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## INTRODUCTION

The transitional arrangements that paved the way for non-racial multi-party elections which were supervised by the United Nations enabled a Constituent Assembly to decide on the Constitution under which Namibia became independent. That Constitution provided for multi-party elections to be held periodically.

Namibia has a dual system of elections – with the use of a proportional party lists system and a constituency/polling wards arrangement which allows for the polling according to such polling wards and constituencies for regional council elections and local authority council elections.

Elections for these various bodies and within the framework of the different systems were provided for in the 1992 Electoral Act of Namibia. This Act established an independent Electoral Commission with a chief executive, the Director of Elections. The 1992 Act was extensively amended by the Electoral Amendment Act of 1994.

### — Section 1 —

#### RELEVANT CONSTITUTIONAL PROVISIONS

##### 1.01 Political Activity

All citizens shall have the right to participate in peaceful political activity intended to influence the composition and policies of the Government. All citizens shall have the right to form or join political parties and, subject to such qualification prescribed by law as would be acceptable in a democratic society, to participate in the conduct of public affairs, whether directly or through freely chosen representatives.

Every citizen who has reached the age of eighteen (18) years shall have the right to vote and who has reached the age of twenty-one (21) years to be elected to public office. The right guaranteed by this provision may only be abrogated, suspended or be impinged upon by Parliament in respect of specified categories of persons on such grounds of infirmity or on such grounds of public interest or morality as are acceptable in a democratic society.<sup>1</sup>

##### 1.02 Elections

The election of members of the National Assembly shall be in accordance with the principles of proportional representation and on party lists as set out in Schedule 2 of the Constitution.<sup>2</sup>

### **1.03 Election of Members of the National Assembly**

For the purpose of filling the seventy-two (72) seats in the National Assembly the total number of votes cast in general election for these seats shall be divided by seventy-two (72) and the result shall constitute the quota of voters per seat.

The total number of votes cast in favour of a registered political party which offers itself for this purpose shall be divided by the quota of voters per seat and the result shall constitute the number of seats to which that political party shall be entitled to in the National Assembly.

A political party which qualifies for seats shall be free to choose in its own discretion which persons to nominate as members of the National Assembly to fill the seats concerned.

Where the formula yields a surplus fraction not absorbed by the number of seats allocated to the political party concerned, such surplus shall compete with similar surpluses accruing to any other political party or parties participating in the elections, and any undistributed seat or seats (in accordance with the formula) shall be awarded to the party or parties concerned in sequence to the highest surplus.

Provision shall be made by Act of Parliament for all parties participating in an election for the National Assembly to be afforded a reasonable opportunity for scrutinising the counting of the votes cast in such election.<sup>3</sup>

## **— Section 2 —**

### **ELECTION ADMINISTRATION**

#### **2.01 Establishment of Electoral Commission**

A commission, known as the Electoral Commission is empowered with the exclusive authority to direct, supervise and control in a fair and impartial manner any election held under the Electoral Act.

The Commission shall in particular –

- (a) supervise and control the registration of voters for the purposes of any election;
- (b) supervise the preparing, publication and maintenance of a national voters' register and local authority voters' register;
- (c) supervise and control the registration of political parties;
- (d) supervise, direct and control the conduct of elections;
- (e) perform any other functions conferred upon it by the Act.<sup>4</sup>

#### **2.02 Constitution of Commission**

The Commission shall consist of –

- 
- (a) a judge or former judge of the Supreme Court or the High Court, who shall be the chairperson of the Commission; and
  - (b) four persons as the other members of the Commission, appointed by the President, with the approval, by resolution, of the National Assembly.<sup>5</sup>

### **2.03 Conditions of Service of Members of Commission**

A member of the Commission holds office, with effect from the date of approval, for a period not exceeding five years, but may be reappointed in a like manner at the expiration of that period.

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

The remuneration and allowances may differ according to the office held by the member of the Commission concerned or the functions performed by him or her.<sup>6</sup>

### **2.04 Vacation of Office and Filling of Vacancies**

A member of the Commission must vacate his or her office if –

- (a) such member, by writing under his or her hand addressed and delivered to the President resigns from his or her office as a member of the Commission;
- (b) such member is convicted of any offence and sentenced to imprisonment without the option of a fine;
- (c) such member is by reason of his or her physical or mental illness or for any other reason incapable of acting as a member of the Commission;
- (d) such member is removed from office by reason of his or her misconduct by the President, with the approval, by resolution, of the National Assembly.

Any casual vacancy on the Commission caused by the death or vacation of office by any member of the Commission shall, with due regard to the provisions of the Act, be filled for the unexpired portion of the period of office of the member of the Commission who has died or vacated his or her office, as the case may be.<sup>7</sup>

### **2.05 Procedure and Meetings of Commission**

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

The Chairperson of the Commission may determine the time and place of a meeting of the Commission.

The Chairperson of the Commission must on a reasoned request in writing of at least

three members of the Commission convene a special meeting of the Commission. The majority of the members of the Commission shall form a quorum for a meeting of the Commission.

The Chairperson of the Commission is required to preside at all meetings of the Commission at which he or she is present.

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

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

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

The Commission is required to keep a record of the proceedings of the meetings of the Commission, and to make rules in relation to the procedure at such meetings.<sup>8</sup>

## **2.06 Reports by Commission**

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

The Speaker of the National Assembly shall within 14 days as from the date on which the report has been submitted to him or her table such report in the National Assembly or, if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session.<sup>9</sup>

## **2.07 Directorate of Elections**

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

The head of the Directorate is known as the Director of Elections and is the secretary to the Commission. The Director of Elections is appointed by the President and performs, subject

to the direction and control of the Commission, the other powers, duties and functions conferred or imposed upon him or her by or under the Act.

The Director is assisted by such other officers as may from time to time be designated by the Permanent Secretary of the Ministry responsible for elections. These officers are required to exercise or perform, subject to the direction and control of the Director, the powers, duties and functions conferred or imposed upon the Director by or under the provisions of the Act and such other functions as may be imposed upon any of them by the Director.

The Commission may, in consultation with the Permanent Secretary of the Ministry concerned, obtain the services of any person, being an officer referred to in the foregoing provision, for the purposes of the functions of the Commission on such conditions as may be determined by mutual agreement with such persons.<sup>10</sup>

## **2.08 Powers of Commission in Relation to Demarcation of Polling Wards<sup>11</sup>**

### **— Section 3 —**

#### **REGISTRATION OF VOTERS**

##### **3.01 Qualification for Registration**

Subject to these provisions, every person who, by virtue of the provisions of the Constitution, is entitled to vote shall be entitled to be registered as a voter:

- (a) in the case of an election of the President or of members of the National Assembly or of any member of a regional council, in the constituency in which he or she is resident;
- (b) in the case of an election of a member of a local authority council, in the local authority area, or where such area is divided into wards, in the particular ward of the local authority area in which he or she is resident, but subject to Article 111(3) of the Constitution.

No person is entitled to be registered as a voter if:

- (a) he or she is subject to an order of a court declaring him or her to be of unsound mind or mentally disordered or defective; or
- (b) he or she is detained as a mentally ill person under any law.

For the purposes of these provisions, a person shall be regarded as being resident in a constituency or ward if his or her home or the place where he or she returns regularly after any period of temporary absence is within such constituency or ward.<sup>12</sup>

##### **3.02 Appointment of Registration Officers**

The Commission shall, for the purposes of the registration of voters, appoint:

- (a) a person as supervisor of registration:
- (i) in the case of registration for elections for the President, the National Assembly or a regional council, for each constituency;
  - (ii) in the case of registration for elections for a local authority area, for each local authority area,
- who shall, subject to the direction and control of the Director, exercise and perform the powers, duties and functions conferred upon or assigned to him or her by the Act;
- (b) one or more registration officers:
- (i) in the case of registration for elections for the President, the National Assembly or a regional council, for each constituency;
  - (ii) in the case of registration for elections for a local authority area, for each local authority area or, where such area is divided into wards, for each ward in that area,
- who shall, subject to the direction and control of the supervisor of registration appointed for the constituency or local authority area in question, whichever is applicable, perform the duties and functions assigned to him or her by the Act, provided that a person may hold more than one appointment under these provisions.

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

There shall be appointed for each constituency or local authority area, as the case may be, as many registration officers as may in the case of the constituency or local authority area in question be determined from time to time by the Commission or, to the extent authorised by it, by the Director.

Any person appointed –

- (i) who is not in the full-time service of the State, is entitled to the remuneration determined by the Commission, in consultation with the Permanent Secretary of the Ministry responsible for elections;
- (ii) may, under the circumstances so determined be entitled to the allowance or allowances so determined.

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

The Commission may delegate any power conferred on it to the Director who may, to the extent determined by the Commission, authorise any supervisor of registration or registration officer concerned to exercise any power so delegated to him or her.

Each supervisor of registration, registration officer and his or her assistant shall, by virtue of his or her appointment and whether or not he or she is by or under the provisions of any

other law a justice of the peace or a commissioner of oaths, be deemed to be, for the duration of such an appointment, a justice of the peace or a commissioner of oaths, as the case may be, for the purposes of the carrying out of the provisions of the Act.

Any appointment may at any time be withdrawn by the authority who made the appointment in question.

A registration officer may, with the necessary staff, vehicles and equipment, enter upon any land for which he or she is appointed and on which there is or is suspected to be any person who is qualified for registration, for the purpose of registering any such person who may wish to apply for registration: provided that a registration officer may not enter upon any land or enter any building or structure on such land without the permission of its owner or occupier, or of the person in control of such land between the hours 19.00 hours and 07.00 hours.

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

A notice under the foregoing provisions may be signed on behalf of the Director by a supervisor of registration for the constituency or local authority area in question, authorised by the Director to do so.

The Commission shall as soon as is practicable after an appointment has been made, give or cause to be given public notice of the name and official address of a person so appointed.<sup>13</sup>

### **3.03 General Registration of Voters**

General registration takes place at intervals of not more than ten years during a period determined by the President by proclamation in the Gazette: provided that the President may from time to time, determine that a supplementary registration of voters must take place during any period determined in a like manner by him or her in respect of Namibia or any part thereof.

The President may by proclamation in the Gazette, alter any registration period or any part thereof.<sup>14</sup>

### **3.04 Application for Registration as Voter**

When for the purposes of the first or any subsequent general registration of voters a period is determined, every person who during that period is entitled or qualified to be registered as

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

- (a) to any registration officer appointed for the constituency in question or, where a constituency is divided into polling districts, for the polling district in question;
- (b) to any registration officer appointed for the local authority area in question, as the case may be, in the manner prescribed by the Act, to be registered as a voter –
  - (i) in the case of (a) above, for the elections of either the President, members of the National Assembly or any member of a regional council;
  - (ii) in the case of paragraph (b) above, for an election in a ward of a local authority area.

Any person who may apply for registration shall, if he or she desires to apply –

- (a) appear in person before the registration officer concerned;
- (b) submit to such registration officer the prescribed application form duly completed by the applicant or by some person on his or her behalf;
- (c) when required by such registration officer to do so, affirm on oath the declaration which appears on the application form and which is required to be made by the applicant;
- (d) in the presence of such registration officer and in accordance with his or her instructions –
  - (i) sign the application form in question; or
  - (ii) if the applicant cannot, for any reason whatsoever, write or sign his or her name, place any fingerprint or mark as such registration officer may require, on that application form.

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

- (a) identified himself or herself;
- (b) proved that –
  - (i) he or she has reached the age of 18 years; and
  - (ii) he or she is a Namibian citizen; and
- (c) complied with any requirement or qualification in relation to any residence, and such registration officer may require him or her to furnish such explanation, information or further particulars as may be necessary to establish the correctness of the particulars entered or to be entered on the relevant application form.

An applicant is deemed to have complied with the provisions of the foregoing paragraph, if he or she –

- (a) in the case of sub-paragraph (a) of that paragraph, identifies himself or herself by means of –
  - (i) any identity document containing a recent photograph of him or her issued under any law governing the identification of persons in Namibia or any such official document of identity issued by the government of any other country;

- 
- (ii) a driving licence or permit containing a recent photograph of him or her, whether issued in or outside Namibia; or
  - (iii) sworn statements made by two other persons having identified themselves to the registration officer concerned by producing any document in which proof of the identity of the first-mentioned person is furnished;
  - (b) in the case of sub-paragraph (b) (i) of the paragraph above –
    - (i) submits to the registration officer concerned –
      - (aa) any official certified extract from any official birth register in Namibia or of any other country from which it appears that the applicant has reached the age of 18 years; or
      - (bb) a sworn statement made by either one of his or her natural parents declaring that he or she has reached the age of 18 years; or
    - (ii) has, in the absence of any documentary proof, in the opinion of the registration officer concerned, apparently reached the age of 18 years;
  - (c) in the case of sub-paragraph (b) (ii) of the paragraph above, submits to the registration officer –
    - (i) a certificate of Namibian citizenship issued under the Namibian Citizenship Act 1990;
    - (ii) a Namibian passport, other than an official passport;
    - (iii) any official certified extract from any official birth register or any similar official document from which it appears that the applicant was born in Namibia; or
    - (iv) sworn statements made by two other persons declaring that –
      - (aa) the applicant is known to him or her; and
      - (bb) to the best of his or her knowledge, such applicant was born in Namibia and he or she is a Namibian citizen as contemplated in the Constitution; or
      - (cc) to the best of his or her knowledge, either one of such applicant's parents was born in Namibia and he or she is a Namibian citizen as contemplated in the Constitution; and
    - (v) a sworn statement made by the applicant declaring that he or she has not voluntarily renounced his or her Namibian citizenship in accordance with the Namibian Citizenship Act 1990, or having so renounced it, he or she remained a Namibian citizen;
  - (d) in the case of sub-paragraph (c) of the paragraph above, submits to the registration officer any document, statement, certificate or account as may be prescribed.<sup>15</sup>

### **3.05 Rejection of Application Form**

A registration officer must reject an application form if the applicant concerned fails to comply with the relevant provisions of the Act.<sup>16</sup>

### **3.06 Refusal to Register Applicant**

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

If a registration officer refuses to register an applicant, he or she shall –

- (a) record the refusal and the reason for it, the date of the refusal and –
  - (i) in the case of an application to the registration officer for the constituency, for which he or she has been appointed;
  - (ii) in the case of an application to the registration officer for the local authority area or ward, as the case may be, for which he or she has been appointed, on the application form in question, and sign the record;
- (b) return the application form to the applicant concerned and inform him or her that he or she may appeal against the refusal to the magistrate.<sup>17</sup>

### **3.07 Appeal against Refusal to Register**

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

The magistrate shall determine the day, which shall not be later than 15 days after the date of the refusal, and the time and place for the hearing of an appeal.

