitled to be registered as a voter in one constituency only.

Every person who is registered in any constituency as a voter for the purposes of elections of the elected members of the National Assembly shall unless he is disqualified by Parliament from voting in such elections on the grounds of his having been convicted of an offence in connection with the elections or on the grounds of his being reported guilty by the court trying an election petition or on the grounds of his being in lawful custody at the date of the election, be entitled so to vote in that constituency in accordance with the provisions made by or under a law in that behalf.¹

1.02 Other Provisions

Other relevant provisions of the Constitution, namely the Supervisor of Elections and constituencies, are dealt with below under Sections 2 and 3 respectively.²

— Section 2 —

ELECTION ADMINISTRATION

2.01 Supervisor of Elections

There shall be a Supervisor of Elections whose duty it is to exercise jurisdiction over the registration of voters for elections of elected members of the National Assembly and over the conduct of such elections.

The Supervisor of Elections shall be appointed by the President.

A person shall not be qualified to be appointed as Supervisor of Elections unless –

- (a) he is a citizen of Botswana and holds or has held senior office in or outside the public service, in any country;
- (b) he has not been declared insolvent or adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged, or has not made a composition with his creditors and has not paid his debts in full; and
- (c) he has not been convicted of any offence involving dishonesty in any country.

A person must not enter upon the duties of the office of Supervisor of Elections until he has taken and subscribed the oath of allegiance and such oath for the execution of his office as may be prescribed by Parliament.

The Supervisor of Elections may give such directions as he considers necessary or expedient to any registering officer, presiding officer or returning officer relating to the exercise by that officer of his functions under any law regulating the registration of voters or the conduct of elections, and any officer to whom directions are given shall comply with those directions.

The Supervisor of Elections shall, on the completion of any election of an elected member or elected members of the National Assembly, submit a report on the exercise of his functions to the Minister for the time being responsible for matters relating to such elections, and that Minister shall, not later than seven days after the National Assembly first meets after he has received the report, lay it before the Assembly.

In the exercise of his functions, the Supervisor of Elections shall not be subject to the direction and control of any other person or authority.

A person holding the office of Supervisor of Elections shall vacate that office on attaining the age of 65 years or such age as may be prescribed by Parliament: provided that the President may permit a holder of the office of Supervisor of Elections to continue in office for such period as may be necessary to enable him to complete any electoral proceedings commenced before he attained that age.

A holder of the office of Supervisor of Elections may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with these provisions.

If the President considers that the question of removing the Supervisor of Elections ought to be investigated then –

- (a) he shall appoint a tribunal which shall consist of not less than two members who hold or have held high judicial office;
- (b) the tribunal shall enquire into and report on the facts thereof to the President and advise the President whether the Supervisor of Elections ought to be removed from office for inability or for misbehaviour,

provided that, pending the determination by the tribunal, the President may suspend the Supervisor of Elections from his duties and appoint the person to act in his place.

Where a tribunal advises the President that the Supervisor of Elections ought to be removed for inability or for misbehaviour, the President shall remove the Supervisor of Elections from office.³

2.02 Duties of Supervisor of Elections

The Supervisor of Elections shall –

- (a) exercise general direction and supervision over the registration of voters;
- (b) exercise general direction and supervision over the administration and conduct of

elections and enforce on the part of all election officers fairness, impartiality and compliance with the provisions of the Act;

- (c) issue to election officers and registration officers such instructions as he may deem necessary to ensure effective execution of the provisions of the Act; and
- (d) exercise and perform all other powers and duties conferred and imposed upon him by the Act.⁴

2.03 Appointment of Officers

The Supervisor of Elections shall appoint a principal registration officer for each constituency, and such other registration officers for each constituency as he may deem necessary, who shall execute and perform the powers and duties conferred upon them by the Act in accordance with such instructions as may be given by the Supervisor of Elections.

The Supervisor of Elections shall appoint a returning officer and such number of assistant returning officers for each constituency as he may deem necessary and shall appoint a presiding officer and such number of polling officers as he may deem necessary for each polling station.

Registration and election officers shall execute and perform the powers and duties conferred upon them by the Act in accordance with such instructions as they may be given by the Supervisor of Elections.

Appointments made under these provisions are to be published in the Gazette.⁵

— Section 3 —

DELIMITATION OF CONSTITUENCIES

3.01 Number of Constituencies

Botswana shall be divided into as many constituencies as there are elected members of the National Assembly and each of those constituencies shall return one member to the National Assembly.⁶

3.02 Delimitation Commission

The Judicial Service Commission shall, at intervals of not less than five nor more than 10 years, appoint a Delimitation Commission consisting of a Chairman and not more than four other members.

At any time when –

- (a) Parliament has made provision altering the number of seats of elected members in the National Assembly; or
- (b) a comprehensive national population census is held in Botswana,

the Judicial Service Commission shall, as soon as practicable thereafter, appoint a Delimitation Commission.

The Chairman of a Delimitation Commission shall be selected from among persons who hold or have held high judicial office.

No person shall be qualified to be appointed as Chairman or member of a Delimitation Commission who –

- (a) is a member of the National Assembly;
- (b) is or has been within the preceding five years actively engaged in politics; or
- (c) is a public officer.

A person is deemed to be actively engaged in politics or to have been so engaged during the relevant period if –

- (a) he is, or was at any time during that period, a member of the National Assembly;
- (b) he is, or was at any time during that period, nominated as a candidate for election to the National Assembly; or
- (c) he is, or was at any time during that period, the holder of an office in any political organisation that sponsors or supports, or has at any time sponsored or supported, a candidate for election as a member of the National Assembly,

provided that no person shall be disqualified from holding the office of Chairman or member of a Delimitation Commission by reason only of the fact that he has been the Speaker of the National Assembly if he was elected to that office from amongst persons who were not members of the National Assembly.

The office of Chairman or other member of the Delimitation Commission shall become vacant if circumstances arise that, were he not Chairman or member of the Delimitation Commission, would disqualify him for appointment as such.

If, after the appointment of the Delimitation Commission and before the Commission has submitted its report, the office of the Chairman or any other member of the Commission becomes vacant, the Judicial Service Commission may appoint another person to be a member of the Commission: provided that a member appointed because of the inability of some other member to discharge his functions ceases to be a member of the Commission when, in the opinion of the Judicial Service Commission, that other member is able to resume his functions as a member of the Commission.⁷

3.03 Report of Commission

Whenever a Delimitation Commission has been appointed the Commission shall as soon as practicable submit to the President a report which shall state whether any alteration is necessary to the boundaries of the constituencies in order to take account of the population quota or in consequence of any alteration in the number of seats of elected members in the National Assembly and where any alteration is necessary shall include a list of the constituencies delimited by the Commission and a description of the boundaries of these constituencies.

The boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable: provided that the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of natural community of interest, means of communication, geographical features, density of population, and the boundaries of Tribal Territories and administrative districts.

“Population quota” means the number obtained by dividing the number of inhabitants of Botswana (as ascertained by reference to the latest comprehensive national population census in Botswana) by the number of constituencies into which Botswana is divided.

The President shall as soon as practicable after the submission of the report of the Delimitation Commission, by Proclamation published in the Gazette, declare the boundaries of the constituencies as delimited by the Commission.

A Proclamation under these provisions shall come into force the next dissolution of the National Assembly after it is made.

The Commission may by regulation or otherwise regulate its own procedure and may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings: provided that any decision of the Commission shall require the concurrence of a majority of all its members.

The Delimitation Commission shall not be subject to the direction or control of any other authority or person.

A Delimitation Commission stands dissolved upon the date on which its report is delivered to the President.⁸

— *Section 4* —

REGISTRATION OF VOTERS

4.01 General Registration of Voters – Polling Districts

As soon as practicable after constituencies have been delimited, the Supervisor of Elections shall divide each constituency into polling districts and establish one or more polling stations in each polling district; and shall cause notice of the boundaries of every such polling district, the situation of every such polling station and the names by which such polling districts and polling stations are to be known, to be published in the Gazette and in such other manner as he may consider appropriate.

The Supervisor of Elections may from time to time in like manner add to the number of

polling stations established in any polling district or vary the situation within a polling district of any polling station established therein.

Whenever polling districts and polling stations have been established or whenever the President considers that it is necessary for new general rolls to be prepared in order to obtain accurate rolls of voters in any constituency or constituencies, the President shall by order published in the Gazette appoint a period to be a general registration period in respect of the constituency or constituencies specified in the order.

During a general registration period registration officers shall attend at all polling stations for the purpose of registering voters.

During a general registration period in any designated polling district, the Supervisor of Elections shall cause copies of the relevant sections of the existing rolls to be made available for inspection by the public at all polling stations within that district and at such other places as he may consider appropriate.

