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INTRODUCTION

In 1991 Zambia moved from a one-party to a multi-party system of government. In order to conduct multi-party elections, new legal structures were required to guarantee the formation of political parties and their freedom to conduct political campaigns throughout the country. A new Constitution and a new Electoral Law were promulgated in 1991.

These new structures were aimed at ensuring the organisation and conduct of free and fair multi-party elections. The main features of the new legal instruments will be set out herein to the extent that they impacted on the organisation of free and fair elections.

— SECTION 1 —

RELEVANT PROVISIONS OF THE CONSTITUTION

1.01 Freedom of Assembly and Association

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.¹

1.02 The Franchise

Every citizen of Zambia who has attained the age of eighteen years must unless he is disqualified by Parliament from registration as a voter for the purposes of elections to the National Assembly, be entitled to be registered as such a voter under a law in that behalf, and no other person may be so registered.

Every person who is registered in any constituency as a voter for the purposes of elections to the National Assembly must, unless he is disqualified by Parliament from voting in such elections on the grounds of his having been convicted of an offence in connection with elections or on the grounds of his having been reported guilty of such an offence by the court trying an election petition or on the grounds of his being in lawful custody at the date of the election, be entitled so to vote in that constituency in accordance with the provisions made by or under an Act of Parliament, and no other person may so vote.²

1.03 Electoral Commission

The President is required to establish an Electoral Commission to supervise the registration of voters and the conduct of Presidential and Parliamentary elections and to review the

boundaries of the constituencies into which Zambia is divided for the purposes of elections to the National Assembly.

The President shall establish an Electoral Commission –

- (a) whenever Parliament is dissolved or he otherwise considers it to be necessary;
- (b) at such times, being not less than eight or more than ten years since the boundaries of the constituencies were last reviewed, as he may from time to time appoint;
- (c) whenever the number of seats in the National Assembly have been altered;
- (d) whenever a census of the population has been held in pursuance of any law.

The composition and operations of an Electoral Commission appointed by the President are provided for by an Act of Parliament.³

1.04 Constituencies and Elections

Zambia is divided into constituencies, for purposes of elections to the National Assembly so that the number of such constituencies, the boundaries of which must be such as an Electoral Commission prescribes, shall be equal to the number of seats of elected members in the Assembly.

In delimiting the constituencies, the Commission must have regard to the availability of means of communication and the geographical features of the area to be divided into constituencies: provided that the constituencies shall be so delimited that there is at least ten constituencies in each administrative Province.

Each constituency returns one member only to the National Assembly.

The boundaries of each constituency must be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable: provided that the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features and the difference between urban and rural areas in respect of density of population.

An Electoral Commission established for the purpose of reviewing the boundaries of the constituencies must review the boundaries and may alter the constituencies to such extent as it considers desirable.

A Commission established by reason of holding of a census of the population may, if the Commission considers that the changes in the distribution of population reported in the census do not justify an alteration in the boundaries, so report to the President without entering upon a review of the boundaries of the constituencies.

Any alteration of the constituencies comes into effect upon the next dissolution of Parliament.

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

The number of inhabitants of Zambia is ascertained by reference to the latest census of the population.

During any period when an Electoral Commission is established for the purposes of Presidential and Parliamentary elections, the registration of voters and the conduct of elections in every constituency must be subject to the direction and supervision of the Commission.⁴

— Section 2 —

ELECTION ADMINISTRATION

2.01 Electoral Commission

An Electoral Commission established under the Constitution shall consist of a Chairman and two other members, who must be appointed by the President.

Where an Electoral Commission is established solely for the purpose of a by-election for a member of the National Assembly, the Electoral Commission may consist of a single Commissioner who may exercise all the powers of the Electoral Commission relating to the direction and supervision of that election other than the power to make or alter regulations.

A person is not qualified for appointment as Chairman of a Commission or as a Commissioner –

- (a) unless he holds or has held high judicial office;
- (b) if he is a member of, or nominated as a candidate for election to, either House of Parliament.