This provision shall not prohibit the magistrate from hearing an appeal at any place or time determined by him or her and communicated to the person who wishes to appeal, or at any place where both the magistrate and that person are at any time.

On a day, at a time and place determined, the person who wishes to appeal (the appellant) , shall –

- (a) appear in person before the magistrate concerned;
- (b) submit his or her application returned to him or her to such magistrate;
- (c) state the grounds on which he or she appeals against the refusal of his or her application; and
- (d) adduce such proof and make such statements he or she may wish to be considered in support of his or her appeal.

The hearing of the appeal may be conducted by the magistrate in such manner as in his or her opinion is best calculated to enable him or her to arrive at a just decision in the matter.

The magistrate may –

- (i) call any person who is present to appear before him or her and require or allow such person to give such oral evidence or produce such other proof as in the opinion of the magistrate may assist him or her in deciding the matter;
- (ii) administer an oath or affirmation to any person appearing before him or her;
- (iii) examine or allow the examination of any person so appearing;

- 
- (iv) postpone the hearing at any stage of the proceedings to a day determined by him or her.

The magistrate must keep a record of the proceedings and such record must be attached to and form part of the relevant application form.

The hearing of an appeal is open to the public.

A magistrate may allow an appeal heard by him or her, or may dismiss such appeal, and may also dismiss it if the appellant fails to appear before him or her on any day determined for the hearing or further hearing.

The magistrate must record his or her decision on the relevant application form.

If the magistrate dismisses the appeal, he or she shall keep the application in his or her office.

If the magistrate allows the appeal, he or she must forthwith refer the appellant to the registration officer concerned, and cause the application to be submitted to that registration officer.<sup>18</sup>

### **3.08 Registration of Applicant**

If the registration officer concerned does not refuse to register an applicant, or if the applicant is a person referred to the registration officer concerned by the magistrate, the registration officer shall register the applicant in respect of the election for which he or she has applied for registration by –

- (a) completing the prescribed registration form in respect of the applicant concerned in accordance with the information contained in that application form;
- (b) requiring the applicant –
  - (i) to sign the form so completed in the space provided for that purpose; or
  - (ii) if the applicant cannot write his or her name, to place his or her fingerprint or, as the case may be, a mark placed by the applicant on the application form, on the registration form in the space provided for that purpose or in accordance with the instructions of the registration officer concerned;
- (c) if the applicant has complied with sub-paragraph (b) above, signing that form in the space provided for that purpose and recording the date of registration and the constituency or the local authority area and, where such area is divided into wards, the ward in question, as the case may be, in which such applicant is entitled or qualified in terms of the Act to be so registered; and
- (d) after so signing that form, issuing the original of that registration card to the applicant in respect of the election for which he or she so applied.

If the applicant is a person who has been referred to the registration officer concerned by the magistrate, the registration officer concerned shall comply with the reference even if he or she is not the registration officer who has refused the application in the first place.

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

As soon as is practicable after the close of the period determined for the registration of voters, the supervisor of registration concerned shall –

- (a) in the prescribed form compile from the records referred to in the preceding paragraph, received from the registration officer or officers for a constituency, local authority area or, where applicable, ward, as the case may be, a voters' list containing the names, residential addresses and registration numbers of all persons registered in respect of the constituency, local authority area or ward concerned;
- (b) forward such voters' lists to the Director to be dealt with.<sup>19</sup>

### **3.09 Publication of Provisional Voters' Registers**

Upon receipt of the voters' lists, the Director must –

- (a) in the prescribed form, cause to be prepared:
  - (i) in respect of the voters' lists for constituencies and/or polling districts, a provisional national voters' register; and
  - (ii) in respect of the voters' lists for a local authority area or a ward in that area, a provisional local authority voters' register;
- (b) publish a notice in the Gazette specifying the places at, and time during, which copies of such provisional registers shall be available for inspection by the public and the period within which objections may be made in respect of the names of voters appearing on any such register; and
- (c) furnish, free of charge:
  - (i) to every political party registered in terms of the Act, a copy of such provisional national voters' register and provisional local authority voters' register;
  - (ii) to every association or organisation registered in terms of the Act for the purpose of participating in any election for members of a local authority council, that part of such provisional local authority voters' register which relates to the local authority area in question.<sup>20</sup>

### **3.10 Objections**

Any person whose name appears on the relevant provisional voters' register may, within the period stipulated, lodge an objection in writing to the inclusion of the name of any other person on that register with the magistrate designated for the constituency or local authority area, as the case may be, in respect of which the name of such other person is so included, on the grounds that he or she –

- (a) is not entitled or qualified to be registered as a voter; or
- (b) is not complying with the requirements in relation to residence.

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

When an objection has been lodged, the magistrate must, upon the expiration of the stipulated period, determine the objection.

The magistrate may –

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

The magistrate is required to notify in writing any person who lodged an objection and made representations in connection with such objection and the Director, of his or her decision regarding the objection.

If an objection has been allowed and a request for the submission of a statement of the case is not made within three days after the date on which the objection was allowed, or if so made, is refused, the relevant registration card issued to the respondent shall cease to be valid, and whereupon the magistrate concerned shall forthwith transmit that registration card endorsed by him or her to the effect that it has ceased to be valid, to the Director.<sup>21</sup>

### **3.11 Statement of Case for Decision by Judge**

The magistrate who dismissed the appeal of an appellant or allowed or dismissed an objection shall at the request of the appellant, respondent or objector, as the case may be, made in writing, transmit a statement of the case to the registrar of the court for submission to a judge of that court in chambers.

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

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

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

The registrar of the court is required to forward two certified copies of the decision of the court to the magistrate who transmitted the statement of the case, and one copy to the Director.

A decision of the court setting aside the decision of the magistrate shall, for all purposes, where the magistrate had, by the decision so set aside, dismissed an appeal, be deemed to be a decision of the magistrate concerned allowing such appeal.<sup>22</sup>

### **3.12 Cancellation of Registration Card**

If an objection has been lodged against the inclusion of the name of a person on the relevant provisional voters' register, such person shall, unless the objection has been dismissed, surrender his or her registration card to the magistrate to whom the objection was submitted or to any other magistrate or to any supervisor of registration or registration officer –

- (a) if at any time it comes to such person's knowledge that the objection has been allowed; or
- (b) if ordered to do so by the said magistrate.

If such person fails to comply with an order, the magistrate, any supervisor of registration, registration officer or police officer may without a warrant seize the registration card in question or cause it to be seized.

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

The Director shall cancel every registration card which ceased to be valid if such registration card comes into his or her possession at any time, unless the magistrate's decision as a result of which such registration card ceased to be valid has been set aside.<sup>23</sup>

### **3.13 Replacement of Registration Card**

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

- (a) as to the identity of such person; and
- (b) as to the facts and circumstances relating to its loss, destruction or its becoming illegible: provided that a duplicate registration card must not be issued on any day determined as a polling day in respect of any election in question.

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

If the Director decides to issue a duplicate registration card, he or she must cancel any registration card surrendered to him or her.<sup>24</sup>

### **3.14 Publication of Voters' Registers**

As soon as practicable after the expiration of the period provided for the lodging of objections against the inclusion of the names of persons on the relevant provisional voters' register, the Director shall –

- (a) in the prescribed form, cause, with due regard to any registration card which has ceased to be valid, to be prepared –
  - (i) in respect of any election for the Presidential election or for a member of the National Assembly or any member of a regional council, a national voters' register; and
  - (ii) in respect of any election of a member of a local authority council, a local authority voters' register;
- (b) certify the relevant voters' register in the prescribed manner.

If any appeal or objection has not been disposed of at the time of the certification, the Director shall –

- (a) in the case of such appeal, upon notification that such appeal has been allowed, include the name of the applicant in the relevant voters' register;
- (b) in the case of such objection, endorse that register to the effect that an objection to the inclusion of the name of the person concerned has been lodged, and upon notification that the objection was allowed, remove the name of that person from the register.

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

- (a) publish a notice in the Gazette to the effect that a relevant voters' register has been completed and certified, and specifying the places where copies thereof shall be kept for inspection by the public;
- (b) cause to be transmitted to every supervisor of registration:
  - (i) for a constituency, a copy of the relevant part of the national voters' register applicable to that constituency;
  - (ii) for a local authority area, a copy of the relevant part of the local authority voters' register applicable to that local authority area.

Upon the date of publication by the Commission of a notice, every voters' list and every provisional voters' register ceases to be of any force and effect, and thereupon the relevant voters' register shall be the voters' register for the respective constituencies or local authority areas or, where such areas have been divided, for the respective wards.<sup>25</sup>

### **3.15 Original Voters' Register for Inspection by Public**

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

Any person desiring to inspect or make copies or take extracts from any such register is entitled to do so during the normal office hours of the Commission.<sup>26</sup>

### **3.16 Supplementary Registration of Voters**

For the purposes of the inclusion in any voters' register of persons who qualify to be registered as voters and who have not or could not so have registered in the last general registration in respect of which that register was prepared, a supplementary registration may be determined in the manner prescribed, and thereupon the relevant provisions of the Act shall apply in relation to such registration, as if it were a general registration determined in respect of such persons.

Persons who are entitled and qualified to be registered as voters in respect of any new local authority area established, after the last general registration of voters in respect of which a relevant voters' register was prepared, shall be deemed to be persons who, for the purposes of the inclusion in that voters' register, have not or could not so have registered in that last general registration.<sup>27</sup>

#### **3.16A Continuous Registration of Voters**

For the purposes of the inclusion in any voters' register of persons who are qualified for registration as voters but are not so registered, any such person may make application for his or her registration, if not during any subsequent general registration or supplementary registration, at any other time, except during a period of suspension in respect of the holding of elections.

The relevant provisions applicable to application for registration made during a general registration of voters, apply.

A voters' list shall be compiled by the supervisor of registration for each month and be forwarded to the Director not later than the fifteenth day of the following month.

The continuous registration of voters shall be suspended during any election (general election or by-election) from the date that the proclamation in relation to such election or by-election is published in the Gazette, up to and including the second day after the close of the poll at such election or by-election, whichever is applicable, and shall be so suspended:

- (a) in the case of a general election, for the whole of Namibia; and
- (b) in the case of a by-election, for every constituency or local authority area or, where applicable, ward in respect of which the by-election is held.

The Director shall keep every provisional voters' register available for inspection by the public at his or her office and, if the Commission so determines, at such other place or places as shall be specified by the Director by notice in the Gazette, during the first seven working days of the second month following on the month in respect of which such provisional voters' register was prepared.

Where a suspension of continuous registration occurs:

- (a) every supervisor of registration concerned shall immediately upon the commencement of that period of suspension compile and forward to the Director

the voters' list for the portion of the month preceding the date of such commencement and, unless it has already been forwarded to the Director, also the voters' list for the preceding month;

- (b) the Director shall keep every provisional voters' register available for inspection by the public at his or her office and, where applicable, at such place or places as may have been specified, for a period of seven days commencing on the first working day following on the expiry of the period of fourteen days from the date on which such suspension of the continuous registration commenced.

The period of seven days during which a provisional voters' register is available for inspection shall be the period within which an objection may be lodged.<sup>27A</sup>

### **3.17 Change of Residence**

When there has been a change in the place of residence or home, with reference to which a voter has been registered in any given local authority area, and as a result thereof he or she is not entitled to the continuance of his or her registration in that local authority area, such voter shall as soon as is practicable after such a change notify the Director in respect thereof.<sup>28</sup>

### **3.18 Application for Registration in Another Constituency, Local Authority Area, etc**

Any voter who, because of a change in the place of his or her residence or home, becomes entitled or qualified for registration in any other constituency or in any other ward within the same local authority area, may apply to the registration officer concerned, in the form determined by the Director, for his or her registration in such other constituency or ward, and shall, when such an application is made by him or her, surrender to that registration officer the registration card previously issued to him or her.