On publication of an order appointing a general registration period, the Supervisor of Elections shall publish a notice or notices, in such manner as he may consider appropriate –

- (a) calling upon every person who is entitled to registration to apply for such registration;
- (b) informing all persons who are entitled to registration in respect of polling stations in any designated polling district of the dates, times and places when and at which copies of the relevant sections of the existing rolls will be available for inspection by the public, and calling upon all such persons who are not already registered in respect of such polling station to apply for registration during the general period, and specifying the dates, times and places when and at which persons so entitled may apply for such registration.⁹

4.02 Supplementary Registration of Voters

Registration of voters otherwise than during a general registration period shall be carried out at the office of the principal registration officer for each constituency, and at such other places as the Supervisor of Elections may from time to time appoint for such purpose.

A district commissioner or his authorised representative may, during any official visit to any part of his district, register voters in that part of the district.¹⁰

4.03 Registration Procedure

During a general registration period –

- (a) any person who claims to be entitled to registration in respect of any polling station not in a designated polling district may, unless he has an existing registration in respect of a polling station in a designated polling district, make application for registration by attending before a registration officer at that polling station;
- (b) any person who claims to be entitled to registration in respect of any polling station

in a designated polling district may, unless he has an existing registration in respect of that polling station or a polling station in a designated polling district, make application for registration by attending before a registration officer for the constituency which contains that polling station.

At any other time, any person who claims to be entitled to registration may, if he is not already a voter, make application for registration by attending before a registration officer for the constituency which contains that polling station in respect of which he claims to be entitled to registration.

If application for registration is made during a general registration period or when the Supervisor of Elections has appointed other places for registration in respect of the constituency concerned, the registration officer shall determine whether or not the applicant is entitled to registration in respect of that polling station, and, if satisfied that he is, shall –

- (a) complete a voter's registration record card in relation to the applicant;
- (b) require the applicant to make the stipulated declaration in the prescribed form;
- (c) register the applicant as a voter in respect of that polling station by completing a voter's registration card in relation to the applicant, and giving it to the applicant;
- (d) forward the completed voter's registration record card to the Supervisor of Elections.

If application for registration is made at any time other than a general registration period, the registration officer must determine whether or not the applicant is entitled to registration in respect of that polling station, and, if satisfied that he is, shall –

- (a) complete a voter's registration record card in the prescribed form in relation to the applicant;
- (b) require the applicant to make the declaration prescribed, and shall forward the completed voter's registration record card to the Supervisor of Elections who, on receipt thereof, will register the applicant as a voter in respect of that polling station by completing a voter's registration card in the prescribed form in relation to the applicant and forwarding it to the applicant.

If a registration officer is not satisfied that an applicant is entitled to registration, he shall complete and give to the applicant a notice of rejection in the prescribed form and send a counterpart of such notice to the principal registration officer.

A registration officer is required to take such reasonable steps as he may deem necessary to satisfy himself as to the identity of any person applying for registration.

For the purpose of satisfying himself with regard to any matter or for the purpose of determining any matter relating to any such application, a registration officer may make such enquiry as he may deem necessary.

There shall be general rolls, supplementary rolls and election rolls of the voters in each constituency.

As soon as practicable after the termination of a general registration period, the Supervisor of Elections shall cause to be prepared a roll of voters in the constituencies affected by such general registration period, containing –

- (a) in respect of polling stations not included in any designated polling district, the names of voters registered in respect of such polling stations during the general registration period;
- (b) in respect of any polling stations included in a designated polling district, the names of voters registered in the relevant sections of existing rolls together with the names of voters registered in respect of such polling stations between the expiration of the period in respect of which the last existing roll was prepared and the expiration of the general registration period.

As soon as practicable after 31 December in each year and at such other intervals as he may consider appropriate the Supervisor of Elections shall cause to be prepared a roll of voters for each constituency, containing the names of voters registered in that constituency since the last such roll was prepared and not included in any general roll, such roll to be known as a supplementary roll.

Whenever a writ of election is issued, the Supervisor of Elections shall amalgamate into one roll for each constituency concerned –

- (a) the last general roll for such constituency; and
- (b) all supplementary rolls for such constituency in operation on the day on which such writ is issued.

Any such amalgamated roll shall be known as an election roll and may be maintained in such form of permanent record as the Minister may by regulations prescribe.

A roll comes into operation on certification.

Upon the coming into operation of a general roll for any constituency, any previous general roll and any existing supplementary rolls for the constituency shall cease to have effect and the Supervisor of Elections may cause the same to be destroyed.

Upon the coming into operation of an election roll for any constituency, the general roll and all supplementary rolls which have been amalgamated into the election roll shall cease to have effect and the Supervisor of Elections may cause the same to be destroyed, and for the purposes of the Act such election roll shall be deemed to be the last general roll for the constituency concerned.

Every roll shall –

- (a) state the surname, initials, sex and address of every voter named therein and the serial number of the voter's registration card given to him;

- (b) be compiled in a regular order in relation to such serial numbers; and
- (c) be divided into sections each relating to the voters registered in respect of a particular polling station.

On completion of any general roll or supplementary roll, and on the certification of any election roll, the Supervisor of Elections shall publish the roll by –

- (a) making it and copies thereof available for inspection by the public; and
- (b) giving notice thereof in the Gazette and in such other manner as he may consider appropriate, specifying the places at which it and such copies are so available, and in the case of a general or supplementary roll, setting out in the prescribed form the manner in which objections in respect of the roll may be made.

As soon as practicable after any objections in relation to a general roll or supplementary roll have been determined, the Supervisor of Elections shall certify the roll in the manner prescribed: provided that if at the expiration of 28 days in the case of a general roll or 14 days in the case of a supplementary roll after such publication, any objection in relation to a roll has not yet been determined, the Supervisor of Elections may certify the roll in accordance with the provisions notwithstanding such objection, but if he does so he shall thereafter alter the roll if necessary to give effect to the decision of a magistrate in relation to that objection.

As soon as practicable after the certification of a general roll or supplementary roll the Supervisor of Elections shall give notice in the Gazette and in such other manner as he may consider appropriate that the roll has been certified and is in operation, and that it and copies thereof are open for inspection by the public, specifying the places at which it and such copies are so available.

The Supervisor of Elections shall certify an election roll in the manner prescribed as soon as it has been completed.

Every existing roll shall be open for inspection by the public without fee at the office of the Supervisor of Elections during the hours the office is open.

A copy of every existing roll for a constituency shall be kept at the office of the principal registration officer for that constituency and at such other places therein as the principal registration officer may determine, and shall be open for inspection by the public without fee during such reasonable hours as the principal registration officer may appoint.

Any person may, without a fee, make copies of a roll or take extracts therefrom during the hours aforesaid.¹¹

4.04 Appeals, Objections and Cancellations

An applicant whose application has been rejected may appeal to a magistrate.

Notice of any such appeal shall be in the prescribed form and shall be delivered to the

principal registration officer for the constituency where the applicant applied within a period of seven days after the rejection of the application, together with a deposit as prescribed.

On receipt of any notice of appeal the principal registration officer shall forthwith set down the appeal for the hearing before a magistrate and the magistrate shall appoint a place and as early a day as is practicable for the hearing of the appeal.

The principal registration officer shall cause an appellant to be notified of the day and place appointed by the magistrate for the hearing of his appeal.

The magistrate shall then determine any such appeal and forthwith notify the principal registration officer concerned of his decision in relation thereto.

If a magistrate allows an appeal the principal registration officer on being so notified shall –

- (a) complete a voter's registration record card in the prescribed form in relation to the appellant, and endorse the card with an entry to the effect that the appeal has been allowed;
- (b) register the appellant as a voter in respect of the polling station named by the appellant in his notice of appeal by completing a voter's registration card in the prescribed manner in relation to the appellant, marking the card in the manner prescribed and giving it to the appellant;
- (c) forward the completed voter's registration record card to the Supervisor of Elections; and
- (d) refund the appellant's deposit.

If a magistrate disallows an appeal the principal registration officer on being so notified shall pay the appellant's deposit into the general revenues of Botswana.

The decision of a magistrate on an appeal shall be final and shall not be challenged in any proceedings whatsoever.

Any person whose name is included in a roll for any constituency may object to the inclusion of any other name appearing therein or in any other existing roll relating to that constituency.

An objection must be made in writing in the prescribed form and must be delivered to the principal registration officer for the constituency together with the stipulated deposit, within 14 days after –

- (a) the date of publication of the roll to which it relates; or
- (b) if the objection relates to the name of a voter inserted in a roll the date on which notice of such insertion was given.

On receipt of an objection the principal registration officer must forthwith set down the

objection hearing before a magistrate and the magistrate shall appoint a place and as early a date as is practicable for the hearing of the objection.

The principal registration officer shall cause the objector and the person to whom the objection relates to be notified of the time and place appointed by the magistrate for the hearing of the objection and shall forward to the person to whom the objection relates a copy of the objection.

The magistrate is then required to determine the objection.

The person to whom an objection relates may appear either in person or by a person appointed in writing under his hand, or may forward by post to a magistrate a statement signed by him setting forth his answer to the objection.

If the objector or the person to whom the objection relates appears by some other person the magistrate may, if he deems it necessary, adjourn the hearing for the attendance in person of the objector or the person to whom the objection relates and may make an order requiring his attendance accordingly.