If, after the appointment of a Commission and before the Commission stands dissolved, the office of Chairman or any member falls vacant or the holder of the office becomes unable for any reason to discharge his functions as a member of the Commission, the President may appoint another person qualified for appointment to be the Chairman or a member of the Commission, as the case may be.

An Electoral Commission stands dissolved upon such date as the President may determine.⁵

2.02 Independence of Electoral Commission

In the exercise of its functions under the Constitution, a Commission shall not be subject to the direction or control of any other person or authority.⁶

2.03 Supervision by Commission

The registration of voters and the conduct of every election shall be subject to the direction and supervision of the Commission.⁷

2.04 Appointment and Functions of Election Officers

The Commission has power to appoint, in respect of any election, for any constituency or province such election officers as it may deem necessary for the purposes of such election, and any election officer may exercise his functions in respect of the whole or part of a constituency or province or in respect of more than one constituency as prescribed by the Commission.

In respect of any election, an election officer may, subject to the general or special directions of the Commission, appoint any fit person to assist him in the exercise of his functions and may, at any time, revoke such appointment.

Every election officer must, before exercising any of the functions of his office, take and subscribe such oath, or make such affirmation in lieu thereof, as the Commission may prescribe.

The Commission may, at any time, revoke the appointment of an election officer.

The term “election officer” is defined as a person appointed by the Commission to be –

- (a) a registration officer;
- (b) an assistant registration officer;
- (c) an electoral officer;
- (d) a returning officer;
- (e) a presiding officer;
- (f) a polling assistant; and
- (g) a counting assistant,

and includes any person appointed to assist an election officer and, where functions are conferred on the Director of Elections in respect of any election, includes the Director of Elections.⁸

2.05 Powers of the Commission

The Commission may –

- (a) require from any election officer such information and returns as it may consider necessary;
- (b) issue instructions to any election officer in connection with his functions;
- (c) issue instructions to any candidate in an election in respect of the use of motor vehicles by or on behalf of such candidate during the day on which such election is to be held.

The Commission may, by statutory instrument, make regulations providing for the registration of voters for the purposes of elections and for the procedure and manner of conducting elections; separate regulations may be made in respect of each category of elections.

Before making any regulations which make any separate or distinct provision in respect of

the functions of the returning officer for the election of a President, the Electoral Commission must consult the returning officer.

Regulations made under these provisions shall not be affected by the dissolution of the Commission by which they are made but shall remain valid and in force, subject to any amendment or revocation by a subsequent Commission.

Regulations may provide in respect of any contravention thereof that the offender is liable to a fine not exceeding twenty thousand Kwacha or to a term of imprisonment not exceeding two years or to both.

No prosecution for an offence against the Act can be commenced after the lapse of one year from the date on which the offence is alleged to have been committed.⁹

2.06 The Director of Elections

The Director of Elections is required to –

- (a) ensure that every election officer performs his functions under the Electoral (General) Regulations with impartiality and in accordance with the provisions thereof;
- (b) issue to any electoral officer, registration officer or assistant registration officer such instructions as he may deem necessary to ensure due compliance with the provisions of the said Regulations;
- (c) perform all such functions as are conferred or imposed upon him by the said Regulations.¹⁰

2.07 Election Officers

In respect of each constituency, there must be –

- (a) a returning officer who shall be such person as the Commission shall specify, by notice in the Gazette, as the returning officer for that constituency; and
- (b) such approved number of assistant returning officers as the electoral officer for that constituency may, by notice in writing, appoint for the purpose of assisting him in the exercise of his functions; and
- (c) such approved number of counting assistants as the electoral officer for that constituency may, by notice in writing, appoint.

In respect of each polling district, there shall be such approved number of presiding officers and polling assistants as the electoral officer may, by notice in writing, appoint.