No application for registration shall be made during a period of suspension of continuous registration.<sup>29</sup>

### **3.19 Registered Deaths**

Any registrar of deaths or any other officer designated by him or her, shall not later than the fifteenth day of each month, transmit to the Director a return in which are furnished in respect of any person whose death during the preceding month was registered by or under any law governing the registration of deaths in Namibia, his or her last residential and postal address and such other particulars as may be determined by the Director after consultation with the said registrar or officer.<sup>30</sup>

### **3.20 Amendment of Voters' Registers**

The voters' registers may be amended by the Director by –

- (a) adding the name, registration number and particulars of any person –

- (i) whose inclusion in the relevant voters' register has subsequently been accepted by virtue of any supplementary registration or in accordance with the process of continuous registration;
- (ii) whose name was erroneously or contrary to the Act omitted or removed from or refused to be included in the register in question; or
- (iii) whose application for registration is accepted by the Director;
- (b) removing the name and particulars of any deceased voter or any person –
  - (i) who since his or her name was included in the register in question has ceased to be entitled to registration as a voter in the particular local authority area, under which his or her name appears in the local authority voters' register;
  - (ii) whose name was erroneously or contrary to the Act included in the register in question;
  - (iii) whose name was in terms of sub-paragraph (a) (iii) added under another constituency or ward in the register in question;
- (c) transferring the name and particulars of any person whose name was erroneously or contrary to the Act included in the register in question, under any particular constituency, local authority area, or ward, to the appropriate constituency, local authority area, or ward, as the case may be;
- (d) correcting any error on the register in question on the name, registration number or particulars of a person, supplying any omission in such a name, number or particulars or recording any change in such name, number or particulars; or
- (e) removing any superfluous entry in the register in question where the name of the same person appears more than once in that register; or
- (f) arranging the local authority voters' register into appropriate parts according to wards upon the division of local authority areas into wards by virtue of the provisions of the Local Authorities Act 1992.

If the Director removes from the register in question a name which is not the name of a fictitious or deceased person, he or she must inform the person concerned by notice directed to the address of that person appearing in that register and state his or her reasons for such removal.<sup>31</sup>

### **3.21 Return or Surrender of Registration Cards**

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

- (a) are added to a relevant voters' register, the Director shall, if no registration card has been issued to such person, issue or cause to be issued a registration card to such person or, if a registration card has already been surrendered by such person cause it to be returned to such person;
- (b) are removed from a voters' register, the Director shall request such person, if he or she is not a deceased person, by notice served upon such person, to surrender the registration card in question within a period determined by the Director and specified in such notice, to him or her or any supervisor of registration, registration officer or magistrate so specified;
- (c) are transferred in terms of the Act, the Director shall request such person by notice served upon such person, to surrender his or her registration card within the period so determined by the Director and specified in such notice, to him or her, to any

- supervisor of registration, registration officer or magistrate so specified, in order to correct or complete the particulars on such registration card;
- (d) are compiled for the purposes of preparing the register in question in the manner prescribed, the Director may by notice in the Gazette request persons affected thereby, to surrender their registration cards within a period specified in such notice and at such places and to such persons as may be so specified, in order to correct or complete any particulars on such registration card, or to issue a new registration card.<sup>32</sup>

### **3.22 Voter to Verify Name on Register**

It is the duty of any person who has applied for registration and is qualified to be registered to ascertain whether his or her name has been included in a voters' register, and if it is not the case, to take the necessary steps to have it so included.<sup>33</sup>

### **3.23 Closing of Voters' Registers<sup>34</sup>**

#### **3.24 Registers Not Invalidated by Reason of Errors**

If through accident, inadvertence or oversight, anything required by law to be done in the preparation of any voters' register is erroneously done or omitted to be done, the voters' register in question shall not be invalidated thereby and the Director may at any time take or cause to be taken such steps as are necessary to rectify the error or omission.<sup>35</sup>

#### **3.25 Effect of Alteration of Constituencies or Wards**

If by reason of any new determination or division of constituencies, or wards, any portion of a constituency, or ward, as existing before the determination or division, is allocated to another constituency, or ward, respectively, the Director must prepare from the current voters' register in question which was prepared on the basis of the last previous determination or division, as amended from time to time, a voters' register of the altered constituencies, or wards, as the case may be.

The relevant voters' register prepared pursuant to the above provision shall come into operation on the date on which the alteration of the constituencies, or wards, as the case may be, comes into operation at the next general election in respect of which the current voters' register in question was prepared.

The voters' register prepared on the basis of the last previous determination or division shall be retained and shall be the relevant voters' register to be used at any by-election in question until the alteration of the constituencies, or wards, as the case may be, comes into operation at the next general election in question.<sup>36</sup>

#### **3.26 Director May Demand Particulars**

The Director may by notice in writing at any time require any person, whether he or she is registered or not, to furnish, in the manner and within the period specified in the notice,

such particulars as the Director may demand in the notice and which are relevant to the registration or continued registration of such person or any other person.<sup>37</sup>

**— Section 4 —**

**REGISTRATION OF POLITICAL PARTIES**

**4.01 Application for Registration**

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

- (a) the Commission is satisfied –
  - (i) that it is the principal object of that political party to participate in and promote elections under the Act, including –
    - (aa) the nomination of persons as candidates for any such elections;
    - (bb) the canvassing for votes for a candidate at any such elections;
    - (cc) the devotion of any funds or any part thereof to the election expenses of any candidate or the funds of any other political party taking part in any such elections;
  - (ii) that any object of that political party is not prejudicial to the safety of the State, the public welfare or the peace and good order; and
  - (iii) that membership of that political party is not excluded or restricted on the ground of sex, race, colour, ethnic origin, religion, creed or social or economic status; and
- (b) the application is accompanied by –
  - (i) the amount for registration as may be prescribed;
  - (ii) the constitution of that political party; and
  - (iii) a declaration signed by at least 500 members of the political party in question whose names appear on the national voters' register to the effect that these voters support the registration of that political party, and which is in the prescribed form.

If a political party applies for registration as a political party before the voters' registers, which are to be prepared after the first general registration, have come into operation, it shall be deemed to be sufficient compliance with the relevant provision of the Act if the declaration contains the registration numbers of, and has been signed by, at least 500 members to whom a registration card was issued for inclusion in the provisional national voters' register, for use in connection with the first election of members of regional councils after the commencement of the Act and by-elections for such councils to be held after that first election but prior to any general election.

The application shall contain –

- (a) the name of the political party;
- (b) the abbreviated name of the political party which may, for the purposes of any election

in terms of the Act, appear on the ballot paper for that election if the political party desires an abbreviation of its name to so appear;

- (c) the full names and the signature of the person who is the authorised representative of the political party;
- (d) a complete list of the names and addresses of its other office-bearers;
- (e) the business address and postal address in Namibia of the office which is the office of the authorised representative of the political party;
- (f) the distinctive symbol of the political party which may appear on the ballot paper, if the political party desires such symbol to so appear.

The declaration shall contain –

- (a) the full names and registration numbers of the persons who have signed the declaration; and
- (b) the names or numbers, as the case may be, of the regions and constituencies in respect of which such signatories are registered.

If a change occurs in relation to the name, abbreviated name, distinctive symbol, the authorised representative or the business or postal address of the office of the authorised representative of any political party, the political party concerned shall notify the Commission in writing of such change within 30 days after the date on which the change has occurred and, in the case of a change of the name or abbreviated name of the political party, transmit the political party's registration certificate together with such notification.

After the Commission has directed the Director to register a political party, the Director shall issue to such political party a registration certificate in the prescribed form.

If, on the receipt of a notification of change, the Commission is satisfied that the said change will not result in the name or distinctive symbol or abbreviated name of a political party being changed into a name or abbreviated name or distinctive symbol on account whereof the registration of the political party would have been prohibited or bring about any other circumstance on account of which the registration of the political party could originally have been refused, it shall direct the Director to effect the change in respect of the registration of the political party and –

- (i) in the case of a change of the name or abbreviated name of the political party, to issue an amended registration certificate to that political party; or
- (ii) in the case of any change other than of a change of name, to issue to that political party a written confirmation that the change in respect of its registration has been effected.

Any person who makes a false statement or furnishes false particulars in an application for registration of a political party as a political party, knowing such statement or particulars to be false, is guilty of an offence and on conviction be liable to penalties prescribed by law for the crime of perjury.<sup>38</sup>

#### **4.02 Prohibition of Registration**

The Commission must not direct the Director to register a political party as a political party, if the name, abbreviated name or distinctive symbol of the political party –

- (a) is identical to the name, abbreviated name or distinctive symbol under which any other political party has already been registered as a political party, or so closely resembles it that voters may be misled or confused thereby; or
- (b) is indecent or obscene or offensive or harmful to public morals.<sup>39</sup>

#### **4.03 Cancellation of Registration as Political Party**

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

- (a) if it is notified in a letter signed by any authorised representative of the party in question of a resolution taken by that party in congress that that party has been dissolved or is going to be dissolved on a date which shall be specified in such letter; or
- (b) if it is proved to the satisfaction of the Commission that any political party has at any time after its registration failed to comply with any relevant provision of the Act or guidelines issued thereunder.<sup>40</sup>

#### **4.04 Registration of Association for Elections of Local Authority Councils**

The Commission must on the written application in the prescribed form of any association or organisation, incorporated or unincorporated, which does not comply with the requirements for registration as a political party, and which desires to participate in any election for members of a local authority council, register it for that purpose in respect of that council, if –

- (a) the Commission is satisfied that it complies with the basic requirement of the Act applicable to the registration of a political party;
- (b) the application is accompanied by –
  - (i) the amount for registration as may be prescribed;
  - (ii) the constitution of that association or organisation; and
  - (iii) a declaration signed by at least 250 members of the association or organisation in question whose names appear on the local authority voters' register, in respect of the local authority area in question, to the effect that such voters support the registration of the association or organisation for that purpose, and, in relation to such voters, any reference to the provisional national voters' register or regional councils is deemed to be a reference to the provisional local authority voters' register or local authority councils, respectively.<sup>41</sup>

#### **4.05 Conduct of Political Parties**

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

The Commission may by notice in the Gazette, and not inconsistent with the Act or the Namibian Constitution, issue guidelines for the conduct of political activities by political parties in respect of any election.<sup>42</sup>

#### **4.06 Inspection of Documents**

A copy of each document which has been handed in at the Commission for the purposes of the registration of a political party, shall be kept at the office of the Commission for inspection by the public and any person wishing to inspect such document may do so during office hours without payment.<sup>43</sup>

#### **4.07 Appeal Against Decision of Commission**

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

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

Any judgment given or order made by the court shall be subject to appeal to the Supreme Court of Namibia on the same conditions as if it were a judgment given or order made in a civil proceeding in the court.<sup>44</sup>

#### **4.08 Disclosure of Foreign Financing of Political Parties**

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

If any political party, body, institution, member or other person uses any money in contravention of the provisions of the Act, the Commission shall cancel the registration of that political party unless it is proved to the satisfaction of the Commission that the money was so used by such body, institution, member or other person without the knowledge, sanction or connivance of the political party.<sup>45</sup>

— *Section 5* —

**PREPARATION FOR ELECTIONS – NOMINATIONS**

**5.01 General Elections and By-elections**

A general election shall take place –

- (a) for the election of the President –
  - (i) on a date not later than the date on which his or her term of office expires by effluxion of time; or
  - (ii) in the event of the dissolution of the National Assembly, on a date within the period required by the Constitution that a national election shall take place;
- (b) for the election of members of the National Assembly –
  - (i) on a date not later than the date on which its term expires by effluxion of time as contemplated by the Constitution; or
  - (ii) in the event of the dissolution of the National Assembly as contemplated in the Constitution, on a date within the period required by the Constitution that a national election shall take place;
- (c) for the election of members of regional councils –
  - (i) in the case of an election for the first regional councils, on a date fixed in accordance with the Constitution; or
  - (ii) in the case of any subsequent election for such members, on a date determined in accordance with the Regional Councils Act 1992;
- (d) for the election of members of local authority councils –
  - (i) in the case of an election for the first local authority councils, on a date fixed in accordance with the Constitution; or
  - (ii) in the case of any subsequent election for such members, on any date determined in accordance with the Local Authorities Act 1992.

When a casual vacancy occurs –

- (i) in the office of the President and any vacancy which so occurred is required to be filled by election, a by-election shall take place on a date determined within the period stipulated;
- (ii) in any regional council and any vacancy which so occurred is required to be filled by election, a by-election shall take place in the constituency in respect of which the vacancy in that council occurred, on a date determined within the period stipulated;
- (iii) in any local authority council and any vacancy which so occurred is required to be filled by election, a by-election shall take place in the ward in respect of which the vacancy in that council occurred, on a date determined in accordance with the Local Authorities Act 1992.

When any vacancy in the office of the President has occurred, the Commission shall, upon being satisfied of the fact of such vacancy, forthwith give notice in the Gazette that a vacancy in the office of the President has occurred, the date on which it occurred and the cause thereof.<sup>46</sup>

## 5.02 Nominations of Candidates

When a general election or by-election is to take place, the President shall by proclamation in the Gazette make known –

- (a) in the case of any such election –
  - (i) for the President or members of the National Assembly, in respect of Namibia;
  - (ii) for any member of any regional council, in respect of each constituency in which such an election is to take place;
  - (iii) for any member of any local authority council, in respect of the local authority area or, where such an area is divided into wards, for the ward in which such an election is to take place,
 a date determined by him or her upon which the submission of nominations of candidates shall take place and the place at which it shall so take place;
- (b) any day determined by him or her upon which a poll shall be taken at such election; and
- (c) the name or office of the person appointed as returning officer at such election, and if the nomination of candidates shall be submitted to any person or body other than the returning officer so referred to, then also the name or office of that person or body, as the case may be.