The magistrate shall forthwith notify the principal registration officer concerned of his decision in relation to any objection.

If a magistrate upholds an objection, the principal registration officer must refund the objector's deposit.

If a magistrate disallows an objection the principal registration officer shall pay the objector's deposit into the general revenues of Botswana.

If in addition the magistrate is of the opinion that the objection was made without reasonable cause, he may order the objector to pay to the person to whom the objection relates such sum not exceeding P100 as he considers will compensate the person to whom the objection relates for the trouble and expense to which he may have been put by reason of the objection.

Any sum payable under this provision is recoverable as a civil debt.

The decision of a magistrate on an objection is final and cannot be challenged in any proceedings whatsoever.

When an objector fails to appear on the day and at the place and time appointed by the magistrate for the hearing of the objection, the magistrate shall disallow the objection.

If any principal registration officer has reason to believe that any voter enrolled in any section of an existing roll in his constituency is not, or is no longer, entitled to registration in respect of the polling station to which that registration relates he shall send to that voter written notice of cancellation in the prescribed form setting forth the grounds on which he proposes to cancel the voter's registration in respect of that polling station and

that unless, on representations made by the voter or otherwise, the principal registration officer withdraws the notice, or unless an appeal by the voter is allowed, the voter's registration in that polling station will be cancelled and his name struck off the roll: provided that –

- (i) in the case of a voter whose registration it is proposed to cancel on the grounds that he does not possess the residence qualification, the principal registration officer may publish such notice in the Gazette and such publication shall be sufficient compliance with these provisions; and
- (ii) no such notice shall be so sent or published during the period between the issue of a writ of election having effect in relation to that constituency and the close of polling in the election to which the writ relates.

A voter who has received notice of cancellation may appeal to a magistrate.

Notice of any such appeal shall be in the prescribed form and be delivered to the principal registration officer who sent the notice of cancellation to the voter within a period of 14 days after delivery of such notice of cancellation.

On receipt of any notice of appeal the principal registration officer shall forthwith set down the appeal for hearing before a magistrate and the magistrate shall appoint a place and as early a day as is practicable for the hearing of the appeal.

The principal registration officer shall cause an appellant to be notified of the day and place appointed by the magistrate for the hearing of his appeal.

The magistrate shall then determine any such appeal and forthwith notify the principal registration officer concerned of his decision in relation thereto.

The procedure for the hearing of appeals or objections shall be regulated in such manner as the presiding magistrate may direct.

For the purpose of determining an appeal or objection a magistrate may summon any person to appear before him to give evidence on oath or affirmation and may order the production of any document bearing on any issue relevant to the determination of such appeal or objection.

If a magistrate upholds an objection or if notice of cancellation is given to any voter and either such voter does not appeal and the notice is not withdrawn, or such voter does appeal and his appeal is dismissed, the principal registration officer concerned shall –

- (a) notify the Supervisor of Elections accordingly who shall, cancel the voter's registration by making an appropriate endorsement on the voter's registration record card relating to such voter, and delete his name from the roll; and
- (b) require the person whose registration is cancelled to surrender to the principal registration officer the voter's registration card given to that person, and forward such card to the Supervisor of Elections.¹²

4.05 Transfer of Registration

Any person who is registered as a voter in respect of any polling station (referred to as “the existing polling station”) and has become entitled to registration in respect of any other polling station (referred to as “the other polling station”) may make application for the transfer of his registration: provided that during a general registration period, these provisions shall have effect only where the existing polling station is in a designated polling district.

Any person who wishes to make such an application shall attend before a registration officer for the constituency in which the other polling station is situated.

The registration officer shall determine whether the applicant is entitled to transfer his registration to the other polling station and, if satisfied that he is, shall –

- (a) require him to surrender the voter’s registration card given to him on his registration in respect of the existing polling station;
- (b) complete a registration transfer card in the prescribed form in relation to the applicant;
- (c) require him to make the declaration stipulated for the purpose;
- (d) transfer the applicant’s registration to the other polling station by making an appropriate endorsement on the surrendered voter’s registration card, completing a new voter’s registration card in relation to the applicant and giving it to the applicant;
- (e) forward the surrendered voter’s registration card and the completed registration transfer card to the Supervisor of Elections.

The Supervisor of Elections shall –

- (a) make an appropriate endorsement on the applicant’s registration record card;
- (b) delete the applicant’s name from the roll on which he is enrolled; and
- (c) insert his name in the appropriate section of the existing roll for the constituency which includes the polling station to which he has been transferred.

If the registration officer is not satisfied that the applicant is entitled to transfer his registration he shall complete and give to the applicant a notice of rejection and send a counterpart of such notice to the principal registration officer.¹³

4.06 Alterations to Rolls

An alteration to any existing roll which is required –

- (a) to insert a voter’s name which was incorrectly omitted;
- (b) to transfer a voter’s name from an incorrect section to the correct section;
- (c) to correct any clerical error made therein;
- (d) to change, on the application of a voter, the original name or address of that voter to an altered name or address;

- (e) to delete the name of any person whom the Supervisor of Elections is satisfied is dead,

may be made by the Supervisor of Elections at any time: provided that no alteration shall be made to a roll in terms of sub-paragraph (d) unless the voter produces the voter's registration card given to him to enable it to be endorsed.

Upon making any alteration to a roll, the Supervisor of Elections shall forthwith notify the principal registration officer concerned of the details of such alteration, and the principal registration officer shall cause a similar alteration to be made to every copy of such roll in his possession or in the possession of any other registration officer in that constituency.

In addition, in the case of –

- (a) any alteration involving the insertion of a name therein in respect of a transfer or an omission the Supervisor of Elections shall give notice thereof in the Gazette and in such other manner as he may consider appropriate specifying the places at which the altered roll and copies thereof are available for inspection by the public, and setting out in the manner prescribed the objections in respect of such insertion which may be made;
- (b) any alteration in respect of a change of name or address of a voter, the Supervisor of Elections shall make a corresponding endorsement to the voter's registration record card relating to the voter, and cause a corresponding endorsement to be made to his voter's registration card;
- (c) any alteration with respect to a deceased voter the Supervisor of Elections shall make a corresponding endorsement to the voter's registration record card relating to the deceased voter, and destroy the card after the expiration of such period as he may deem fit.

After the issue of any writ of election, the Supervisor of Elections shall not –

- (a) prepare, publish or certify any roll other than an election roll except to record a transfer of registration effected prior to the issue of a writ of election;
- (b) make any endorsement to a voter's registration record card;
- (c) cause any endorsement to be made to any voter's registration card; or
- (d) make any alteration to a roll except to record a transfer of registration effected prior to the writ of election,

which will have effect in relation to the constituency to which the writ relates, until the close of polling in the election to which the writ relates.¹⁴

4.07 Duplicate Voter's Registration Card

Where a voter loses his voter's registration card, or the card is destroyed, a registration officer for the constituency in which the voter is registered, on being satisfied as to such loss or destruction, may issue a duplicate voter's registration card to such person: provided that no duplicate voter's registration card shall be issued on any day fixed for polling in that constituency.¹⁵

— *Section 5* —

PREPARATION FOR ELECTIONS

5.01 Writ of Election

For the purpose of a general election to the National Assembly or of a by-election to fill a vacancy therein caused by death, resignation or otherwise, the President shall issue a writ under the public seal of Botswana, addressed to the returning officer of each constituency for which a member is to be returned, fixing –

- (a) the place and day at and on which, and the hours between which, the returning officer will receive nominations of candidates for election;
- (b) the day for the taking of any poll which may become necessary.

The day fixed for nominations shall not be earlier than 14 days after the day on which the writ was issued and, in the case of a general election, shall be not less than five days nor more than 10 days after the day which is the day for nomination of presidential candidates.

The day fixed for election shall not be earlier than 21 days after the day fixed for nominations.

Every writ must be in the prescribed form and shall be forwarded to the Supervisor of Elections for transmission to the returning officer to whom it is addressed.

As soon as practicable after a writ has been issued, the Supervisor of Elections shall give notice thereof in the Gazette, specifying in such notice the various matters prescribed.

Upon receipt of a writ, the returning officer shall proceed to hold an election in the manner provided in the Act and shall give and publish notice thereof throughout the constituency in such manner as he thinks fit and shall cause a notice in the prescribed form to be posted in such places as he considers desirable.¹⁶

5.02 Nomination of Candidates

Every candidate shall be nominated by a proposer, seconder and not fewer than seven other persons as supporters; the names of such proposer, seconder and supporters must be on the election roll for the constituency for which the candidate seeks election.