Whenever an electoral officer –

- (a) appoints any person to be an assistant returning officer;
 - (b) appoints any person to be a counting assistant; or
 - (c) appoints any person to be presiding officer or a polling assistant,
- he shall deliver a copy of the notice of each appointment to the Director of Elections.

Every returning officer, assistant returning officer, counting assistant, presiding officer and polling assistant must, before exercising any of the functions conferred upon him under the Electoral (General) Regulations or under any other written law, take and subscribe an oath, or make an affirmation in lieu thereof, before a magistrate in a prescribed form.

Where the Commission revokes the appointment of a returning officer, it shall publish a notice of such revocation in the Gazette.

Where an electoral officer revokes the appointment of an assistant returning officer or of a presiding officer or of a polling assistant or of a counting assistant appointed by him, such electoral officer shall give notice in writing of such revocation to the person concerned and shall deliver a copy of such notice to the Director of Elections.¹¹

— Section 3 —

REGISTRATION OF VOTERS

3.01 Qualification for Registration of Voters

Except as provided in the subsequent paragraphs, every person is qualified for registration as a voter in direct elections who –

- (a) is a citizen of Zambia; and
- (b) has attained the age of eighteen years.

No person is qualified for registration as a voter in direct elections, and no person shall be registered as such a voter, who –

- (a) is under a declaration of allegiance to some country other than Zambia;
- (b) under any law in force in Zambia, is adjudged or otherwise declared to be of unsound mind, or is detained under the Criminal Procedure Code during the pleasure of the President;
- (c) is under sentence of death imposed on him by any court in Zambia, or a sentence of imprisonment (by whatever name called) imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or
- (d) is not in possession of a national registration card issued to him under the National Registration Act.

A sentence of imprisonment does not include a sentence of imprisonment the execution of which is suspended or a sentence of imprisonment imposed in default of payment of a fine.¹²

3.02 Registration in a Constituency

A person qualified for registration as a voter must, on application in accordance with regulations made by the Commission, be registered as a voter in the register of voters for a constituency in which he is ordinarily resident.

Every person who is registered in a register of voters for a constituency is entitled to vote at a direct election held in that constituency.

Every person must, whenever he wishes to vote at a direct election, identify himself to an election officer in such a manner as may be prescribed, and no person is entitled to vote more than once in the same such election.¹³

— Section 4 —

APPOINTMENT OF ELECTION DATES

4.01 Election Dates

For the purpose of the election of members to the National Assembly, whether after a dissolution of Parliament or after the Speaker has informed the President and the Commission of a vacancy in the elected membership of the National Assembly, the Commission must, in respect of each constituency in which an election is to be held, by statutory order –

- (a) appoint the day on which, and the hours on such day within which, returning officers may receive nominations of candidates for any election; and
- (b) appoint the day on which, and the hours on such day within which, presiding officers may take the poll at any election. Different days may be appointed in respect of different constituencies, and different hours may be appointed in respect of different constituencies or different polling districts.

The Commission may, from time to time, by statutory order, vary or amend any statutory order.¹⁴

4.02 Allocation and Registration of Symbols

The Director of Elections is required to keep a register of symbols for use by candidates at elections, and such register must be in such form as the Director of Elections may determine.

A political party contesting an election must apply through its secretary to the Director Elections for registration of a symbol chosen by that party for use by candidates supported by that party at elections and the Director of Elections is required to register such symbol.

The Director is also required to allocate and register a symbol for use by an independent candidate in any election; such a candidate may however apply to the Director to cancel the registration of a symbol allocated by the Director of Elections and for the registration of a symbol chosen by such candidate.

The following symbols are not allowed and must not be registered –

- (a) the Armoria Ensigns or the National Flag of Zambia;

-
- (b) any device or emblem which, in the opinion of the Director of Elections, is normally associated with any tribe or religion or the regalia of a chief;
 - (c) any symbol or part of a symbol which is currently registered in respect of any political party or candidate;
 - (d) any symbol which is not distinctive from any other registered symbol; and
 - (e) any symbol the use of which may, in the opinion of the Director of Elections, be offensive or objectionable.¹⁵

4.03 National Assembly Nominations

The Commission must, by notice in the Gazette, appoint for each constituency a place to be the nomination office for receiving nomination papers.