Any day determined for submission of nominations of candidates shall be any day not less than 15 days and not more than 20 days after the day on which the proclamation is published in the Gazette.

Any day determined as polling day shall be any day not less than 30 days and not more than 40 days after the nomination day.

An election is deemed to commence on the day on which the proclamation is published in the Gazette in relation to that election.<sup>47</sup>

## 5.03 Appointment of Election Officers

The Commission shall appoint –

- (a) in the case of any election –
  - (i) for the President or members of the National Assembly, for every constituency and for a polling station outside Namibia;
  - (ii) for any member of a regional council, for a constituency;
  - (iii) for any member of a local authority council, for a local authority area or, where such area is divided into wards, for a ward,
 a returning officer who shall, subject to the direction and supervision of the Director, have such powers, duties and functions as may be conferred or imposed upon him or her by the Act;
- (b) as counting officers such number of persons as it may deem necessary for the purpose of assisting any person who in terms of the Act is charged with the determination of the result of the poll in any such election;

- (c) a presiding officer for each polling station who shall be in control thereof;
- (d) as many polling officers as may be necessary to facilitate the taking of the poll at that polling station,

provided that the same person may be appointed returning officer for a constituency and a local authority area or ward referred to in sub-paragraph (a) or for more than one polling station referred to in this paragraph.

Any person appointed under these provisions is entitled to remuneration or allowances or both in respect of such services rendered by him or her and at such tariffs, as may from time to time be determined by the Commission, in consultation with the Permanent Secretary of the Ministry responsible for elections.

Different circumstances, bases, services or tariffs may be determined in respect of the different offices or in respect of persons appointed to such offices who are in the full-time service of the State and persons so appointed who are not in the full-time service of the State, or in respect of work done under different circumstances or in different areas.

The Commission may delegate any power conferred upon it to the Director who may, to the extent determined by the Commission, authorise any returning officer or presiding officer concerned to exercise any power so delegated to him or her.

Any appointment made may at any time be withdrawn by the authority who made the appointment in question.

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

Every returning officer, presiding officer or polling officer shall be competent to take an oath or affirmation from any other person for the purposes of the Act.<sup>48</sup>

#### **5.04 Agents of Political Parties and Candidates**

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

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

An election agent for a polling station shall be entitled to attend at that polling station as the

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representative and observer of the political party or such candidate by whom he or she was appointed such agent.

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

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

A political party or such candidate shall be entitled to be represented at any place where the determination of the result of the poll for an election occurs, by such number of persons as may be prescribed, appointed, subject to the final paragraph below, by such political party or candidate not later than seven days before the election in question, as counting agents.

A political party or such candidate shall not later than three days before the election in question furnish the returning officer concerned and, in the case of the determination of the poll in accordance with Section 87A, the Director, in writing, of the names and addresses of such counting agents who shall give public notice thereof.

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

No person shall be appointed or act as an election agent or counting agent if he or she:

- (a) is a candidate for the election in question; or
- (b) is not a Namibian citizen.<sup>49</sup>

### **5.05 Declaration of Secrecy**

Every returning officer, presiding officer, polling officer or counting officer and every agent appointed under the preceding provisions shall, before assuming his or her duties or performing any function or attending at any polling station or where the result of an election is determined, make, in a form determined by the Director, a declaration of secrecy under oath or affirmation.

Every candidate for any election shall make the declaration of secrecy referred to in these provisions before attending a place where the result of such election is determined.<sup>50</sup>

### **5.06 Nomination of Presidential Candidates**

A person must not be nominated as a candidate for any election to the office of President, unless he or she –

- (a) qualifies to be elected as President under the Constitution;
- (b) is a registered voter; and
- (c) is nominated, in a manner prescribed, either –
  - (i) as a representative of a political party, by such political party; or
  - (ii) as an independent candidate whose nomination is supported by at least 300 registered voters, from each of at least ten regions in Namibia.

Upon nomination day and at the place determined in respect of the election in question, the Chairperson of the Commission shall hold a public sitting for the submission of nominations of candidates for that election: provided that a nomination may be submitted to the Chairperson of the Commission at any time after publication of the appropriate proclamation and before the close of the sitting.

No candidate for the election of President shall be regarded as having been duly nominated, unless –

- (a) his or her nomination is made in the prescribed form and –
  - (i) in the case of a candidate nominated by a political party, duly signed by the authorised representative of the political party or any other office-bearer of such political party authorised thereto in writing by the authorised representative; or
  - (ii) in the case of an independent candidate, duly signed by any two persons supporting the nomination;
  - (iii) is accompanied by a photo of the candidate in such form and of such colours as may be acceptable to the Chairperson of the Commission, but subject to any requirements laid down by the Commission.
- (b) he or she consents to the nomination by any instrument in writing before the close of the sitting; and
- (c) in the case of a nomination by a political party such nomination is accompanied by –
  - (i) a copy of the registration certificate of the political party, and certified as such by a justice of the peace or commissioner of oaths; and
  - (ii) a receipt that an amount of N\$10,000 has been deposited with the State Revenue Fund, by or on behalf of the political party in question; or
- (d) in the case of a nomination as an independent candidate –
  - (i) such nomination is accompanied by a receipt that an amount of N\$5,000 has been deposited with the State Revenue Fund, by or on behalf of such candidate; and
  - (ii) there is submitted to the Chairperson of the Commission a list, not later than four o'clock in the afternoon of the second day before the nomination day, containing the names, registration numbers and residential addresses of, and signed by, the persons supporting the nomination of such candidate, and none

of whom has already signed in support of any other candidate in respect of the election in question.

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

At any time before the close of the sitting determined for the submission of nominations –

- (a) the nomination of a candidate may be withdrawn by the political party which submitted that nomination; or
- (b) the consent to nomination may be withdrawn by a candidate concerned, by submitting to the Chairperson of the Commission any instrument in writing containing such withdrawal, and thereupon such nomination shall lapse.

If the office of the Chairperson of the Commission is vacant or the Chairperson is for any reason unable to perform the functions assigned to him or her, the members or remaining members of the Commission, as the case may be, shall elect from among their number any other member to act in the place of the Chairperson of the Commission, and who shall, while so acting, be competent to perform any of those functions.<sup>51</sup>

### **5.07 Duration of Session on Nomination Day**

A sitting for the submission of the nomination of candidates shall be from 09.00 hours until 11.00 hours: provided that if at such last-mentioned hour any person present is then ready to submit the nomination of a candidate or a person has so submitted the nomination but it has not been completed, the Chairperson of the Commission shall continue the sitting for such period as will enable such candidate to be duly nominated.<sup>52</sup>

### **5.08 Declaration of Duly Nominated Presidential Candidate**

If the Chairperson of the Commission is satisfied that the Act has been complied with, he or she shall declare, as soon as is practicable after the close of the sitting, the candidate concerned to be duly nominated for the election of the President, and shall thereupon notify the candidate concerned by any instrument in writing of such declaration.

As soon as is practicable after the close of the sitting the Commission shall by notice in the Gazette make known:

- (a) the full names, registration number and residential address of each duly nominated candidate and the political party by whom he or she was nominated or indication “independent” if a candidate has been so nominated;
- (b) any polling day of the election in question;
- (c) the allocation of every polling station in a constituency.

When the Chairperson of the Commission rejects a nomination of a candidate for the

election in question, he or she must forthwith by any instrument in writing, notify the candidate of his or her rejection as a candidate and the grounds upon which the rejection has been made, and shall afford the political party or the persons by whom the nomination in question was submitted, an opportunity, at any time before the close of the sitting, to rectify the nomination or to nominate any other qualified person as candidate for that election.<sup>53</sup>

### **5.09 Lack of Nomination or Death of Candidate**

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

If a duly nominated candidate for the election of President dies before the poll for that election has commenced or while the poll for that election is taking place, the Commission shall immediately terminate the election, and all proceedings relating to the said election shall be commenced afresh in the same manner as if a vacancy had occurred in the office of President: provided that no fresh nomination is necessary in the case of a candidate who was duly nominated at the time when the election was so terminated.<sup>54</sup>

### **5.10 Nomination of Candidates for National Assembly Elections – Party Lists**

A political party shall take part in the election for members of the National Assembly by submitting to the Commission a list of candidates in writing at any time after the publication in the Gazette of the appropriate proclamation, but not later than 11.00 hours on the day determined and which shall contain the names, and residential addresses of at least 24 but not more than 72 candidates nominated with a view to the filling of any seats in the National Assembly to which that political party may become entitled.

The names on a list of candidates must appear in such order as the registered party may determine. The registration number of each candidate must be stated on the list after his or her name. A person shall not be nominated as a candidate on a list of candidates, unless he or she –

- (a) qualifies to be elected as a member of the National Assembly;
- (b) is a registered voter;
- (c) is a member of the political party submitting the list of candidates in question.

A list of candidates shall be accompanied by –

- (a) a declaration by the authorised representative of the political party that each person whose name appears on the said list of candidates has consented to his or her nomination as a candidate of that political party and that every such person complies with the requirements of the Act;
- (b) a copy of the registration certificate of the political party and certified as such by a justice of the peace or a commissioner of oaths;
- (c) a photo of the head of the political party in question, in such form and of such colours as may be acceptable to the Commission.

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

A copy of each list of candidates must be kept for inspection by the public at the offices of the Commission, and at such places in any constituency as the Commission may deem necessary.<sup>55</sup>

### **5.11 Publication of Party Lists**

The Commission is required to publish a notice in the Gazette –

- (a) stating, in alphabetical order, the names of all the political parties;
- (b) setting out the list of candidates of each such political party for the election in question, as drawn up by the registered party and declaring that the persons whose names appear on the list have been duly nominated as the candidates of the political party in question for that election.

If –

- (a) any person whose name appears on a list of candidates in a notice published in the prescribed form, dies or is found not to qualify to be a member of the National Assembly; or
- (b) the candidature of such person is withdrawn by him or her or by the political party which submitted that list of candidates by submitting to the Commission in any instrument in writing such withdrawal,

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

A person whose name has –

- (a) been deleted from the list of candidates of a political party, shall cease to be a candidate for that election;
- (b) been added or inserted, as the case may be, to the list of candidates of a political party, shall thereby become a candidate for such political party for that election.<sup>56</sup>

### **5.12 Nomination of Candidates for Regional Councils**

A person must not be nominated as a candidate for election as a member of a regional council, unless he or she –

- (a) qualifies to be a member of a regional council pursuant to the Regional Councils Act 1992;
- (b) is nominated, in a manner either –

- (i) as a member of a political party, by that political party; or
- (ii) as an independent candidate whose nomination is supported by at least 100 registered voters in the constituency for which such nomination is intended.

No person shall at a general election or, where more than one by-election for members of regional councils take place on the same day, be nominated as a candidate in more than one constituency.<sup>57</sup>

### **5.13 Submission of Nomination as Candidate for Regional Council Elections**

Upon the nomination day and at the place and time determined in respect of any constituency, the returning officer for the constituency shall hold a public sitting for the submission of the nomination of candidates for that constituency: provided that a nomination may be submitted to the returning officer at any time after the publication of the appropriate proclamation and before the close of the sitting.

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

- (a) his or her nomination is made in the prescribed form and –
  - (i) in the case of a candidate nominated by a political party, duly signed by the authorised representative of the political party or any other office-bearer of such political party authorised thereto in writing by the said authorised representative; or
  - (ii) in the case of an independent candidate, duly signed by any two persons whose names appear on the list referred to in paragraph (e) below; and
  - (iii) is accompanied by a photo of the candidate, in such form and of such colours as may be acceptable to the returning officer, but subject to any requirements laid down by the Commission; and
- (b) he or she consents to the nomination by any instrument in writing before the close of the sitting; and
- (c) such nomination is accompanied by a receipt that an amount of N\$1,000 has been deposited with the State Revenue Fund, by or on behalf of such political party or candidate; and
- (d) in the case of a nomination by a political party, such nomination is accompanied by a copy of the registration certificate of the political party and certified as such by a justice of the peace or a commissioner of oaths; or
- (e) in the case of a nomination as an independent candidate, there is submitted a list to the returning officer concerned, not later than four o'clock in the afternoon of the second day before the nomination day, containing the names, registration numbers and residential addresses of, and signed by, the persons supporting the nomination of such candidate, and none of whom has already signed in support of any other candidate in respect of the election in question.

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

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Subject to the preceding paragraph, the amount deposited by or on behalf of a political party or candidate, as the case may be, shall, as soon as is practicable after the poll in the constituency has been taken, be returned to the depositor.

If the nomination as a candidate is rejected or withdrawn or a candidate is declared duly elected, the amount deposited by or on behalf of the political party or the person nominated as candidate shall as soon as is practicable be returned to the depositor.