The nomination shall be made on a nomination paper in the prescribed form which shall be signed by the candidate and his proposer, seconder and supporters, and shall contain the following particulars –

- (a) the name, identity card number and address of the candidate, the name of the constituency in which he is registered, together with his number on the electoral roll for that constituency;
- (b) the names, identity card numbers, addresses and the numbers on the electoral roll

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- for that constituency of the proposer, seconder and supporters of the candidate;
- (c) a statement by the candidate that he is willing and qualified to stand for election;
 - (d) a statement by the candidate as to his preference of symbol and voting colour for the purpose of any contested election;
 - (e) in his discretion, a declaration as to the candidate, if any, whom he supports in the election to the office of President; and
 - (f) if his nomination contains a declaration made under sub-paragraph (e), a declaration in the prescribed form by the presidential candidate named in his nomination that such presidential candidate consents to the declaration being made in his favour.

If any proposer, seconder or supporter is unable to sign his name, he shall affix his mark in place of his signature and such mark shall be witnessed by a person who can sign his name; such witness shall, in addition to his signature, write his name legibly immediately under such signature.

No person shall witness more than one mark. No person may be nominated for election in more than one constituency or while he is a member of the National Assembly.

The returning officer shall attend at the place and during the hours fixed for the nomination papers as may be tendered to him.

The returning officer shall require a candidate nominated, his proposer, seconder and his seven supporters to produce their identity cards for him to inspect.

Where any person is required to produce his identity card and fails to do so, the returning officer shall reject the nomination.

Every candidate shall either before his nomination paper is delivered to the returning officer, deposit or cause to be deposited in any convenient Government revenue office the sum of P100 in cash and, at the time of delivery of such papers, produce or cause to be produced to the returning officer the official receipt for that sum, or at the time of delivery of such papers, deposit or cause to be deposited with the returning officer the sum of P100 in cash, and no nomination is valid unless such deposit has been made or the receipt therefor is produced to the returning officer.

The deposit shall be returned to the candidate or his personal representative if –

- (a) the candidate dies before the date of the election;
- (b) there is no contested election;
- (c) a contested election is declared void;
- (d) he withdraws his candidature in due time;
- (e) in any contested election he is successful or obtains not less than one-twentieth of the total number of votes cast in his constituency; or
- (f) if his nomination is invalid for any other reason.

Any deposit which is not returnable shall be paid into the general revenues of Botswana.

When any nomination paper is delivered and a receipt is produced the candidate is deemed to stand nominated unless the returning officer decides that the nomination paper is invalid, or proof is given to the satisfaction of the returning officer of the death of the candidate, or he withdraws.

The returning officer shall not be entitled to hold a nomination paper invalid except on the following grounds –

- (a) that the candidate does not possess the qualifications (additional to qualifications in respect of proficiency in English) or possesses the disqualifications prescribed by law for membership of the National Assembly;
- (b) that the paper is not completed and subscribed or was not delivered as required by the Act;
- (c) that the candidate has already been nominated for another constituency; or
- (d) that the nomination is void under the Constitution;
- (e) that the candidate, his proposer, seconder or anyone of his supporters has failed to produce their identity card.

The returning officer's decision that a candidate has been validly nominated is final and shall not be questioned in any legal proceedings except on an election petition.

Whenever the returning officer decides that a candidate has been validly nominated he shall endorse and sign on the nomination paper his decision and the reasons therefor, and such decision shall not be questioned in any legal proceedings except on an election petition.

A candidate whose first nomination paper is or may be invalid shall be permitted to submit a second or subsequent nomination paper before the time fixed for the close of nominations.

A candidate may at any time before the close of nominations, but not afterwards, withdraw his candidature by giving to the returning officer a notice to the effect signed by himself.

As soon as practicable after the close of nominations, the returning officer shall publish a statement of the full names of all persons standing nominated, and of their proposers, seconders and supporters, and the respective addresses by displaying it at the place appointed for the receipt of nominations and at such other places as he considers desirable.

Where no candidate remains nominated at the close of nominations, the returning officer shall endorse the writ accordingly and return it to the Supervisor of Elections and the President shall issue a fresh writ.

If at the close of nominations there is only one candidate validly nominated, the returning officer shall forthwith publicly declare that candidate to be elected and shall immediately thereafter certify on the writ the return of that candidate and shall return the writ to the Supervisor of Elections.

If at the close of nominations there is more than one person standing nominated a poll shall take place.¹⁷

5.03 Notice of Poll

Where it is necessary for a poll to take place, the returning officer, as soon as practicable after the close of nominations, shall publish in such manner as he may think fit in the vicinity of each polling station and elsewhere in the constituency a notice –

- (a) stating the day and hours fixed for the poll;
- (b) stating the first names or their initials and the surnames (arranged in alphabetical order of surnames), and places of residence of the candidates, the symbols and voting colours allotted to them;
- (c) stating the situation of the nearest polling station; and
- (d) giving an indication of the persons entitled to vote at such polling station.

Such notice shall be in English and in such other language or languages as in the opinion of the returning officer is or are commonly used in that constituency.

If at any time between the issue of a writ and polling day the President is satisfied that it is expedient in the public interest to do so, he may by proclamation published in the Gazette adjourn the taking of the poll to some other day specified by him and endorsed on the writ.

A proclamation made under the foregoing provision shall apply only to such constituencies as are specified in the proclamation, and in any other constituency for which a writ has been issued, and which is not so specified, the poll shall be taken upon the day appointed by the writ.

Where any such proclamation is made before the day which would have constituted the nomination day if the proclamation had not been made, the nomination day shall be deemed to have been adjourned to the twenty-first day next before the day to which the holding of the poll is adjourned by the proclamation: provided that if the twenty-first day is a Sunday or a public holiday, the nomination day shall be deemed to have been adjourned to the first day, not being a Sunday or a public holiday, after the twenty-first day.¹⁸

5.04 Death of Candidate

If after the close of nominations but before the taking of the poll is commenced, proof is given to the satisfaction of the Supervisor of Elections of the death of one of the candidates, the Supervisor of Elections shall countermand the notice of the poll, and all proceedings with reference to the election shall be started afresh in all respects as if the writ has been received on the day on which proof was given to the Supervisor of Elections of the death.

Where by reason of the death of a candidate proceedings at an election are started afresh, the Supervisor of Elections shall fix –

- (a) the place and day at and on which, and the hours between which, the returning officer will receive nominations of candidates for elections; and
- (b) the day for the taking of any poll which may become necessary.

The day fixed for nominations shall not be earlier than 14 days after the day on which proof was given to the Supervisor of Elections of the death.

The day fixed for the poll shall not be earlier than 21 days after the day fixed for nominations.¹⁹

5.05 Polling Agents, Materials and Arrangements

Each candidate may by letter appoint two persons as polling agents to attend at each polling station in the constituency for which he is a candidate.

No person shall be appointed as a polling agent for any constituency unless his name appears on the election roll for that constituency.

Notice in writing of the appointment of polling agents stating their names and addresses and the polling station to which each has been assigned shall be given by the candidate to the presiding officer.

Each polling agent shall, upon his first attending at a polling station or at such other time as the presiding officer may require, produce his letter of appointment to the presiding officer.

The ballot paper of every person voting at an election shall consist of a ballot envelope in a form to be determined by the Supervisor of Elections and having a serial number printed or stamped on the back into which the voter shall place a counter having the voting colour allotted to the candidate for whom he wishes to vote.

Every poll shall commence at six-thirty o'clock in the morning and close at seven o'clock in the evening, unless the Supervisor of Elections otherwise orders.

Different hours for taking the poll may be ordered by the Supervisor of Elections in respect of different constituencies or different polling stations and in such case the returning officer shall amend any notice accordingly.

Where a presiding officer is satisfied that for conditions beyond their control many voters would not be able to cast their votes within the stipulated closing time, he may extend the time for the taking of the poll for a further period not exceeding two hours beyond the closing time.

In the absence of the presiding officer from any polling station a polling officer nominated by the returning officer shall act as presiding officer.

A polling officer may be authorised by the presiding officer to do any act which the presiding officer is required or authorised to do at a polling station, except that he may not order the searching of any voter or the arrest of any person from the polling station.

On polling day at every polling station there shall be –

-
- (a) outside the polling station in a conspicuous place a notice setting out the name of the polling station;
 - (b) both within and outside the polling station notices setting out (in alphabetical order of surnames) the surnames and first names or their initials, and voting colours of the candidates;
 - (c) one or more polling booths in which voters may handle their ballot envelopes and counters in secrecy, each containing notices of the kind referred to in (b), a table and a discard box;
 - (d) one or more ballot boxes placed in front of the presiding officer; and
 - (e) a copy of the election roll for the constituency, a sufficient number of ballot envelopes, counters and other things necessary for the poll to be properly and expeditiously carried out.

Every presiding officer shall be in possession of a seal supplied by the Supervisor of Elections.

Every ballot box shall be provided with a lock or other device for securing it when closed and shall be so constructed that ballot envelopes can be put therein when it is closed but cannot be removed therefrom once it has been sealed.