The returning officer for a constituency must attend at the nomination office during the periods appointed in respect of that constituency to receive nomination papers in that constituency.

The returning officer is required to keep order at the nomination office and in its precincts and to control the number of persons to be admitted at a time to the nomination office.

The returning officer may require any unauthorised or any other person who misbehaves to leave the nomination office and its precincts. This power must not be exercised in such a manner so as to prevent any person from lodging or subscribing a nomination paper.¹⁶

4.04 Nomination Procedure

The returning officer for a constituency is required to provide nomination papers to persons who are qualified for nomination and who request such papers.

Every person who desires to be a candidate for election in any constituency must lodge his nomination paper with the returning officer for that constituency. The nomination paper must be in the prescribed form and must –

- (a) state the name of the political party of which the candidate is the authorised candidate or, if he is not the authorised candidate of any political party, that he is standing as an independent candidate;
- (b) be completed on all respects, save that the supporters must sign it in the presence of the returning officer;
- (c) be signed by the candidate or by any person authorised in that behalf by him in writing; if the nomination paper is signed on behalf of the applicant, a copy of the written authority must be attached thereto;
- (d) state the name and address of his election agent, if any;
- (e) lodged within the period appointed for that purpose in respect of such constituency;
- (f) be accompanied by an election fee in the sum prescribed which fee shall not be refunded once the nomination has been lodged;
- (g) be accompanied by a declaration in prescribed form stating citizenship, age, registration, etc.

At the time of lodging a nomination paper, the candidate or a person duly authorised by him, must present himself to the returning officer together with his nine supporters who must produce their voter registration cards and national registration cards to the returning officer. The supporters must complete that part of the nomination paper which relates to their signatures in the presence of the returning officer.

If a person intending to lodge his nomination paper as a candidate in a constituency requests the returning officer for that constituency to examine his nomination paper before it is lodged, or to guide him on any matter relating thereto, the returning officer must guide such person to the best of his ability. Where the nomination paper is to be lodged on behalf of the person intending to be a candidate, the returning officer owes the same duty to the person authorised to lodge the nomination paper. The fact or nature of any advice or guidance given cannot be inquired into at any proceedings before a court.¹⁷

4.05 Withdrawal of Nomination

A nomination may be withdrawn at any time before the expiry of the period appointed for lodging nomination papers in respect of the constituency concerned.

The withdrawal must be effected only if the candidate, or a person authorised in that behalf by him in writing, delivers to the returning officer a written notice in that behalf.¹⁸

4.06 Determination of Validity of Nominations

Upon the expiry of the period appointed for lodging nominations in any constituency, the returning officer for that constituency is required to determine the validity of each nomination lodged with him, and declare invalid any nomination in respect of which he is satisfied that –

- (a) the nomination paper was not duly completed, properly signed and lodged as required;
- (b) the nomination paper is not accompanied by the declaration or such declaration is defective in a material particular; or
- (c) the appropriate fee was not paid.

Where the returning officer determines that a nomination is invalid, he shall reject the nomination and endorse on the nomination paper his reason for such determination, and must sign an endorsement.

Where a returning officer determines that a nomination is valid, he must sign the nomination paper to signify his acceptance.

The determination of the returning officer that a nomination is valid or invalid must not be questioned save by way of an election petition.

In any election, no person must seek to lodge nomination papers in more than one constituency. If upon the expiry of the period for lodging nomination papers in any two or

more constituencies, a person is found to have lodged and not withdrawn nomination papers in more than one constituency, then every one of those nominations is invalid.¹⁹

4.07 Procedures after Determination of Validity of Nominations

A returning officer is required to, after he has determined the validity of the nominations lodged with him, inform the Commission of the names of the candidates validly nominated.