At any time before the close of the sitting determined for the submission of nominations-

- (a) the nomination of a candidate may be withdrawn by the political party which submitted that nomination; or
- (b) the consent to nomination may be withdrawn by the candidate concerned, by submitting to the returning officer concerned any instrument in writing containing such withdrawal, and thereupon such nomination shall lapse.<sup>58</sup>

#### **5.14 Duration of Session on Nomination Day**

A session for the submission of the nomination of candidates shall be from 09.00 hours until 11.00 hours: provided that if at such last-mentioned hour any person present is then ready to submit the nomination of a candidate or a person has so submitted the nomination but it has not been completed, the returning officer for the constituency shall continue the sitting for such period as will enable such candidate to be duly nominated.<sup>59</sup>

#### **5.15 Candidates Duly Nominated for Regional Councils**

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

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

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

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

When in respect of a constituency more than one person has been declared duly nominated

as a candidate, the returning officer for that constituency shall notify the Commission by any instrument in writing of –

- (a) the full names, registration number and residential address of each candidate declared to be duly nominated in respect of the constituency in question; and
- (b) the name of the political party which has nominated the candidate, or an indication “independent” if a candidate has been so nominated.

After receipt of a notification, the Commission shall, as the case may be, by notice in the Gazette, make known –

- (a) the full names, registration number and residential address of each person who has been declared as duly elected member of the regional council in question, and the name and number of the constituency in respect of which he or she has been so declared;
- (b)
  - (i) the full names, registration number and residential address of each candidate and the political party or indication “independent”;
  - (ii) the constituency in respect of which such candidates are nominated;
  - (iii) any polling day for the election in question;
  - (iv) the location of every polling station in a constituency.

The Commission must also cause to be displayed the notification referred to above at such places in a constituency as it may deem necessary.

When the returning officer for a constituency rejects a nomination as a candidate for the election of any member of a regional council, he or she shall forthwith by any instrument in writing notify the candidate of his or her rejection as a candidate and the grounds upon which the rejection has been made, and shall afford the political party or the persons by whom such nomination was submitted an opportunity, at any time before the close of the sitting, to rectify the nomination or, to duly nominate any other qualified person as candidate for that constituency.<sup>60</sup>

### **5.16 Death of Candidate after Nomination**

If any duly nominated candidate at an election for a member of a regional council in any constituency dies before the poll has commenced, the President shall, upon being satisfied of the fact of the death, withdraw so far as it concerns that constituency, the proclamation determining any polling day which has been published in the Gazette.

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

When an election in a constituency has been terminated, all proceedings relating to the said election shall be commenced afresh in precisely the same manner as if a vacancy had occurred in respect of that constituency at the time of such termination: provided that no fresh nomination shall be necessary in the case of a candidate who was duly nominated at the time when the election was so terminated.<sup>61</sup>

### **5.17 Lack of Nomination**

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

If the registration of a political party in respect of which a candidate for the election of a member of a regional council has been declared duly nominated in a constituency, is cancelled before the poll has commenced or while the poll is taking place in that constituency, all proceedings relating to such election shall continue as if such candidate were nominated as an independent candidate.<sup>62</sup>

### **5.18 Nomination of Candidates for Local Authority Elections**

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

- (a) qualifies to be a member of that local authority council; and
- (b) is nominated as provided –
  - (i) in the case of elections for members of local authority councils to be held on party lists, as a member of a political party, by that political party; or
  - (ii) in the case of any election for any member of a local authority council required to be held otherwise than on party lists, either –
    - (aa) as a member of a political party, by that political party; or
    - (bb) as an independent candidate whose nomination is supported by at least 50 registered voters in the ward for which such nomination is intended.<sup>63</sup>

### **5.19 Submission of Nomination as Candidate for Local Authority Council Elections**

For the purposes of any election on party lists, a political party is required to take part in the election for members of a local authority council by submitting to the returning officer for the local authority area in question, a list of candidates in writing at any time after the publication in the Gazette of the appropriate proclamation, but not later than 11.00 hours on the day determined, and which shall contain the names and residential addresses of candidates, numbering not less than the number of members required to fill the seats in such council to which that political party may become entitled. Where any election for any member of a local authority council is held otherwise than on party lists, the returning officer for the ward in respect of which the election is to take place, shall, upon the nomination day and at the place and time determined in respect of that ward, hold a public sitting for the submission of the nomination of candidates for that ward.

No candidate for an election is regarded as having been duly nominated, unless –

- (a) his or her nomination is made in the prescribed form and –
  - (i) in the case of a candidate nominated by a political party, duly signed by the authorised representative of the political party or other office-bearer of such

- political party authorised thereto in writing by the said authorised representative;  
or
- (ii) in the case of an independent candidate, duly signed by any two persons whose names appear on the list referred to in sub-paragraph (e) below; and
  - (iii) is accompanied by a photo of the candidate, in such form and of such colours as may be acceptable to the returning officer, but subject to any requirements laid down by the Commission; and
- (b) he or she consents to the nomination by any instrument in writing before the close of the sitting; and
  - (c) such nomination is accompanied by a receipt that an amount of N\$1,000 has been deposited with the State Revenue Fund, by or on behalf of such political party or candidate; and
  - (d) in the case of a nomination by a political party, such nomination is accompanied by a copy of the registration certificate of the political party and certified as such by a justice of the peace or a commissioner of oaths; or
  - (e) in the case of a nomination as an independent candidate, there is submitted a list to the returning officer concerned not later than four o'clock in the afternoon of the second day before the nomination day, containing the names, registration numbers and residential addresses of, and signed by, the persons supporting the nomination of such candidate, and none of whom has already signed in support of any other candidate in respect of the election in question.

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

Subject to the foregoing provisions, the amount deposited by or on behalf of a political party or a candidate, as the case may be, shall as soon as is practicable after the poll in the ward has been taken, be returned to the depositor.

If the nomination as candidate is rejected or withdrawn or a candidate is declared duly elected, the amount deposited by or on behalf of the political party or the person nominated as candidate shall, as soon as is practicable, be returned to the depositor.

At any time before the close of the sitting determined for the submission of nominations for a ward –

- (a) the nomination of a candidate may be withdrawn by the political party which submitted that nomination; or
- (b) the consent to the nomination may be withdrawn by the candidate concerned, by submitting to the returning officer concerned any instrument in writing containing such withdrawal, and thereupon such nomination shall lapse.<sup>64</sup>

## **5.20 Duration of Session on Nomination Day in Case of Wards**

A session for the submission of the nomination of candidates for a ward shall be from 09.00 hours until 11.00 hours: provided that if at such last-mentioned hour any person present is

then ready to submit the nomination of a candidate or a person has so submitted the nomination but it has not been completed, the returning officer for the ward shall continue the sitting for such period as will enable such candidate to be duly nominated.<sup>65</sup>

### **5.21 Declaration of Candidates in Wards**

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

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

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

If at the close of the sitting for the submission of nominations more than one person has been nominated in respect of a ward, a poll shall take place.

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

- (a) the full names, registration number and residential address of each candidate declared to be duly nominated in respect of the ward in question; and
- (b) the name of the political party which has nominated the candidate, or an indication “independent” if a candidate has been so nominated.

After receipt of a notification, the Commission shall, as the case may be, by notice in the Gazette, make known –

- (a) the full names, registration number and residential address of each person who has been declared as duly elected member of the local authority council in question, and the name or number of the ward in respect of which he or she has been so declared;
- (b)
  - (i) the full names, registration number and residential address of each candidate and the political party or indication “independent”;
  - (ii) the ward in respect of which such candidates are nominated;
  - (iii) any polling day for the election in question;
  - (iv) the location of every polling station in a ward.

When the returning officer for a ward rejects a nomination as a candidate for the election of

members of a local authority council he or she shall forthwith by any instrument in writing notify the candidate of his or her rejection as a candidate and the grounds upon which the rejection has been made, and shall afford the political party or the persons by whom the nomination in question was submitted an opportunity, at any time before the close of the sitting, to rectify the nomination or, to duly nominate any other qualified person as a candidate for that ward.<sup>66</sup>

### **5.22 Death of Candidate for a Ward**

If any duly nominated candidate at an election for a member of a local authority council in any ward dies before the poll has commenced, the President shall, upon being satisfied of the fact of the death, withdraw so far as it concerns that ward, the proclamation determining the polling day which has been published in the Gazette.

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

When an election in a ward has been terminated, all proceedings relating to the said election shall, unless otherwise provided in the Local Authorities Act 1992, be commenced afresh in precisely the same manner as if a vacancy had occurred in respect of that ward at the time of such termination: provided that no fresh nomination shall be necessary in the case of a candidate who was duly nominated at the time when the election was so terminated.<sup>67</sup>

### **5.23 Lack of Nomination**

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

If the registration of a political party in respect of which a candidate for the election of a member of a local authority council has been declared duly nominated in a ward, is cancelled before the poll has commenced or while the poll is taking place in that ward, all proceedings relating to such election shall continue as if such candidate were nominated as an independent candidate.<sup>68</sup>

## **— Section 6 —**

### **FURTHER ELECTION PREPARATIONS**

#### **6.01 Polling Stations**

The Commission shall for the purpose of facilitating the taking of a poll in any election, establish one or more polling stations at convenient places for each constituency or local authority area, or, where applicable, each ward of a local authority area.

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The allocation of polling stations shall be determined with due observance of –

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

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

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

A mobile polling station shall be under the general control of the returning officer designated by the Director and shall for the purposes of the Act be regarded as a polling station.

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

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

Additional polling stations may be established at any time after the commencement of the poll in any election and every political party concerned and, where applicable, every independent candidate shall be notified thereof as soon as is practicable.<sup>69</sup>

## **6.02 Provision of Equipment**

For the purposes of any election the Director shall provide every returning officer with:

- (a) polling booths, ballot boxes, ballot papers, instruments for stamping ballot papers with the official mark, seals and any other requisites as may be considered necessary; and

- (b) a list of unrecovered registration cards of persons whose names:
- (i) were included in the provisional voters' register but not in subsequent voters' register;
  - (ii) were removed from the voters' register in terms of Section 32,
- and a returning officer shall do such acts and make such arrangements to facilitate the taking of the poll as may be deemed advisable for effectually conducting the election.

The returning officer may depute any person under his or her control to perform on his or her behalf any of the duties imposed upon him or her in regard to the arrangements for the taking of the poll.<sup>70</sup>

### **6.03 Polling Booth**

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

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

For the purposes of the Act, the expression "polling booth" means any place or surface in or at a polling station that is screened off in such a way that voters may record their votes in secrecy.<sup>71</sup>

### **6.04 Ballot Box**

Not more than 30 thirty minutes before the commencement of the poll on a polling day at any polling station, the presiding officer shall –

- (a) satisfy himself or herself that all ballot boxes to be used at such polling station are empty;
- (b) permit the inspection of the interior of all such empty ballot boxes by such persons entitled to attend at the polling station, and as are present; and
- (c) immediately thereafter close and seal all such ballot boxes in the prescribed manner.

If for any reason it becomes necessary at any time during the polling period to use any additional ballot box at any polling station, such additional ballot box must be made available for inspection, closed and sealed before being made available for the deposit of ballot papers.

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

The presiding officer at a polling station shall at the closing of the poll on a polling day,

close and seal the aperture in any ballot box at the polling station, in a manner as may be prescribed, and in the presence of such persons entitled to attend at the polling station, and as are present.

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

The presiding officer and a police officer shall be responsible for the safe-keeping of all ballot boxes used at his or her polling station until they are delivered to the person responsible for the determination of the result of the election in question.<sup>72</sup>

### **6.05 Commencement and Closing of Poll**

Subject to the provisions below, the poll for any election shall:

- (a) at polling stations in Namibia, commence at 07.00 hours and shall close at 21.00 hours on any polling day; and
- (b) at polling stations outside Namibia, on polling day referred to in the proviso to section 80(3), commence and close at times as the Commission may determine in respect of each such polling station.

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

Notwithstanding the foregoing, the presiding officer shall permit every voter who at the time of the closing of the poll is inside the room or other enclosure of the polling station to record his or her vote.<sup>73</sup>

### **6.06 Powers of Presiding Officers**

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

- (a) a member of the Commission or the Director;
- (b) the returning officer concerned;
- (c) any election agent entitled to attend at the polling station;
- (d) the polling officers or any police officer on duty; and
- (e) any other person authorised in writing by the Director.

The presiding officer may order any person, other than those mentioned above, and any person recording his or her vote, to leave the polling station.

Any person who fails to leave the polling station when so ordered shall be guilty of an offence and may, by order of the presiding officer, be arrested without a warrant.

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

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

The powers conferred by these provisions shall not be exercised so as to prevent any voter who is entitled to vote, from having an opportunity to record his or her vote.<sup>74</sup>

### **6.07 Voting**

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

Where, at an election for a member of a regional council or a local authority council, any voter who is employed as a returning officer, presiding officer, polling officer, counting officer or police officer at such election and, by reason of such employment, will be unable to attend on any polling day at a polling station at which he or she is required to record his or her vote, the returning officer for the constituency, local authority area or, where applicable, the ward in respect of which such voter is registered, shall:

- (i) at the request of any such voter made at any time during the period allowed under these provisions; and
- (ii) upon production and surrender by him or her to the returning officer of a written authorisation issued by the Director stating that the voter concerned is by reason of such employment permitted to record his or her vote in terms of this sub-section, allow such voter to record his or her vote subject to these provisions.

An officer referred to above shall be permitted to vote at any time from 09.00 hours on the fifth day preceding the day of the election but not later than 19.00 hours on the second day preceding the said day of the election.

The written authorisation required under the above provision must be signed by the officer producing it and shall be placed in an envelope.