Every discard box shall be so constructed that counters can be put therein but cannot be removed or seen unless the box or any fastening thereof is destroyed.²⁰

5.06 Voting Proceedings

The voting at an election shall be conducted in the following manner –

- (a) every voter desiring to record his vote shall present himself at the polling station in respect of which he is registered to vote, and shall produce his voter's registration card and his identity card to the presiding officer;
- (b) the presiding officer, after satisfying himself –
 - (i) that the name of such voter appears on his copy of the election roll for that constituency and in the section thereof relating to that polling station;
 - (ii) that such voter has not already voted at the election; and
 - (iii) that such voter has not become disqualified from voting,shall ask the voter to immerse a thumb up to at least the whole of the exposed nail in the ink provided by the presiding officer and shall immediately thereafter deliver to the voter a ballot envelope and such number of counters as there are candidates for the election, each counter having voting colour of a particular candidate: provided that –
 - (aa) in the case of a voter without a thumb, such a voter shall immerse a finger up to at least the whole of the exposed nail;
 - (bb) in the case of a voter without any thumb or finger, the provisions relating to the immersing of a thumb in ink shall not apply;
- (c) immediately before the presiding officer delivers a ballot envelope and counters to any person –
 - (i) the number and name of the voter, as stated in the election roll, shall be called out;

- (ii) a mark shall be made on the copy of the election roll against the number of such voter to show that he has been issued with a ballot envelope and counter;
- (iii) the voter's registration card shall be marked by the presiding officer with the date and his initials;
- (d) subject to the provisions of sub-paragraph (g), a voter on receiving a ballot envelope and counters shall go immediately into a polling booth and shall there secretly record his vote by putting into the ballot envelope the counter having the voting colour of the candidate for whom he wishes to vote;
- (e) he shall then seal the ballot envelope and put the unused counters into the discard box, and return to the presiding officer and, having held up the ballot envelope so that the presiding officer can identify it, shall drop the ballot envelope into the ballot box placed in front of the presiding officer;
- (f) every voter shall vote without undue delay and shall leave the polling station as soon as he has voted;
- (g) on the application in person of any voter who is incapacitated by blindness or other physical cause from voting, the presiding officer shall, in the presence of the person with whose assistance the blind voter came to cast his vote, secretly record the voter's vote by putting into the ballot envelope the counter having the voting colour of the candidate for whom the voter wishes to vote, and he shall then seal the ballot envelope and put the unused counters into the discard box and drop the ballot envelope into ballot box.

Except as provided in the Act, the presiding officer or polling officers shall not give any assistance or explanation to a voter beyond –

- (a) directing him to a polling booth where he may vote;
- (b) informing him of the nature of the notice posted inside the polling booth; and
- (c) informing him of the procedure he should follow after entering the polling booth.

Except as provided in the Act, no person shall approach, interfere with, speak to or assist a voter from the time he has received his ballot envelope and counters to the time he has completed voting.

If a candidate or his polling agent or a voter makes before the presiding officer a written declaration on oath in the prescribed form that he verily believes and undertakes to prove that a person applying for or in possession of a ballot envelope and counters –

- (a) is in fact not the voter whose name he assumed to vote;
- (b) that such person has voted before in the same election; or
- (c) that such person is disqualified from voting in such election,

the presiding officer shall, unless that person makes a written declaration on oath in the prescribed form before the presiding officer that the statements in the first mentioned declaration (which shall be read to him) are false, prohibit the issue of a ballot envelope and counters to that person or, if a ballot envelope and counters have already been issued to him but he has not yet entered the polling booth impound and cancel the ballot envelope and counters and endorse on the envelope the reason for the cancellation and make an appropriate endorsement on the marked copy of the election roll.

A ballot envelope so impounded and cancelled shall be treated as a spoilt ballot envelope.

The presiding officer is authorised and required to administer the oath.

A person who makes any false statement in a declaration is guilty of an offence unless he proves that he did not know that the statement was false, and shall, on conviction, be liable to penalties prescribed by law for perjury.

A voter who has accidentally dealt with his ballot envelope in such manner that it may not properly be used as a ballot envelope may, on delivering such ballot envelope to the presiding officer, and after satisfying the presiding officer that it has been accidentally spoilt, obtain another ballot envelope in place thereof and the spoilt ballot envelope shall be immediately cancelled and the presiding officer shall make an appropriate endorsement of the marked copy on the election roll.

A voter who has accidentally placed his ballot envelope in the discard box may, on satisfying the presiding officer that it was so placed by accident, obtain another ballot envelope in place thereof and the presiding officer shall make an appropriate endorsement on the marked copy of the roll.

Any voter who has accidentally dealt with his counters in such a manner that he is unable to vote as he wishes shall be entitled to obtain a further set of counters, on demand, and not be required to disclose directly or indirectly what counters were accidentally dealt with.

A vote may not be recorded by a voter except by his attending in person at the polling station and recording his vote in accordance with the Act.

No person shall be permitted to vote at any polling station other than the one in respect of which he is registered.

So far as practicable polling officers and police officers on duty at polling stations shall be assigned to polling stations in respect of which they are registered.

Polling officers and police officers on duty at polling stations in respect of which they are registered shall so inform the presiding officer, who shall himself supervise the formalities necessary for the casting of their votes.

If a presiding officer is on duty at a polling station in respect of which he registered a polling officer shall supervise the formalities necessary for the casting of such presiding officer's vote.

Where election officers and police officers entitled to vote are unable or likely to be unable to vote on the date of the poll by reason of not having been assigned to the polling stations in respect of which they are registered, the Supervisor of Elections shall, for the purpose of enabling such officers to vote –

- (a) fix such times, places and days, not earlier than 15 days before the date fixed for the taking of any poll;

- (b) appoint presiding and returning officers for each place fixed by him under subparagraph (a); and
- (c) inform the candidates of each constituency in respect of which a poll is to be taken in accordance with the preceding provisions by notice published in the Gazette, at least seven days before the day fixed by him for the taking of the poll.

The presiding officer of each polling station as soon as practicable after the closing of the poll, shall –

- (a) place all the ballot envelopes containing the votes of each constituency in a separate packet and seal it with his seal and with the seals of each of the polling agents as attend and desire to affix their seals; and
- (b) transmit all the election documents in safe custody to the returning officer of the constituency in respect of which the votes were cast.

The returning officer of each constituency to whom election documents have been transmitted shall retain such documents unopened in safe custody until after the close of the poll on the date fixed and the documents shall be dealt with in the stipulated manner.

If a person representing himself to be a voter named in the election roll and being in possession of a voter's registration card in such name applies for a ballot envelope after another person has voted in such name, the applicant shall, after making a declaration on oath in the prescribed form be entitled to receive a ballot envelope and counters in the same manner as any other voter, except that such ballot envelope (herein referred to as a "tendered envelope") shall be crossed in the manner of a registered letter.

The name of such voter, his number in the election roll and the number of the tendered ballot envelope issued to him shall be entered on a list to be called the "tendered votes list", which shall be admissible in any legal proceedings arising out of the election.

The presiding officer shall regulate the admission of voters to the polling station and must exclude all other persons who have no lawful reason to be admitted, and shall keep order and ensure compliance with the Act at the polling station.

If any person misconducts himself at a polling station or fails to obey any lawful order of the presiding officer he may, by order of the presiding officer (but not of any other polling officer), be removed from the polling station by a police officer or any other person authorised by the presiding officer, and a person so removed shall not without the permission of the presiding officer again enter the polling station during the day of the election. The powers conferred by these provisions must not be used to prevent any person who is otherwise entitled to vote at a polling station from voting.

When the hour appointed for the closing of the poll has been reached, the presiding officer shall declare that no more persons shall be admitted to the polling station, and thereafter only the persons already inside the polling station, or any area set aside for waiting voters, shall be permitted to vote.

Any person, other than persons entitled to be present at the counting of votes, who between the hour appointed for the closing of the poll and the declaration of the result, remains in association with two or more persons within a radius of 1,000 metres from the place appointed for the counting of votes with the intent to disturb or disrupt the counting of votes, is guilty of an offence.

The presiding officer of each polling station as soon as practicable after the closing of the poll, shall, in the presence of such of the candidates and their polling agents as attend, make up into separate packets, sealed with his seal and the seal of the candidates or their agents if they desire to affix their seals –

- (a) the unused ballot envelopes, the spoilt ballot envelopes and the ballot envelopes cancelled;
- (b) the marked copy of the election roll; and
- (c) the tendered votes list.

Any ballot envelopes which are left in the polling booth must be cancelled by the presiding officer.

Any counters which are left in the polling booths shall be put into the discard box by the presiding officer.

Every unopened ballot box shall be secured by the presiding officer and sealed with his seal and with the seals of such of the candidates or their agents as attend and desire to affix their seals, in such manner that it cannot be opened and nothing can be marked therein without the seals being broken.

The presiding officer shall despatch each such packet and ballot box in safe custody to the returning officer, together with a statement by the presiding officer (referred to as the “ballot envelope account”) showing –

- (a) the number of ballot envelopes entrusted to him;
- (b) the number of ballot envelopes issued;
- (c) the number of ballot envelopes contained in the packet of unused ballot envelopes;
- (d) the number of ballot envelopes alleged to have been placed in the discard box by mistake.