Where a returning officer for any constituency determines that only one candidate has been validly nominated for election in that constituency, the returning officer must declare such candidate to be elected in that constituency, and inform the Commission accordingly.

Where a returning officer for any constituency determines that no candidate has been validly nominated for election in that constituency, the returning officer must inform the Commission accordingly.²⁰

4.08 Notice of Taking of the Poll

Where two or more candidates have been validly nominated for election in a constituency, the returning officer for that constituency must give local notice that a poll must be taken in such constituency on the day appointed therefor and such notice must set out the names of such candidates in alphabetical order of surnames.

Where no candidate or only one candidate has been validly nominated for election in a constituency, the returning officer for that constituency must give local notice that a poll must not be taken in that constituency for that reason.

After a returning officer for a constituency has given notice of the taking of the poll and before the day appointed for the taking of a poll in that constituency, any person registered in such constituency may, at any reasonable time, inspect, at the office of the returning officer, any of the nomination papers of the candidates in that constituency.²¹

— Section 5 —

PREPARATION FOR POLLING

5.01 Polling Stations

For the purpose of the taking of a poll in a polling district the electoral officer for that polling district must appoint a place at which the polling station for such polling district is to be established and give local notice thereof as directed by the Director of Elections. The same polling station may serve more than one district.²²

5.02 Duties of Returning Officer

For the taking of a poll, a returning officer must, in respect of each polling station within his constituency –

- (a) ensure that there are sufficient compartments within which voters may mark their ballot papers in secrecy and screened from observation;
- (b) provide each presiding officer with such number of ballot boxes, ballot papers, official seals, official marks, copies of the voters' roll relating to such polling station and such other things as may be necessary;
- (c) make such arrangements to facilitate the taking of the poll as may be necessary for ensuring that it is taken in the manner prescribed;
- (d) publish, both inside and outside each polling station, notices instructing voters as to the procedure for casting their votes, and notices showing –
 - (i) the names in alphabetical order of surnames of the candidates for election in that constituency; and
 - (ii) that symbol allocated in respect of each candidate for election in the constituency.

The returning officer for each constituency in which a poll is to be taken must give notice in writing to each candidate for election in such constituency, prior to the day appointed for the taking of the poll, of the time and place at which the votes cast in such election are to be counted.²³

5.03 Ballot Boxes

Every ballot box must be so constructed that, after it is sealed, the ballot papers can be placed therein by voters but not taken out without breaking the seals. The official seals and official marks must be in the form directed by the Director of Elections.

Immediately before the commencement of the poll, the presiding officer at each polling station must show every ballot box, open and empty, to any person whose presence for that purpose is permitted so that such person may see that it is empty, and must then lock and seal with the official seal every such ballot box, and permit any candidate, election agent or polling agent who may be present to affix their seals thereto, and such seal or seals must not be broken until the ballot box is opened.

The presiding officer at each polling station shall place the key to every ballot box in a packet marked "A" as soon as such ballot box has been locked, and must then seal such packet with the official seal, and permit any candidate, election agent or polling agent who may be present to affix their seals thereto, and such seal or seals must not be broken except for the purpose of opening such ballot box.

The presiding officer at each polling station must place every ballot box locked and sealed in such position in the polling station that it can be seen throughout the taking of poll by the presiding officer and such candidate, election agent or polling agent as may be present at the polling station.²⁴

5.04 Polling Procedure

The Commission may appoint different commencement or closing times for different constituencies or polling districts.

The presiding officer must permit every voter to cast his vote before closing the poll if such voter, at the time appointed for the closing of the poll –

- (a) is inside the polling station; or
- (b) was, in his opinion, within the precincts of the polling station and was prevented from entering the polling station owing to congestion therein.

A presiding officer may in his discretion postpone until later in the day, and, if necessary, adjourn to some other day, the polling at his polling station where it cannot be started or is interrupted by reason of riot, open violence, flood, natural catastrophe or other similar cause but where he does so, he must start or restart the polling at the earliest practicable moment.