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

Where, at an election for the President or members of the National Assembly, any voter is

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by reason of absence unable to attend any polling day at a polling station at which he or she is required to record his or her vote, the presiding officer of any other polling station, whether in or outside Namibia, shall, at the request of such voter, permit such voter to record his or her vote by way of a tendered vote at that polling station during the polling hours applicable to that polling station: provided that where at such an election the poll has been determined to take place over more than one day, a voter shall, at a polling station outside Namibia, be entitled to so record his or her vote only on the first day of the polling days so determined.

The voting at any election shall be by secret ballot.

Every ballot paper must be in the prescribed form and must contain –

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

The voting at any polling station shall be conducted substantially and as nearly as possible in accordance with the provisions of the Act.

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

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

- (a) produces his or her registration card for the election in question to the presiding officer or a polling officer; and
- (b) produces to the presiding officer or a polling officer in proof of his or her identity –
  - (i) any document for the purpose by the Act; or
  - (ii) if he or she is unable to produce any such document, an affidavit in the prescribed form made before the presiding officer or a polling officer by any voter who has identified himself or herself to the presiding officer or polling officer and in which proof of identity of the first-mentioned voter is furnished.

The presiding officer or a polling officer must ascertain –

- (a) by examining and by putting relevant questions relating to the particulars appearing on the registration card and identity document or statement produced to him or her by the voter, that –
  - (i) the voter is the person whose name appears on the registration card; and
  - (ii) the registration card –
    - (aa) is a registration card officially issued under the Act; and
    - (bb) has not been signed, imprinted, marked or endorsed;
- (b) in the manner prescribed, that the voter has not already voted at the election in question; and
- (c) by reference to the list of unrecovered registration cards, whether the name of the voter, registration number or other particulars which appear on the registration card produced by the voter appear on that list.

The presiding officer or a polling officer shall require the voter, and the voter when so required is obliged, to cause his or her fingers to be examined by the presiding officer or such polling officer, and if upon examination no finger or fingers of the voter display the identification mark (that is, the mark approved by the Director for the purpose of identification of a voter who has voted at an election in question), he or she shall be presumed not to have already voted at the election in question.

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

If any person has been prohibited from voting, the presiding officer shall endorse the relevant registration card produced by him or her to the effect that such person was so prohibited.

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

Where the prospective voter's documents are in order, he or she shall, in the presence and in accordance with the instructions of the presiding officer or polling officer –

- (i) if the registration card produced by him or her bears the signature of the person to whom it was issued, sign that registration card by placing such signature in the space on that card provided for the election in question; or
- (ii) if the said registration card bears the imprint of any finger or fingers of the person to whom it was issued, place the imprint of the corresponding finger or fingers in that space; or
- (iii) if the said registration card bears, instead of the signature or any fingerprint of the person to whom it was issued, any mark made by that person, place a similar mark in that space,

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and the presiding officer or polling officer shall return the registration card to the person concerned.

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

When the provisions above-mentioned are complied with, the voter shall in the presence and in accordance with the instructions of the presiding officer or a polling officer place the identification mark on the finger or fingers of his or her left hand or of his or her right hand, as may be determined by the Director for the purposes of the election in question, or cause it to be placed thereon by the presiding officer or such polling officer.

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

When the voter has complied with the requirements, the presiding officer or polling officer shall –

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

Upon receiving the ballot paper, the voter shall:

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

- (i) the ballot paper in the ballot box for ordinary votes;
- (ii) the tendered vote envelope in the ballot box for tendered voters' envelopes.

The voting at a polling station shall not be interrupted by any defect occurring in any instrument used at such polling station for the purpose of effecting the identification mark, and the vote recorded by any voter shall not be invalid merely because the provisions requiring such use of the instrument concerned were not complied with in his or her case because of such defect, whereupon the registration card shall be endorsed to that effect.

Where an election for the President and an election for members of the National Assembly have been determined to take place on the same polling day, the voting process at polling stations must be conducted jointly for both such elections and:

- (a) any political party which has nominated a candidate for the election of the President as well as candidates for the election of members of the National Assembly, is entitled to appoint as election agents for a polling station only such number of persons as is prescribed in respect of any one of such elections; and
- (b) any voter who attends at a polling station for the purpose of recording his or her vote shall, if he or she desires to record a vote in respect of both such elections, record such votes on the occasion of such attendance, and no voter shall, after such attendance, be allowed to record any vote at any polling station on any subsequent occasion, irrespective of whether he or she has, on the occasion of his or her previous attendance at a polling station, exercised a vote in respect of only one of such elections.

Where the voting process is conducted jointly for both elections, voters attending at polling stations for the purpose of recording their votes, must:

- (a) be required to subject themselves to the identification mark stipulated in the Act; and
  - (b) in the application of the procedures (set out in section 82(7)(a)), sign their registration cards or place an imprint or make a mark thereon,
- as they would have been required to do had the voting process been conducted in respect of only one of such elections, irrespective as to whether any such voter desires to record a vote in respect of both such elections.<sup>75</sup>

### **6.08 Spoilt Ballot Papers**

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

- (a) give such voter another ballot paper;
- (b) retain the spoilt ballot paper which he or she shall immediately cancel and endorse with the word “spoilt”; and
- (c) forthwith record on the counterfoil of the ballot paper in the ballot paper book the fact that it has been cancelled.<sup>76</sup>

### 6.09 Assistance to Voters

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

- (a) a voter who is incapacitated by blindness or other physical disability from voting in a manner prescribed, requests in person the presiding officer or polling officer, to assist him or her in the manner directed by him or her to record his or her vote, but without interfering with the exercising of his or her franchise;
- (b) such assistance or instructions are to direct a voter to a polling booth for the purposes of recording his or her vote or, to inform a voter in respect of the procedure which he or she may follow on entering the polling booth, but without such presiding officer or polling officer interfering with the secrecy of his or her vote or with the exercising of his or her franchise;
- (c) a voter who is unable to read or to understand any written directions or instructions at a polling station, personally requests the presiding officer or polling officer to explain such directions or instructions to him or her, but without interfering with the exercising of his or her franchise.

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

Except as permitted in the foregoing provisions, no person is allowed to converse or in any other manner interfered with a voter at any time after he or she has been handed a ballot paper until he or she leaves the polling booth.<sup>77</sup>

### 6.10 Closing of Poll

Every presiding officer shall immediately after the close of the poll and in the presence of such of the persons entitled to attend at the polling station, as may be in attendance –

- (a) close and seal in the prescribed manner every ballot box entrusted to him or her;
- (b) make up into separate packets, so sealed –
  - (i) all unused ballot papers;
  - (ii) all spoilt ballot papers;
  - (iii) the counterfoils of used and spoilt ballot papers;
  - (iv) all registration cards seized (in terms of section 82(b));
  - (v) the stamp for the official mark used at the polling station; and
  - (vi) any such other equipment or documents as may be prescribed,

and shall deliver or cause to be delivered to the returning officer concerned such sealed ballot boxes and packets –

- (aa) in the case of any Presidential election or National Assembly election or regional election, as the case may be, to the returning officer for the constituency for which that polling station has been established; or
- (bb) in the case of any local authority council election, to the returning officer for the local authority area or, where such area is divided into wards, for the ward for which the polling station has been established.

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

The sealed ballot boxes and packets shall be accompanied by a return in which the presiding officer accounts for the number of ballot papers entrusted to him or her under the heads of ballot papers in the ballot boxes and unused and spoilt ballot papers.<sup>78</sup>

### **6.11 Determination of Result of Poll**

The Director shall inform:

- (a) in the case of an election on party lists, every political party taking part in that election;
- (b) in the case of any other election, every candidate taking part in that election, of any place where the result of the poll or any part thereof will be determined and on the day upon which and the time at which such determination shall be commenced.

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

The returning officer shall:

- (a) open the ballot boxes relating to a particular polling station received from the presiding officer and remove therefrom the ordinary ballot papers and the tendered vote envelopes and verify the correctness of the return furnished by the presiding officer concerned;
- (b) after such verification:
  - (i) prepare a report on the result of such verification; and
  - (ii) at the request of any counting agent or candidate, allow such counting agent or candidate to make a copy of that report;
- (c) replace all tendered vote envelopes in a ballot box, seal it in the prescribed manner

- and cause it to be delivered, together with the report referred to in sub-paragraph (b), to the Director immediately;
- (d) open the packet referred to in section 80(2)(d) and remove from the authorisation envelopes contained therein the folded ballot papers and place such folded ballot papers with the other ordinary ballot papers; and
  - (e) after ascertaining that each ordinary ballot paper bears the official mark on the back thereof, count the votes recorded on such ballot papers:
    - (i) in the case of an election on party lists, for each political party; or
    - (ii) in the case of an election otherwise than on party lists, for each candidate.

The returning officer must reject and not count any ballot paper:

- (i) which records votes to more than one political party or candidate, as the case may be;
- (ii) which does not bear the official stamp and in respect of which he or she has reasonable grounds to believe that it has not been officially issued to a voter;
- (iii) which is unmarked or on which it is impossible to determine with certainty for which political party or candidate, as the case may be, the ballot is recorded;
- (iv) which contains any writing or mark revealing the identity of the voter.

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

The returning officer shall in the presence of any counting agent or candidate as is in attendance, endorse the word "rejected" on any ballot paper rejected.

A counting agent or candidate may request a returning officer to recount the ballot papers and votes counted at polling stations until such time as he or she is satisfied of its accuracy: provided that a returning officer may refuse to do so if he or she is of the opinion that such request is at any time unreasonable.

At the time and place notified for the counting of tendered votes the Director shall:

- (a) examine the seals of all ballot boxes received by him or her and afford any counting agents or, at an election for President, also any candidates who are present an opportunity to do the same;
- (b) open such ballot boxes and verify the correctness of the report of each returning officer in relation to the tendered vote envelopes contained therein;
- (c) sort such tendered vote envelopes according to the constituencies indicated on such envelopes; and
- (d) open such tendered vote envelopes and remove therefrom the ballot papers and count the votes recorded thereon.<sup>79</sup>

## **6.12 Determination of Result in Presidential Elections**

At an election for the President:

- (a) a returning officer shall, when the counting of ordinary votes has been completed; and
- (b) the Director shall, when the counting of tendered votes has been completed, and whether or not the return (referred to in section 85(3)) or the report (referred to in section 87(2)(b)) was found to be correct, announce in the prescribed manner the result of such count and inform the Chairperson of the Commission of such result.

When the Chairperson of the Commission has received all the results and he or she has established the number of votes recorded for each candidate or, where only one candidate was nominated for election as President, for such candidate as President, he or she shall determine the candidate to be declared duly elected as President.

Upon determining the result of the election, the Chairperson of the Commission shall in the prescribed manner announce the result, by:

- (a) making known the total number of votes counted in the election and, in respect of each candidate or, where only one candidate was nominated for election as President, the number of votes recorded for him or her; and
- (b) declaring:
  - (i) the candidate duly elected as President with effect from such date as shall be determined in accordance with the Constitution of Namibia; or
  - (ii) if no candidate has received the requisite number of votes stipulated by the Constitution, that no candidate has been duly elected as President.

The Chairperson of the Commission shall as soon as is practicable after the declaration, cause a written statement of the announcement made by him or her to be transmitted to the Commission.

If no candidate is declared duly elected as President, these provisions shall apply *mutatis mutandis* in relation to the conducting of ballots until a result in the election is reached in accordance with the Constitution.<sup>80</sup>

### **6.13 Determination of Results in National Assembly Elections**

At an election for members of the National Assembly:

- (a) a returning officer shall, when the counting of ordinary votes has been completed, and whether or not the return referred to in section 85(3) was found to be correct, announce in the prescribed manner the result of such count and inform the Director of the result; and
- (b) the Director shall, when the counting of tendered votes has been completed, and whether or not the report referred to in section 87(2)(b) was found to be correct, announce in the prescribed manner the result of such count.

The Director shall in accordance with the results received by him or her from returning officers and the results determined by him or her, determine in the manner provided in the Constitution the number of candidates of each political party to be declared duly elected as members of the National Assembly.

Upon determining the result of the election, the Director shall in the prescribed manner announce the result, by:

- (a) making known the total number of votes counted and the appropriate quota determined in accordance with the Constitution and, in respect of each political party, the number of votes recorded for it and the number of seats in the National Assembly, if any, determined in its case in accordance with the provisions of paragraph (2) of Schedule 4 to the Constitution to which that political party is entitled; and
- (b) declaring:
  - (i) the candidates on the list of candidates of each political party in which case a number of seats has been determined, as aforesaid, but subject to the provisions of paragraph (4) of that Schedule; and
  - (ii) if the number of seats determined as aforesaid, is more than the number of candidates available on the said list, a person who qualifies to be a member of the National Assembly and has been nominated in writing in the prescribed manner for that purpose by the said political party and has in writing consented to his or her nomination,
 

to be duly elected as members of the National Assembly with effect from such date as shall be determined in accordance with the relevant provisions of the Constitution.

If there appears on any list of candidates the name of a person who died or was found not to be qualified in relation to the National Assembly on or before the date of the declaration, that name shall be deemed not to appear on the list in question.

The Director shall cause a written statement of the announcement made by him or her to be transmitted to the Commission.<sup>81</sup>

#### **6.14 Determination of Results in Regional Council Elections**

When all the votes in respect of all polling stations in a constituency have so been counted in respect of any candidate in an election for any member of a regional council and the number of votes recorded for any candidate has been determined in the constituency, the returning officer shall determine the candidate for that constituency to be declared duly elected as a member of the regional council in question.