The presiding officer shall despatch the unopened discard box in safe custody to the returning officer for onward transmission to the Supervisor of Elections who shall retain all such boxes in his possession unopened until the result of the election has been ascertained and then dispose of them as he sees fit.²¹

5.07 Counting of Votes

Each candidate may appoint not more than two persons (“counting agents”) to attend at the counting of the votes.

Notice in writing of the appointment, stating the names and addresses of the counting

agents, must be given by the candidate to the returning officer on polling day, and the returning officer may refuse to admit to the place where the votes are counted any person purporting to be a counting agent in respect of whom no such notice has been given.

If a counting agent dies, or becomes incapable of acting as such, a candidate may appoint another counting agent in his place, and the candidate shall immediately notify the returning officer in writing of the name and address of the counting agent so appointed.

The returning officer shall make arrangements for counting the votes, at a place to be determined by him, in the presence of any candidates or counting agents who wish to be present, as soon as practicable after the closing of poll, and shall as far as practicable proceed continuously until the counting is completed, allowing only reasonable time for refreshment.

When all the ballot boxes have been received by the returning officer, he shall, in the presence of any candidate or counting agents, who wish to be present, proceed to verify the ballot envelope accounts of each polling station in the constituency by opening the sealed packet containing the unused, spoilt and cancelled ballot envelopes from that polling station and comparing the number of ballot envelopes in it and the total number of ballot envelopes found in the ballot boxes for that polling station.

The returning officer shall prepare a statement as to the result of the verification and shall on request allow any candidate or counting agent to copy such statement.

After examination the returning officer shall return the unused, spoilt and cancelled ballot envelopes to the packet from which they were taken and shall reseal such packet with his seal.

When the procedures have been completed in each of the polling stations in the constituency the returning officer shall mix together all the envelopes found in the ballot boxes for that constituency and shall then count the votes in the manner stipulated.

After verifying the ballot envelope accounts the returning officer shall then open each ballot envelope, remove the counter therein, affix it to the face of the envelope and put the envelope into a separate pile or receptacle according to the colour of the counter.

The returning officer shall not open the tendered ballot envelopes but shall put them all together into a separate pile or receptacle.

The returning officer shall reject and endorse the word "rejected" on any ballot envelope on which anything except the serial number is written or marked by which the voter can be identified, or in which there is no counter or more than one counter: provided that the returning officer shall not reject any ballot envelope containing two or more counters of the same colour but shall treat such counters as if they were one counter of that colour.

If any candidate or counting agent objects to a decision made by the returning officer, the returning officer shall endorse the words "objected to" on the ballot envelope.

The returning officer shall then count the ballot envelopes in favour of each candidate.

While handling ballot envelopes the returning officer shall so far as possible keep their faces upwards.

The returning officer shall prepare a statement showing the number of ballot envelopes rejected and shall on request allow any candidate or counting agent to copy the statement.

The decision of the returning officer on any question arising in respect of any ballot envelope shall be final, and shall not be questioned in any legal proceedings except on an election petition.

At the conclusion of the counting of the votes the returning officer shall seal up in separate packets the counted ballot envelopes, the rejected ballot envelopes and the tendered ballot envelopes.

The returning officer shall at no time open the sealed packet containing the marked copy of the election roll or sealed packet containing the tendered votes list.

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

When an equality of votes is found to exist between any candidates, a fresh election shall be held in respect of that constituency so that the addition of a vote would entitle one of the candidates to be declared elected, the returning officer shall forthwith decide between those candidates by lot, and shall proceed as if the candidate on whom the lot falls had received an additional vote.

After counting the votes and having ascertained the result of the poll the returning officer shall –

- (a) certify by endorsement on the writ the return of the candidate elected;
- (b) declare the result of the poll by reading such endorsement aloud at the place of counting;
- (c) return the writ so endorsed to the Supervisor of Elections.

The Supervisor of Elections shall notify the Clerk to the National Assembly of the return of the writ and shall cause the result of the election to be published in the Gazette.

The returning officer shall deliver all documents (including counters) relating to the conduct of the election to the Registrar of the High Court, who shall ensure their custody.

The Registrar of the High Court shall retain for six months all such documents (including counters) relating to an election forwarded to him and then unless otherwise ordered by the court, or unless he is aware that legal proceedings are pending in respect of such election, shall cause them to be destroyed.²²

— *Section 6* —

ELECTION EXPENSES AND ELECTION AGENTS

6.01 Election Expenses

“Election expenses” means all monies expended or expenses incurred on account of or in respect of the conduct or management of that election by the candidate or on his behalf or in his interests and money shall be deemed to have been expended or expenses incurred in respect of the conduct or management of an election if expended or incurred after the issue of a writ in relation to the election.

The following expenses are not deemed to be election expenses –

- (a) any monies 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 monies expended or expenses incurred directly in the particular interest of any particular candidate or expenditure;
- (b) any monies 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;
- (c) any money deposited in respect of candidature.

The election expenses of any candidate must not exceed P20,000.²³

6.02 Appointment of Election Agent

Not later than ten days after nomination day a candidate may appoint one and only one person to be his election agent and shall forthwith notify in writing the full name and address of his election agent to the returning officer who shall forthwith publish a statement setting out the information so given by displaying it at the place appointed for the receipt of nominations.

If a candidate revokes the appointment of his election agent or the election agent dies, the candidate may forthwith appoint another election agent.

If the candidate fails to give the notification required he shall be deemed to be his own election agent and thereupon shall, so far as circumstances admit, be subject to the provisions of the Act both as a candidate and an election agent.

An election agent shall appoint every clerk and messenger employed for hire or reward on behalf of the candidate.²⁴

6.03 Disclosure of Expenditure

All money provided by an association or group of persons or by any person for the election expenses of a candidate, whether as a gift, loan, advance or deposit, shall be paid or promised

to the candidate or his election agent and not otherwise and shall be fully disclosed, whether paid or promised, in the return respecting election expenses made as required.

Any person who makes or promises to make any payment, advance or deposit in contravention of the Act or for any purpose other than a lawful and authorised purpose or pays any money so provided is guilty of an illegal practice and is liable to be punished in respect of illegal practices.

Every payment in respect of any election expenses shall, except where less than P10 in any one account, be vouched for by a bill stating the particulars and by a receipt or some other evidence of payment.

With the consent of the candidates concerned, a political party or organisation may incur expenditure on the advertisement of candidates sponsored by such party or organisation and their meetings and in that event shall –

- (a) apportion the expenditure between such candidates as it thinks fit; and
 - (b) within 30 days after polling day in the election inform each candidate of the amount so apportioned to him,
- and the amount so apportioned shall form part of the candidates' election expenses.

Any such advertisement must include the name of the secretary of the political party or organisation in question and a statement that it is published under the authority of that political party or organisation.

The secretary of a political party or organisation shall, within 90 days after polling day in the election, render in respect of every candidate sponsored by such party or organisation who stood for election, to the appropriate returning officer a true return showing the expenditure incurred, and the amount apportioned to each candidate.²⁵

6.04 Return of Election Expenses

Within 90 days after the result of any election has been declared every candidate at that election shall render to the returning officer a true return in the prescribed form and verified by his affidavit showing –

- (a) all his election expenses which have been paid;
- (b) all his election expenses which are unpaid;
- (c) all claims for election expenses which are disputed by the candidate;
- (d) all money and the name of the person from whom he has received such money;
- (e) any amount apportioned to him,

together with all relevant bills, invoices and receipts relating to the expenses. If no election expenses have been incurred the candidate shall, in an affidavit, render a return to that effect to the returning officer within the period aforesaid.

If a candidate who has taken no part in the election has appointed an election agent, that election agent shall be responsible for rendering the return

If in the case of a successful candidate at an election the return has not been rendered within the period prescribed that candidate shall not thereafter sit or vote in the National Assembly until such return has been rendered or until the date of the condoning order, if any, excusing such failure.

A candidate who fails to comply with these provisions is guilty of an illegal practice unless such failure has been excused by a condoning order.

Any candidate who makes any material false statement of fact in his return knowing it to be false or not believing it to be true is guilty of an offence.

Where the return respecting election expenses has not in respect of any candidate at an election been rendered as required by the Act or, having been rendered, is incomplete or contains some error or false statement –

- (a) if the candidate applies to the High Court and shows that the failure to render the return or any error or false statement therein or omission therefrom has arisen by reason of his illness or of the absence, death, illness or misconduct of his election agent or by reason of inadvertence or of any reasonable cause of a like nature and not by reason of any want of good faith on the part of the applicant; or
- (b) if the election agent of the candidate applies to the High Court and shows that the failure to render the return which he was required to render or any error or false statement therein or omission therefrom arose by reason of his illness or of the death or illness of any prior election agent of the candidate or of the absence, death, illness or misconduct of any employee or agent of an election agent of the candidate or by reason of inadvertence or of any reasonable cause of a like nature and not by reason of any want of good faith on the part of the applicant,

the High Court may, after such notice of the application and on production of such evidence on the grounds stated in the application and of good faith of the applicant and otherwise as to the Court seems fit, make such order excusing the failure to transmit such return or for an error or false statement therein or omission therefrom as to the Court seems just.