A presiding officer in his discretion may extend the hours or adjourn the day of polling at his polling station where polling has not started or has been interrupted by reason of any of the causes referred to in the sub-regulation above and references in the Regulations to the close of the poll must be construed accordingly.

Where a presiding officer postpones or adjourns the poll, he must take such precautions as are necessary to safeguard the ballot boxes, ballot papers and other election requisites, and must forthwith notify the returning officer of such postponement or such adjournment, as the case may be. Where a returning officer is notified of a postponement or adjournment of a poll he must forthwith notify the Director of Elections of such postponement or such adjournment, as the case may be.

A voter is entitled to vote at the polling station appointed for the district in which he is registered and is not entitled to vote at any other polling station.

At the taking of a poll a voter is entitled to cast one, and only one, vote and if a voter's name appears in error or for any other reason in more than one voters' roll or more than once in the same voters' roll he is not entitled to cast more than one vote.

The poll must be taken by secret ballot.

For a poll in an election to the National Assembly, the ballot paper must be in the prescribed form and in respect of any constituency, must show the names in alphabetical order of surnames of the candidates for election in that constituency and the symbol allocated to each candidate for the election in that constituency.

Every ballot paper must be attached to a counterfoil bearing the same serial number as that printed on the ballot paper.

Every person applying for a ballot paper must –

- (a) present himself at the polling station at which he is entitled to vote;
- (b) produce his voter's registration card to the presiding officer or polling assistant at such polling station;
- (c) identify himself by producing his national registration card; and

(d) if so required by the presiding officer or polling assistant, present both his hands for inspection by such officer,
and no person must be issued with a ballot paper unless he complies with the requirements contained in the Regulations.

A presiding officer or polling assistant at a polling station may put to any applicant for a ballot paper such questions as he may consider necessary to enable him to identify the applicant with the name on the copy of the voters' roll for such polling station.

No person shall be issued with a ballot paper or permitted to vote at a polling station unless the presiding officer or polling assistant for such polling station is satisfied that such person –

- (a) is entitled to vote at that polling station;
- (b) has produced his voter's registration card;
- (c) has properly identified himself;
- (d) has not previously voted in the poll in respect of which he is applying for a ballot paper; and
- (e) is not disqualified from voting at such election.

The presiding officer at each polling station must keep order in such polling station and in its precincts, and must regulate the number of voters to be admitted at a time to such polling station.

The presiding officer at each polling station may require any unauthorised person to leave such polling station and its precincts.

Every candidate, election agent, polling agent or person authorised in writing by the Director of Elections to enter and remain in a polling station must, before attending the taking of a poll at any polling station, take and subscribe an oath, or make an affirmation in lieu thereof in the prescribed form before the returning officer for such constituency.

The above-mentioned powers cannot be exercised in a manner so as to prevent any voter who is otherwise entitled to vote at a polling station from having an opportunity of voting at such polling station.

The main features of the voting procedure are as follows –

- (a) the voter must, prior to receiving a ballot paper, immerse in ink provided for that purpose by the presiding officer or polling assistant, a thumb up to at least the whole of the exposed nail: provided that –
 - (i) in the case of a voter without any thumb, such voter must immerse a finger up to at least the whole of the exposed nail;
 - (ii) in the case of a voter without any thumb or fingers, these provisions do not apply; and
- (b) before issuing a ballot paper to the voter the officer or polling assistant must –

-
- (i) call out the name and number of the voter as recorded in the copy of the voters' roll at such polling station;
 - (ii) draw a line through the entry relating to the voter in such copy of the voters' roll as evidence that such voter has received a ballot paper;
 - (iii) stamp such ballot paper with the official mark;
 - (iv) on the counterfoil of such ballot enter the number of the voter as recorded in such copy of the voters' roll;
 - (v) stamp the voter's registration card produced by such voter with the official mark; and
- (c) the presiding officer or polling assistant must then detach the ballot paper from its counterfoil and deliver it to the voter; and
 - (d) the voter, on receiving the ballot paper, must enter one of the compartments provided in the polling station for that purpose and signify his vote by secretly marking such ballot paper with a cross in the appropriate place and shall then fold the ballot paper in such a way that the official mark stamped thereon is visible and the mark signifying his vote is not visible; and
 - (e) the voter must then leave the compartment and must, in the presence of the presiding officer or polling assistant, place the folded ballot paper in the ballot box provided in the polling station for that purpose.