The returning officer for the constituency in question shall announce in the prescribed manner the result of the election in question, by:

- (a) making known the total number of votes counted in the constituency and, in respect of each candidate, the number of votes recorded for him or her; and
- (b) declaring the candidate determined to be duly elected as a member of the regional council in question with effect from the day determined in respect of the election in question.

The returning officer concerned shall cause a written statement of the announcement made by him or her to be transmitted to the Commission.

If any candidates for election as a member of a regional council in any constituency have received an equal number of votes and the result of the election cannot by virtue thereof be determined, the returning officer for the constituency shall declare the election in question to be null and void, and in such event all proceedings relating to the election in that constituency shall be commenced afresh in precisely the same manner as if a vacancy in that regional council had occurred.<sup>82</sup>

### **6.15 Determination of Results in Local Authority Council Elections**

When all the votes in respect of all the polling stations:

- (a) in the case of any election on party lists, in a local authority area; or
  - (b) in the case of any other election, in a ward,
- have so been counted and the number of votes recorded has been determined:
- (i) in the case of any election on party lists, for each political party in that area, the returning officer concerned shall determine the number of candidates of that political party to be declared duly elected as members of the local authority council in question, as if the election for members of the National Assembly; or
  - (ii) in the case of any other election, for each candidate in that ward, the returning officer concerned shall declare the candidate who has received the greater or the greatest number of votes in that ward to be duly elected a member of the council in question.

As soon as is practicable after the foregoing provisions have been complied with:

- (a) with respect to an election relating to party lists, the returning officer for the local authority area shall announce in the prescribed manner the result of the election in question, by:
  - (i) making known the total number of votes counted and the appropriate quota determined and, in respect of each political party, the number of votes recorded for it and the number of seats in the council in question, if any, determined in its case; and
  - (ii) declaring:
    - (aa) the candidates on the list of candidates of each political party in which case a number of seats has been determined, and who, from that list, have been nominated by that political party as members of the council in question to fill the said seats; and
    - (bb) if the number of seats determined is more than the candidates available on the said list, a person who qualifies to be a member of the council in question and has been nominated in writing in the prescribed manner for that purpose by the said political party and has in writing consented to his or her nomination,  
to be duly elected as members of the council in question with effect from any day determined in respect of the election in question;
- (b) with respect to an election other than for party lists, the returning officer for the ward shall announce in the prescribed manner the result of the election in question, by:

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- (i) making known the total number of votes counted in that ward and, in respect of each candidate, the number of votes recorded for him or her; and
  - (ii) declaring the candidate to be duly elected as a member of the council for that ward with effect from any day determined in respect of the election in question.

The returning officer shall cause a written statement of the announcement made by him or her to be transmitted to the Commission.

If:

- (a) there appears on any list of candidates, the name of a person who died or was found not to qualify in relation to the council in question on or before the date of the declaration, that name shall be deemed not to appear on the list in question;
- (b) any candidates for an election in any ward have received an equal number of votes and the result of the election cannot by virtue thereof be determined, the returning officer for the ward shall declare the election in question to be null and void, and in such event all proceedings relating to the election in that ward shall be commenced afresh in precisely the same manner as if a vacancy in that council had occurred.<sup>83</sup>

#### **6.16 Publication of Election Results**

The Commission shall cause a notice of any announcement made and transmitted to it to be published in the Gazette.

Such a notice is on its mere production in any legal proceedings prima facie evidence of the announcement to which it relates and the particulars thereof. The Commission may also cause to be published in any other manner any such announcement and the particulars contained therein.<sup>84</sup>

#### **6.17 Safekeeping of Election Material**

The returning officer concerned shall enclose in separate packets:

- (a) all counted ballot papers;
- (b) all rejected ballot papers; and
- (c) all ballot paper accounts, received from any polling station for which he or she was the returning officer,

and shall seal such packets and cause them together with the packets to be delivered to the Director.

The packets shall be accompanied by a return in which the returning officer concerned accounts for the number of ballot papers received by him or her under the heads of ballot papers counted and rejected ballot papers.

The returning officer must, if requested by any counting agent or candidate furnish a copy of the return to such agent or candidate.

The Director is responsible for the safe-keeping of all packets received and shall retain them until such time as the Commission directs otherwise. Except as determined by the Commission, no person shall open or inspect the contents of the packets without an order of the court, which may be granted on the court being satisfied by evidence on oath that the inspection or production of any document contained in such packet is required for the purposes of instituting or maintaining a prosecution for an offence in relation to the election in question, and any such order may be made subject to such conditions as to persons and time, place and manner of inspection or production as that court may deem fit.<sup>85</sup>

### **6.18 Director to Verify Elections**

The Commission may direct the Director to verify or cause to be verified in accordance with the prescribed procedures any ballot paper accounts received in the election in question, and to report therein to the Commission in the prescribed manner. For the purposes of any such verification, the Director may open any sealed packet received from a returning officer.

The Commission may in the manner determined by the Commission, publish the report or any extracts therefrom, for the information of the public or for any other reason it deems necessary.<sup>86</sup>

### **6.19 Effect of Immaterial Mistakes**

No election shall be set aside by the court by reason of any mistake or non-compliance with the provisions relating to the conduct of elections, if it appears to that court that the election in question was conducted in accordance with the principles laid down and that such non-compliance or mistake did not affect the result of that election.<sup>87</sup>

## **— Section 7 —**

### **OFFENCES AND PENALTIES**

#### **7.01 Offences in Connection with Registration of Voters**

Any person who:

- (a) whether himself or herself or through an intermediary and whether directly or indirectly, with intent to dissuade, discourage or prevent any other person from causing himself or herself to be registered as a voter, irrespective of whether such other person is qualified for such registration or is not so qualified, or with intent to obtain unlawfully the possession of a registration card issued to any other person:
  - (i) uses or threatens to use violence against the person or his or her next of kin or property of any person or his or her next of kin; or
  - (ii) does or omits to do, or threatens to do or omits to do anything, to the loss, detriment, disadvantage or prejudice of any person or his or her next of kin; or

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- (b) during the hours whereupon voters may be registered, does any canvassing of persons to register or erects any poster or structure or uses any form of loudspeaker, excluding for official purposes, or organises any procession of or demonstration by persons or participates therein, within such a distance from any room, office or place where the registration of voters occurs that it disturbs, hinders or interferes with such registration; or
  - (c) with intent to defraud, duplicates, copies, forges, falsifies or fabricates any registration form or registration card or any document purporting to be a registration form or a registration card, or utters or is in possession of any document so duplicated, copied, forged, falsified or fabricated; or
  - (d) not being an officer or a magistrate or other person acting within the course of his or her duties under the Act, is in possession of a registration form or issues or purports to issue a registration form or issues or purports to issue a registration card or destroys, mutilates or defaces any registration card or places any writing or mark on any registration card; or
  - (e) is found in possession of a registration card not issued to him or her, without being able to give a satisfactory explanation for his or her possession of it, or is found in possession of more than one registration card issued to him or her for the election in question; or
  - (f) being a registered voter in relation to an election in question, applies for registration as a voter for that election or, after having ceased to be a registered voter, applies without being qualified for registration for that election or induces or procures any other person to so apply for registration or to register in fact as a voter knowing such other person or himself or herself not to be authorised to be so registered; or
  - (g) obstructs, hinders or interferes with the Director, any registration officer, supervisor of registration, magistrate or other person in the performance of his or her duties or functions or the exercise of his or her powers; or
  - (h) without being authorised thereto removes any document from any place where it is kept in terms of any provision of the Act, or destroys, mutilates, defaces, places any writing or mark upon or otherwise interferes with any document so kept in such place or any document, form, paper, instrument or other thing used for or required in connection with the carrying out of any such provision; or
  - (i) without good cause fails to comply with a notice furnished to him or her; or
  - (j) in or for the purpose of any application made to a registration officer or in any proceedings before a magistrate, makes a false statement knowing it to be false or not believing it to be true; or
  - (k) when appearing before a magistrate, fails to answer fully and truthfully any question put to him or her or to produce anything that he or she has with him or her; or
  - (l) obstructs, hinders or interferes with any person serving or attempting to serve a copy of a notice of objection in terms of the Act; or
  - (m) fails to comply with a requirement to return or surrender a registration card; or
  - (n) with intent to defraud, makes a false entry of the particulars of any person in any voters' list or register or on any registration card; or
  - (o) wilfully issues to any person a registration card knowing that such person does not qualify to be issued with a registration card,
- shall be guilty of an offence.<sup>88</sup>
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## **7.02 Offences in Connection with Nominations**

Any person who:

- (a) with intent to defraud, forges, falsifies or fabricates a nomination for any candidate in any election or utters or is in possession of any document so forged, falsified or fabricated;
- (b) wilfully defaces, destroys or mutilates a nomination for a candidate in any election;
- (c) with the intent to defraud makes any false statement or declaration in respect of qualifications to be a candidate in any election in question;
- (d) on any day that a session in an election for the nomination of a candidate sits, uses any form of loudspeaker, excluding for official purposes, within such distance that it disturbs, hinders or interferes with the proceedings at that session, or wilfully obstructs or disturbs any proceedings thereat in any other manner whatsoever or obstructs or interferes with any person in the exercise of his or her powers or the performance of his or her duties and functions at such proceedings or attending such proceedings,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$4,000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.<sup>89</sup>

## **7.03 Failure to Disclose Foreign Financing**

Any person who fails to disclose within the period stipulated foreign financing of a political party or candidature is guilty of an offence and on conviction is liable to a fine not exceeding N\$12,000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.<sup>90</sup>

## **7.04 Neglect of Duty**

Any returning officer, presiding officer, polling officer or counting officer, who after having accepted an appointment as such wilfully fails to perform any of the duties which he or she is required to perform or the directions issued by the Director or Commission, shall, without derogating from the Act, be guilty of an offence and on conviction be liable to a fine not exceeding N\$2,000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.<sup>91</sup>

## **7.05 Infringement of Secrecy**

Every officer or agent to the extent determined by the Act, present at a polling station shall maintain, and aid in maintaining, the secrecy of the voting at the polling station, and shall not communicate to any person any information likely to defeat the secrecy of the voting.

No person shall interfere with or attempt to interfere with a voter when marking his or her vote, or otherwise attempt to obtain at a polling station information as to the political party or candidate for which any voter at that polling station is about to vote or has voted, or communicate at any time to any person any information obtained at a polling station as to

the political party or candidate for which any voter at such polling station is about to vote or has voted.

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

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

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

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

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

No person shall, except upon the order of any court or as authorised by the Act, break the seal of a sealed packet or open such a packet.

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

Any person who contravenes or fails to comply with any of these provisions is guilty of an offence and on conviction is liable to a fine not exceeding N\$4,000 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.<sup>92</sup>

## **7.06 Obstruction of Officers**

Any person who:

- (a) wilfully obstructs or disturbs any proceedings at a polling station or obstructs or interferes with the Director, returning officer, presiding officer, polling officer or counting officer in the exercise of his or her powers or the performance of his or her duties and functions; or
- (b) on any polling day does any canvassing for votes or erects any poster or structure for such purposes, or uses any form of loudspeaker or organises any procession of

or demonstration by persons or participates therein, within a distance of 500 metres from any polling station, is guilty of an offence and on conviction is liable to fine not exceeding N\$4,000 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.<sup>93</sup>

### **7.07 Offences in Connection with Voting**

Any person who:

- (a) for the purpose to have a ballot paper issued to him or her knowingly produces to any presiding officer or polling officer a registration card issued to or in the name of some other person, living or dead, or a fictitious person, or a registration card which has been altered with intent to deceive, or any document purporting to be but not being a registration card; or
- (b) having previously voted at the election in question, produces to any presiding officer or polling officer, for the purpose to have a ballot paper issued to him or her, a registration card, whether issued to him or her or in the name of some other person, or any document purporting to be but not being a registration card; or
- (c) forges, counterfeits or fraudulently destroys any ballot paper or the official stamp on any ballot paper; or
- (d) without due authority supplies any ballot paper to any person; or
- (e) fraudulently places into any ballot box any paper other than a ballot paper issued to him or her or into any authorisation ballot paper envelope any paper other than a ballot paper issued to him or her; or
- (f) fraudulently takes out of any polling station any ballot paper or authorisation ballot paper envelope; or
- (g) without due authority destroys, takes, opens, uses or otherwise interferes with any ballot box, polling booth, instrument, form, document or other equipment used or intended for use at any polling station; or
- (h) causes any disturbance at any polling station, or disobeys any lawful order given by the presiding officer at any polling station; or
- (i) without lawful authority destroys, mutilates, defaces or removes any notice exhibited under the Act,

is guilty of an offence.<sup>94</sup>

### **7.08 Corrupt and Illegal Practices**

“Corrupt and illegal practices” mean any of the offences of undue influence, bribery, impersonation, corrupt procurement or withdrawal of candidature and treating.<sup>95</sup>

### **7.09 Undue Influence**

Any person who, directly or indirectly, by himself or herself or by any other person:

- (a) makes use or threatens to make use of any violence, force or restraint, or inflicts or threatens to inflict any bodily or psychological injury, damage, hazard or loss,

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upon or against, or does or threatens to do anything to the disadvantage of, any person in order to induce or compel any person to vote or to refrain from voting at any election, or on account of any person having voted or refrained from voting at the election; or