Where it appears to the High Court that any person has refused or failed to supply such particulars as will enable the candidate or election agent to comply with the requirement, the High Court before making a condoning order shall order such person to attend before the Court and on his attendance shall unless he shows cause to the contrary order him to supply the necessary particulars within such time as the Court may direct. Any person who fails to comply with such an order is guilty of an offence.

A condoning order may be made conditional upon the rendering of the return in a modified form or within an extended time and upon compliance with such other terms as to the High Court seem best calculated for carrying into effect the objects of the Act.

A condoning order shall relieve the applicant from any liability or consequence under the Act in respect of the matter excused by the order.

The date of the condoning order or, if conditions and terms are to be complied with, the

date on which the applicant fully complies with them is the date of the condoning order.²⁶

6.05 Inspection of Return

The return and any accompanying documents must be kept at the office of the returning officer or at some convenient place appointed by him and shall at all reasonable times during six months next after their receipt by the returning officer be open to inspection by any person on payment of a stipulated fee and the returning officer shall supply copies thereof at the stipulated price per copy or part thereof.²⁷

— Section 7 —

ELECTION OFFENCES

7.01 Corrupt Practices

The expression “corrupt practice” means any of the following offences –

- (a) personation;
- (b) treating;
- (c) undue influence;
- (d) bribery;
- (e) aiding, abetting, counselling or procuring any such offence.²⁸

7.02 Personation

Any person who –

- (a) at an election applies for a ballot envelope and counters in the name of some other person whether that name be the name of a person living or dead or of a fictitious person; or
- (b) having voted once at any such election applies for a second ballot envelope and counters in the same election in his own name,

is guilty of personation. A person charged with this offence shall not be convicted except on the evidence of not less than two witnesses.²⁹

7.03 Treating

A person is guilty of treating who –

- (a) corruptly, by himself or by any other person on his behalf, either before, during or after an election, directly or indirectly gives, provides or pays, wholly or in part, the expenses of giving or providing any entertainment or provision other than food or drink to or for any person for the purposes of corruptly influencing that person or any other person to vote or refrain from voting at the election, or on account of such person or any other person having voted or refrained from voting at the election;
- (b) who corruptly accepts or takes any such entertainment or provisions.³⁰

7.04 Undue Influence

Any person who directly or indirectly by himself or by any other person on his behalf makes use of any force, violence, or restraint or inflicts or threatens to inflict by himself or by any other persons any temporal or spiritual injury, damage, harm or loss upon or against any person, in order to induce or compel anyone to vote or refrain from voting or on account of anyone having voted or refrained from voting at any election or who by abduction, duress, or any fraudulent device or contrivance impedes or prevents the free use of the vote by any voter, or thereby compels, induces or prevails upon any voter either to give or refrain from giving his vote at any election, is guilty of undue influence.³¹

7.05 Bribery

The following person is guilty of bribery –

- (a) any person who directly or indirectly, by himself or by any other person on his behalf, gives, lends or agrees to give or to lend, or offers, promises or promises to procure or to endeavour to procure, any money or valuable consideration 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 corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting, at any election;
- (b) any person who directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises or promises to procure or to endeavour to procure, any office, place or employment to or for any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any voter having voted or refrained from voting, at any election;
- (c) any person who directly or indirectly, from the time at which nomination papers may be delivered to the returning officer in the constituency concerned until the declaration of the result of the poll by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement or agreement as aforesaid to or for any person, in order to induce such person to procure, or to endeavour to procure, the return of any other person as a member of the National Assembly or the vote of any voter at any election;
- (d) any person who, upon, or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures, or engages, promises or endeavours to procure the return of any person as a member of the National Assembly or the vote of any voter at any election;
- (e) any person who advances or pays or causes to be 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 election;
- (f) any voter who before or during any election, directly or indirectly, by himself or by any other person on his behalf receives or contracts for any money, gift, loan or valuable consideration, office, place or employment, for himself or for any

other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any such election, provided that the aforesaid provisions shall not be construed to extend to any money paid or agreed to be paid for or on account of any expenses bona fide incurred at or concerning any election.

Any person who without the expressed or implied authority of a candidate or his election agent incurs election expenses in relation to that candidate is guilty of illegal practice.³²

7.06 Penalties for Illegal Practices

Where under the Act no penalty is expressly provided for an illegal practice, a person guilty of an illegal practice is liable to a fine of P400 and to imprisonment for two years.

In addition to any other penalty which may be awarded, a person guilty of a corrupt practice or an illegal practice may where no incapacity is specially provided for any particular class of person under the Act, further be declared incapable during a period not exceeding five years from the date of his conviction –

- (a) of being elected as a member; or
- (b) of being registered as a voter or of voting at an election.³³

7.07 Offences on Day of Election

No person shall on the date on which an election is held commit any of the following acts within a polling station or within a distance of 200 metres from a polling station, namely –

- (a) canvassing for votes;
- (b) soliciting the vote of any voter;
- (c) persuading any voter not to vote for a particular candidate;
- (d) persuading any voter not to vote at the election;
- (e) shouting slogans concerning the election;
- (f) being in possession of any offensive weapon or wearing any dress or having any facial or other decoration calculated to intimidate voters;
- (g) exhibiting, wearing or tendering any notice, symbol, badge, photograph or party card referring to the election.

No person shall on the date on which a poll is held in a constituency –

- (a) convene, hold or attend any public meeting;
- (b) operate any megaphone, amplifier or public address apparatus for the purpose of making announcements concerning the election (unless he is an election officer making an official announcement).

Any person who contravenes any of these provisions is guilty of an offence and the court convicting that person may in addition award corporal punishment not exceeding six strokes.³⁴

7.08 Disorderliness at Political Meetings

Any person who at a political meeting held in any constituency after the publication of a notice in respect of that constituency –

- (a) acts or incites another to act in a disorderly manner for the purpose of preventing transaction of the business for which the meeting was convened; or
 - (b) has in his possession an offensive weapon or missile,
- is guilty of an offence.

No person shall, after the publication of the notice of election in respect of that constituency, himself hold, or organise or participate in any meeting, intended to promote the candidature of any person, at any place within the radius of 1,000 metres from a meeting being held or to be held on that day and at that time to promote the candidature of a rival candidate; and any person who contravenes this provision is guilty of an offence.³⁵

7.09 Bills and Placards to Have Name of Printer and Publisher

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

The proprietor and publisher of every newspaper shall cause the word “advertisement” to be printed as a headline to each article or paragraph in his newspaper containing electoral matter, the insertion of which is or is to be paid for or for which any reward or compensation is or is to be made.

No candidate shall issue or distribute any document (which term includes any bill, placard, poster, pamphlet, circular or card) which contains any facsimile or imitation of a ballot envelope and advises or purports to advise any person as to the manner in which such person should record his vote, unless such candidate has first obtained from the Supervisor of Elections a certificate, in duplicate, stating that, in his opinion, such document contains no representation likely to mislead a voter as to his rights.³⁶

— Section 8 —

ELECTION PETITIONS

8.01 Who May Present an Election Petition

A petition complaining of an undue return or an undue election of a member for any constituency by reason of want of qualification or by reason of disqualification, corrupt or illegal practice, irregularity, or by reason of any other cause whatsoever, may be presented to the High Court by –

- (a) a voter in that constituency; or
- (b) any person who was a candidate at such election.

A petitioner shall, before lodging his petition with the Registrar of the High Court, afford every person, other than the member whose election or qualification is complained of (referred to as “the respondent”), who was a candidate at the election to which the petition relates an opportunity of becoming a party to the petition as a co-petitioner.

The following provisions apply with respect to the representation of an election petition –

- (a) the petition shall be signed by the petitioner, or all the petitioners, if more than one;
- (b) the petition shall be presented within 30 days after the day on which the result of the election has been declared by the returning officer. However, when the return or election is questioned upon an allegation of an illegal practice, the petition may be presented –
 - (i) at any time before the expiry of 21 days after the day on which the returning officer receives the return of election expenses of the person whose election is to be questioned; or
 - (ii) if the election petition specifically alleges a payment of money or some other act to have been made or done since that day by the member or with the privity of the member or his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, at any time within 30 days after the date of such payment or other act;
- (c) presentation of a petition is made by lodging it with the Registrar of the High Court;
- (d) at the time of the presentation of the petition or within seven days afterwards security for the payment of all costs, charges and expenses that may become payable by the petitioner –
 - (i) to any person summoned as a witness on his behalf; and
 - (ii) to the respondent,shall be given by or on behalf of the petitioner;
- (e) the security must be in the amount stipulated by the Registrar of the High Court and shall be given by recognizance to be entered into by the petitioner and any number of sureties not exceeding four, in a form to be approved of by the Registrar.³⁷

8.02 The Respondent

Notice in writing of the presentation of a petition and of the names and addresses of the proposed sureties, accompanied by a copy of the petition shall, within ten days after the presentation of the petition, be served by the petitioner on the respondent, either personally or by leaving the same at his usual or last known dwelling or place of business.