A voter must cast his vote without undue delay and must leave the polling station as soon as he has placed his ballot paper in the ballot box. Where the presiding officer is of the opinion that any voter is causing undue delay in casting his vote and that such delay is likely to hinder the adequate or orderly conduct of the poll, he may require such voter to complete the procedures within a period of two minutes immediately thereafter. On or after the expiry of the period of two minutes, the presiding officer may direct the voter concerned to place the ballot paper issued to such voter in the ballot box and to leave the polling station and its precincts and not to return thereto during the period of the poll.

No person, other than a presiding officer, polling assistant, police officer or person on duty in an official capacity at a polling station, shall have any communication whatsoever with a voter while the voter is in the precincts of a polling station for the purpose of voting.

Where a voter inadvertently deals with a ballot paper in such a manner that it cannot be used as a valid ballot paper, he must deliver such ballot paper (referred to as a "spoilt ballot paper") to the presiding officer and, if the presiding officer is satisfied that such ballot paper has been spoilt inadvertently, he shall issue another ballot paper to such voter, and shall cancel the spoilt ballot paper and the counterfoil to which it relates.²⁵

5.05 Incapacitated Voters

A presiding officer, a relative or a friend may, upon application by and with the assent of –

- (a) a voter who is incapacitated by blindness or other physical cause from voting in accordance with the procedure prescribed; or
- (b) a voter who declared orally that he is unable to read or otherwise asks for assistance of the presiding officer, a relative or a friend,

enter a compartment with such voter in order to assist him to cast his vote, mark the ballot paper issued to such voter in such manner as the voter may signify and place it in the ballot box on behalf of such voter. Such a relative or friend must prove that he is a registered voter in that polling district and had not already assisted another voter in that election.

A presiding officer acting under the foregoing provision must record in the copy of the voters' roll, by means of a mark placed next to the name of the voter concerned, that he or a relative or friend of a voter has marked the ballot paper on the application of the voter, and the reasons for doing so.

If the presiding officer is of the opinion that due to the number of voters making application to be assisted the conduct of the poll is being or is likely to be delayed he may authorise a polling assistant to assist him in the performance of the functions imposed upon him.²⁶

5.06 Voting by Electoral Officers

Where a person entitled to vote in any constituency is employed as a returning officer, presiding officer, polling assistant, police officer or in any other official capacity at a polling station within such constituency other than the polling station at which he is entitled to vote, the returning officer for such constituency may authorise the voter by a certificate under his hands in the prescribed form, to vote at the polling station at which he is employed. Any voter to whom such authority is given must deliver the certificate to the presiding officer when he applies for a ballot paper.²⁷

5.07 Close of Poll

As soon as practicable after the close of the poll, the presiding officer at a polling station, in the presence of such candidates or election agents or polling agents as may be present at such polling station, must –

- (a) close and seal with the official seal the aperture of every ballot box used for the poll and permit any such candidate or election agent or polling agent to affix his seal thereto; and
- (b) in respect of the poll, complete the ballot paper account which must be in the prescribed form; and
- (c) place in separate packets, which shall be sealed of such candidates or election agents or polling agents, if any, who wish to affix their seals thereto the following items in the manner hereinafter provided, that is to say:
 - (i) in a packet marked "B", the unused ballot papers, which must remain attached to their respective counterfoils, and the spoil ballot papers;
 - (ii) in a packet marked "C", the copy of the voters' roll marked together with the certificates delivered to the presiding officer;
 - (iii) in a packet marked "D", the counterfoils of the used ballot papers including the counterfoils of any spoiled ballot papers;
 - (iv) in a packet marked "E", the ballot paper account;
 - (v) a packet marked "F", the official mark and the official seal. This packet must not be sealed but must be securely fastened.