- (b) by any such means or any fraudulent device or contrivance induces, compels or prevails upon any voter to vote or refrain from voting at any election in question or to vote in favour of a particular political party or candidate, or impedes, hinders or prevents the free exercise of the franchise by any voter at any election in question, is guilty of an offence and on conviction is liable to a fine not exceeding N\$20,000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.<sup>96</sup>

### **7.10 Bribery**

Any person who, whether himself or herself or through an intermediary and whether directly or indirectly:

- (a) corruptly gives, lends or procures, or agrees to give, lend or procure or offers, promises or promises to procure, or promises to endeavour to procure, any money or any other thing, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person:
- (i) for the purpose of inducing such voter to record or abstain from recording his or her vote in any election; or
  - (ii) on account of the fact that such voter has recorded or abstained from recording his or her vote in any election; or
- (b) makes any such gift, loan, offer or promise or effects for him or her any such procurement or enters into any such agreement to or for or with any other person for the purpose of inducing such person to vote for any particular political party or candidate; or
- (c) upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages or promises or endeavours to procure the vote of any voter in the election; or
- (d) advances or pays, or causes to be advanced or paid, any money, to or for the use of any other person with the intention that such money, or any part thereof, is to be expended on bribery in the election in question, or who knowingly pays, or causes to be paid, any money or any other person in discharge or repayment of any money which has in full or in part been expended in bribery in that election; or
- (e) before or during the election in question, receives or negotiates any payment or loan on his or her own behalf or any other person in consideration for his or her voting or his or her agreeing to vote in such election, or his or her abstaining from voting or his or her agreeing to abstain from voting in such election; or
- (f) after the election has received any money on account of the fact that any other person:
- (i) has recorded his or her vote or has abstained from recording his or her vote in such election; or

(ii) has induced any further person to record or to abstain from recording his or her vote in such election,  
is guilty of an offence and on conviction is liable to a fine not exceeding N\$20,000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.<sup>97</sup>

### **7.11 Impersonation**

Any person who:

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

is guilty of an offence and on conviction is liable to a fine not exceeding N\$8,000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.<sup>98</sup>

### **7.12 Corrupt Procurement of Candidate**

Any person who:

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

is guilty of an offence and on conviction is liable to a fine not exceeding N\$8,000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.<sup>99</sup>

### **7.13 Treating**

Any person who:

- (a) corruptly, whether himself or herself or through an intermediary, whether before or during or after an election and whether directly or indirectly, gives or provides, or pays in full or in part the expense of giving or providing, any provisions to or for any other person:
  - (i) for the purpose of corruptly influencing such other person or any further

- person to record or abstain from recording his or her vote in such election;  
or
- (ii) on account of the fact that such other person or any further person has recorded or has abstained from recording or is about to record or to abstain from recording his or her vote in such election; or
- (b) being a voter, corruptly accepts or takes any payment, food, drink, entertainment, lodging or provisions referred to in sub-paragraph (a),  
is guilty of an offence and on conviction is liable to a fine not exceeding N\$8,000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.<sup>100</sup>

## — Section 8 —

### ELECTION APPLICATIONS

#### 8.01 Powers of High Court

An application complaining of an undue return or an undue election of any person to the office of President or as any member of the National Assembly or a regional council or local authority council by reason of want of qualification, disqualification, corrupt and illegal practice, irregularity or by reason of any other cause whatsoever, shall be made to the court.<sup>101</sup>

#### 8.02 Presentation of Election Applications

An election application must be presented within 30 days after the day on which the result of the election in question has been declared.

Presentation of the application shall be made by lodging it with the registrar of the court.

At the time of the presentation of the application or within five days thereafter, security for the payment of all costs, charges and expenses that may become payable by the applicant:

- (i) to any person who may be summoned as a witness on his or her behalf; and
- (ii) to the person, or, in the case of an election on party lists, the political party whose election or return is complained of (the respondent),  
shall be furnished by or on behalf of the applicant.

The security shall be for an amount determined by the registrar of the court and shall be furnished in money or by recognizance to the satisfaction of the registrar.

If the applicant complies with the foregoing provisions, the application is deemed to be at issue, or, if there is no such compliance, no further proceedings shall be heard on the application.<sup>102</sup>

### **8.03 List of Election Applications**

The registrar of the court shall make out a list of election applications presented to the court and which are at issue, placing them in the order in which they were presented, and shall keep at his or her office a copy of such list open to inspection by the public and furnish the Commission with a copy thereof.

Election applications shall be tried in the order in which they stand on such list, unless the court otherwise directs.

When more than one application relating to the same election is presented, all such applications must be put together in the list and must be dealt with as one application, but such application must stand on the said list in the place where the last of such applications would have stood if it had been the only application presented, unless the court otherwise directs.<sup>103</sup>

### **8.04 Persons Who May Present Applications**

An election application may be presented by:

- (a) a voter registered for the election in question;
- (b) a political party which took part in the election by submitting any party lists or which nominated a candidate at any other election in question;
- (c) any person claiming to have had a right to be elected at the election in question;
- (d) any person alleging himself or herself to have been a candidate at such election;
- (e) the Attorney-General if he or she deems it expedient in the public interest.

When an office or a seat is claimed for some person other than the applicant such person shall be a party to the application as co-applicant.<sup>104</sup>

### **8.05 Service of Applications**

Notice in writing of the presentation of an election application, accompanied by a copy of the application and a certificate of the registrar of the court stating the amount determined by him or her as security has been paid or sufficient recognizance has been furnished in respect of that amount, shall within ten days after the presentation of the application, be served on the respondent.<sup>105</sup>

### **8.06 Joinder of Co-applicant**

Any person may after an application has been represented to the registrar of the court apply to that court to be joined as co-applicant in that application, and the court may allow or refuse such application and make such order as to costs as it deems just and equitable.<sup>106</sup>

### **8.07 Trial of Applications**

The trial of every election application shall take place before one judge, unless the Judge President directs the trial to take place before two or more judges of the court.

Notice of the time and place at which an election application will be heard shall be furnished by the registrar of the court to the parties concerned not less than ten days before the day on which the trial is to be commenced.

Any election application shall be heard in open court and shall be determined within 60 days from the date of the presentation of the application to the registrar of the court or within such longer period as special circumstances may require.

No election shall be set aside by the court by reason of want of qualification, disqualification, corrupt and illegal practice, irregularity or by reason of any other cause if it appears to the court that any such want of qualification, corrupt and illegal practice, irregularity or other cause did not affect the result of that election.

At the conclusion of the trial of any election application, the court shall determine whether the respondent was duly elected or whether any, and, if so, what, person other than the respondent was or is entitled to be declared duly elected.

If the court determines that the respondent was not duly elected, but that some other person was or is entitled to be declared duly elected, the respondent shall from the date of such determination be deemed to have vacated his or her office or seat, as the case may be, and the court shall forthwith certify as such its determination to the Commission and, in the case of the President or the National Assembly, to the Speaker of the National Assembly or, in the case of a regional council, to the regional officer of that council or, in the case of a local authority council, to the Chief Executive Officer of that council, and the Commission shall by notice in the Gazette, declare such other person duly elected from the date on which the respondent vacated his or her seat or office, as the case may be, and alter the announcement of the result of the election published in the Gazette, accordingly.

If the court determines that a respondent was not duly elected, and that no other person was or is entitled to be declared duly elected, the office or seat of the respondent, as the case may be, shall be deemed vacant and the court shall certify as such its determination, and the Commission shall, if satisfied that no appeal is being prosecuted against the determination of the court or that an appeal has failed, declare by notice in the Gazette that a vacancy has occurred, the cause of such vacancy and nature of such vacancy.

When any allegation is made on an election application of any corrupt and illegal practice having been committed at the election to which the application refers, the court shall, in addition to the certificate aforesaid, at the same time and in the like manner report in writing:

- (a) whether any corrupt and illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any political party or candidate at that election or by or with the knowledge and consent of its or his or her agents, and the nature of such corrupt and illegal practice;
- (b) the names of all persons who have been proved at the trial to have been guilty of any corrupt and illegal practice;
- (c) whether corrupt and illegal practices have, or whether there is reason to believe that corrupt and illegal practices have, extensively prevailed at the election in question.

The court may at the same time make a special report as to any matter, arising in the course of the trial, an account of which ought, in its judgment, to be submitted to the Commission or National Assembly or the regional council or local authority council in question.

A copy of every certificate and report made by the court shall be presented by the Speaker to the National Assembly or by the said regional officer to the regional council in question, or by the said Chief Executive Officer to the local authority council in question.<sup>107</sup>

### **8.08 Transmission of Statement to Prosecutor-General**

If the court states in the report on the trial of an election application that any person has been guilty of a corrupt and illegal practice or that there is reason to believe that corrupt and illegal practices have extensively prevailed at the election to which the application refers, that statement with the evidence taken at the trial shall be transmitted by the registrar of the court to the Prosecutor-General with a view to the institution of any prosecution in relation thereto.

A copy of every such statement and evidence shall also be transmitted by the said registrar to the Commission.<sup>108</sup>

### **8.09 Witnesses**

A witness shall be summoned and sworn in the same manner as at a trial of an action before the court, and his or her evidence shall be subject to the same rules of admissibility and to the same privileges and penalties under like circumstances in respect of the giving of false evidence, as he or she would be subject to if the evidence given by him or her at the trial of the election application had been given at the trial of an action before the court.

On the trial of an election application the court may examine any witness or any person in court although such witness or person is not called or examined by any party to the application.

After a witness has so been examined by the court, such witness or person may be cross-examined by or on behalf of the applicant and respondent or either one of them.

The reasonable expenses incurred by any person appearing to give evidence at the trial of an election application, may be allowed to such person, according to the scale usually allowed to witnesses on trial by the court for civil action, and such expenses are deemed to be costs in the application.

On the trial of an election application complaining of an undue election or undue return and claiming the office or seat, as the case may be, for some other person, the respondent may give evidence to prove that the election of that other person was undue, in the same manner as if the respondent had presented an election application complaining of such election.<sup>109</sup>

## 8.10 Withdrawal of Application

An election application shall not be withdrawn without the leave of the court, and then only after such notice has been given as the court may direct.

If there is more than one applicant, no application to withdraw an election application shall be made without the consent of all the applicants.

If an election application is withdrawn, the applicant shall be liable to pay the costs of the respondent.<sup>110</sup>

## 8.11 Costs

All costs, charges and expenses of and incidental to the presentation of an election application and the proceedings consequent thereon, shall be defrayed by the parties to the application in such manner, and in such proportions, as the court may determine, regard being had to the disallowance of any costs, charges, or expenses which may, in the opinion of the court, have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the applicant or the respondent, and to the discouragement of needless expense by throwing the burden of defraying it on the parties by whom it has been caused, whether such parties are or are not on the whole successful. The costs may be taxed and recovered in the same manner as the costs of an ordinary action at law in the court.<sup>111</sup>

## NOTES

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|--|---|
| 1. Constitution of Namibia, see article 17   | 19. Ibid., see section 20   |
| 2. Ibid., see article 49   | 20. Ibid., see section 21   |
| 3. Ibid., see Schedule 2   | 21. Ibid., see section 22   |
| 4. Electoral Act 1992 (as amended by the Electoral Amendment Act 1994), see sections 3 and 4 | 22. Ibid., see section 23   |
| 5. Ibid., see section 5  | 23. Ibid., see section 24   |
| 6. Ibid., see section 7  | 24. Ibid., see section 25   |
| 7. Ibid., see section 8  | 25. Ibid., see section 26   |
| 8. Ibid., see sections 6 and 9   | 26. Ibid., see section 27   |
| 9. Ibid., see section 10   | 27. Ibid., see section 28   |
| 10. Ibid., see section 11  | 27A. Ibid., see section 28A   |
| 11. Section 12 of the Electoral Act 1992 (repealed by the Electoral Amendment Act 1994)      | 28. Ibid., see section 29   |
| 12. Electoral Act 1992 (as amended by the Electoral Amendment Act 1994), see section 13      | 29. Ibid., see section 30   |
| 13. Ibid., see section 14  | 30. Ibid., see section 31   |
| 14. Ibid., see section 15  | 31. Ibid., see section 32   |
| 15. Ibid., see section 16  | 32. Ibid., see section 33   |
| 16. Ibid., see section 17  | 33. Ibid., see section 34   |
| 17. Ibid., see section 18  | 34. Section 35 of the Electoral Act 1992 (repealed by the Electoral Amendment Act 1994) |
| 18. Ibid., see section 19  | 35. Electoral Act 1992 (as amended by the Electoral Amendment Act 1994), see section 36 |
|  | 36. Ibid., see section 37   |
|  | 37. Ibid., see section 38   |

- 38. Ibid., see section 39
- 39. Ibid., see section 40
- 40. Ibid., see section 41
- 41. Ibid., see section 42
- 42. Ibid., see section 43
- 43. Ibid., see section 44
- 44. Ibid., see section 45
- 45. Ibid., see section 46
- 46. Ibid., see section 47
- 47. Ibid., see section 50
- 48. Ibid., see section 51
- 49. Ibid., see section 52
- 50. Ibid., see section 53
- 51. Ibid., see sections 54 and 55
- 52. Ibid., see section 56
- 53. Ibid., see section 57
- 54. Ibid., see section 58
- 55. Ibid., see section 59
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