The respondent may, by notice in writing served upon the petitioner in the manner prescribed within 21 days after the date of the service on him of the notice in respect of the security, object to such recognizance on the ground that the sureties or any of them are insufficient or that a surety is dead or that he cannot be found or that a person named in the recognizance has not signed the same or that the recognizance is invalid or defective.

Any objection made to the security given shall be heard and decided by the High Court.

If any objection to the security is allowed, the petitioner may within a further time to be fixed by the High Court, not exceeding ten days, remove the objection by a deposit of such sum of money as may be deemed proper by the High Court to make the security sufficient.

If, on objection made, the security is decided to be insufficient and the objection is not removed in the manner ordered by the Court, no further proceedings shall be had on the petition; otherwise, on the expiration of the time during which objections may be made, or, if after objection made the sufficiency of the security is established, the petition shall be deemed to be at issue.³⁸

8.03 Lists and Trial of Petitions

The Registrar of the High Court shall, as soon as may be, make out a list of petitions presented to the High Court and which are at issue, placing them in the order in which they were presented, and shall keep at his office a copy of such list open to the inspection of any person making application for inspection thereof, and election petitions shall be tried in the order in which they stand in such list unless the High Court otherwise orders.

The following provisions apply with respect to the trial of petitions –

- (a) every election petition shall be tried in open court;
- (b) the trial of election petitions may take place upon any day prescribed by any rule or order of court;
- (c) notice of the time and place at which an election petition will be tried must be given by the Registrar of the High Court to the parties concerned not less than 14 days before the day on which the trial is to be held;
- (d) the High Court may adjourn the trial from time to time and from place to place;
- (e) where, on the trial of election petition praying the High Court to determine that some other person than the respondent is entitled to be declared duly elected in place of the respondent, it is proved that any person who voted for the respondent was bribed or treated or subjected to undue influence by the respondent or anyone on behalf of the respondent or that such person was guilty of personation or of an illegal practice or was not qualified as a voter at the election, the vote given for the respondent by such person shall be deducted from the total number of votes given for the respondent at the election;
- (f) at the conclusion of the trial of any election petition, the High Court shall determine whether the respondent was duly elected or whether any, and if so what, person other than the respondent was or is entitled to be declared duly elected;
- (g) if the High Court determines that the respondent was duly elected, such election shall be and remain as valid as if no petition had been presented against it;
- (h) if the High Court determines that the respondent was not duly elected, but some other person was or is entitled to be declared duly elected the respondent shall forthwith be deemed to have vacated his seat, and the High Court shall forthwith certify its determination to the Supervisor of Elections and the Supervisor of Elections shall thereupon by notice in the Gazette declare such other person duly elected;
- (i) if the High Court determines that the respondent was not duly elected and that no

other person was or is entitled to be declared duly elected the seat of the respondent is deemed to be vacant and the High Court shall certify its determination to the President that a vacancy has occurred, the cause of such vacancy and the constituency in which such vacancy has occurred;

- (j) where, on the trial of an election petition, the High Court determines that the respondent was not duly elected and is of opinion, having regard to the circumstances, that it would be just and reasonable to relieve any party to the action from all or a portion of the costs thereof, then –
- (i) if the High 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 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 action or portion thereof, as it may deem fit;
 - (ii) if the High 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 officer, it may, after sufficient notice to such officer to show cause to the contrary, make such order as to the payment by such officer of the costs of the action or portion thereof, as it may deem fit.³⁹

8.04 Where Court Reports Cases of Corrupt or Illegal Practices

If the High Court states in the report on the trial of an election petition that any person has been guilty of a corrupt practice or illegal practices have extensively prevailed at the election to which the petition relates, that statement, together with the evidence taken at the trial, shall be transmitted by the Registrar of the High Court to the Attorney-General with a view to the institution of any prosecution proper to be instituted in the circumstance, and every such report shall, so far as it concerns any person, further be transmitted by the Registrar to the Supervisor of Elections.⁴⁰

8.05 Witnesses

A witness shall be summoned and sworn in the same manner as a witness may be summoned and sworn in civil proceedings before the High Court.

Any such witness who, in the course of the trial of an election petition, wilfully makes a statement of fact material in the proceedings which he knows to be false or does not believe to be true is guilty of an offence.

On the trial of an election petition, the Court may examine any witness or any person in court, although such witness or person is not called or examined by any party to the petition, and after the examination of a witness as aforesaid by the Court, such witness may be cross-examined by or on behalf of the petitioner and respondent or either of them.

No person who is called as a witness at the trial of any election petition shall be excused from answering any question relating to any corrupt practice or illegal practice at or connected with any election then forming the subject of inquiry on the ground of privilege or on the ground that the answer thereto may incriminate him or tend to incriminate himself.

If any witness fully answers to the satisfaction of the Court every question relating to any matter which he is required by the Court to answer, and the answer to which may incriminate him, such witness shall be absolutely freed and discharged from all liability to prosecution, either at the public instance or at the instance of any private party, for any offence under the Act committed by him previous to the time of his evidence and at or in relation to the election concerned or in relation to which the witness may have been so examined and the witness shall be entitled to receive a certificate signed by the Registrar of the High Court stating that he is so freed and discharged from all liability to prosecution as aforesaid.

The reasonable expenses incurred by any person appearing to give evidence at the trial of an election petition, according to the scale usually allowed to witnesses in civil proceedings before the High Court, may be allowed to such person and such expenses shall be deemed to be costs of the petition.

On the trial of an election petition complaining of an undue election or undue return and claiming the seat for some person, the respondent may give evidence to prove that the election of that person was undue, in the same manner as if the respondent had presented an election petition complaining of such election.⁴¹

8.06 Withdrawal of Petition

An election petition shall not be withdrawn without the leave of the High Court and after such notice has been given as the Court may direct.

On the hearing of the application for withdrawal of an election petition, any person who might have been a petitioner in respect of the election to which the election petition relates may apply to the High Court to be substituted for a petitioner who desires to withdraw.⁴²

8.07 Costs of Petition

If an election petition is withdrawn, the petitioner is liable to pay the costs of the respondent.

All costs, charges and expenses incidental to the presentation of an election petition and to the proceeding consequent thereon shall be defrayed by the parties to the petition in such manner and in such proportions as the High Court may determine, regard being had to the disallowance of any costs, charges, or expenses which may, in the opinion of the Court, have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or the respondent, and regard being had also to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful.

Costs may be taxed and recovered in the same manner as the costs of civil proceedings in the High Court.

If any petitioner in an election makes default for the space of one month after demand in paying to any person summoned as a witness on his behalf or to the respondent any sum certified to be due to him for his costs, charges or expenses and if the default is proved to the satisfaction of the High Court, every person who has entered into a recognizance relating to the petition shall be held to have made default on his recognizance and the Registrar shall thereupon certify such recognizance to be forfeited, and execution may thereupon by leave of the High Court, be sued out thereon at the suit of any such witness or respondent as occasion may require.⁴³

NOTES

1. Constitution of Botswana, see section 67
2. *Ibid.*, see sections 63-66
3. *Ibid.*, see section 66
4. Electoral Act, see section 3
5. *Ibid.*, see section 4
6. Constitution of Botswana, see section 63
7. *Ibid.*, see section 64
8. *Ibid.*, see section 65
9. Electoral Act, see sections 5 and 7
10. *Ibid.*, see section 8
11. *Ibid.*, see sections 9-15
12. *Ibid.*, see sections 16-23
13. *Ibid.*, see section 24
14. *Ibid.*, see sections 25-27
15. *Ibid.*, see section 28
16. *Ibid.*, see section 31
17. *Ibid.*, see sections 32-39
18. *Ibid.*, see sections 42 and 43
19. *Ibid.*, see section 44
20. *Ibid.*, see sections 45-50
21. *Ibid.*, see sections 51-65
22. *Ibid.*, see sections 66-77
23. *Ibid.*, see sections 78 and 79
24. *Ibid.*, see sections 80 and 81
25. *Ibid.*, see sections 82-84
26. *Ibid.*, see sections 85 and 86
27. *Ibid.*, see section 87
28. *Ibid.*, see section 88
29. *Ibid.*, see section 89
30. *Ibid.*, see section 90
31. *Ibid.*, see section 91
32. *Ibid.*, see sections 92-95
33. *Ibid.*, see sections 101 and 102
34. *Ibid.*, see section 111
35. *Ibid.*, see section 112
36. *Ibid.*, see section 113
37. *Ibid.*, see sections 114 and 115
38. *Ibid.*, see sections 116 and 117
39. *Ibid.*, see sections 118 and 119
40. *Ibid.*, see section 120
41. *Ibid.*, see sections 124-128
42. *Ibid.*, see sections 129 and 130
43. *Ibid.*, see sections 136 and 137