The presiding officer must, in accordance with such directions as may be issued by the Director of Elections, dispatch each packet, together with the ballot boxes sealed as prescribed, in safe custody to the returning officer for the constituency in respect of which the poll was conducted.

The returning officer for a constituency in which a poll has been taken must take into his custody, and issue a receipt for, all packets and ballot boxes delivered to him.²⁸

— Section 6 —

THE COUNT

6.01 Persons Who May Attend

No person is allowed to attend at the counting of the votes cast in an election in a constituency, other than –

- (a) members of the Commission or members of its staff authorised in that behalf;
- (b) the Director of Elections;
- (c) the returning officer of such constituency;
- (d) the counting assistants appointed by the electoral officer;
- (e) the electoral officer of any area within such constituency;
- (f) the candidates for election to the office of President;
- (g) the candidates for election in such constituency;
- (h) the election agents appointed by such candidates;
- (i) one polling agent in respect of each candidate for election;
- (j) a police officer on duty; and
- (k) any person authorised in writing by the Director of Elections.

Every person authorised to attend the counting of the votes in any constituency, other than a member of the Commission, must take and subscribe an oath, or make an affirmation in lieu thereof, in the prescribed form and for that purpose the returning officer for such constituency has power to administer such oath.²⁹

6.02 Examination of Seals

When the returning officer for a constituency in which a poll has been taken is satisfied that he has received all the packets and ballot boxes in respect of all the polling stations in such constituency he shall, at the time and place notified for the counting of the votes, examine the seals of all such packets and ballot boxes and shall permit such candidates, election and polling agents as are present to examine such seals.

The returning officer shall submit to the Director of Elections a written report of the result of the examination carried out if such examination reveals that the seals of any packet or ballot box are broken.³⁰

6.03 Counting Procedure

The returning officer for a constituency in which a poll has been taken must, with the aid of the counting assistants for such constituency, count all the votes cast in the election in such constituency in accordance with the regulations.

The counting of the votes must, so far as circumstances permit, proceed continuously until the count is completed, allowing only a reasonable time for refreshment.

The counting procedure is as follows –

- (a) the returning officer must open each ballot box and, after removing all the ballot papers therefrom, must count and record the total number of ballot papers contained in each ballot box without reference to the manner in which such ballot papers are marked; and the returning officer shall announce publicly to those present the total number of the ballot papers found in the ballot box;
- (b) the returning officer must then count the votes according to the way they have been given (marked) by the voters in respect of each candidate;
- (c) after sorting them accordingly, the returning officer must announce publicly how the ballot papers have been distributed from the single polling station, before proceeding to the next polling station;
- (d) the returning officer is required to ensure that, while counting the ballot papers, the counting assistants keep the side of each ballot paper on which the vote is recorded upwards, and must take all precautions for preventing any person present at the count from seeing the number printed on each ballot paper.³¹

6.04 Rejection of Ballot Papers

The returning officer must reject as invalid, and must not count, any ballot paper –

- (a) which does not bear the official mark, unless the returning officer is satisfied that such omission was a bona fide error; or
- (b) which contains more than one vote; or
- (c) on which anything (other than the number printed on such ballot paper) is written or marked in such manner that the voter can be identified; or
- (d) which is unmarked or invalid for uncertainty.

A ballot paper on which the vote is marked –

- (a) elsewhere than in the proper place; or
- (b) otherwise than by means of a cross; or
- (c) by more than one mark,

must not by reason thereof be invalid if the intention of the voter clearly appears, and the manner in which the paper is marked does not of itself identify the voter and it is not shown that he can be identified thereby.

The returning officer must write the word “rejected” on any ballot paper which is not to be

counted, and must add “rejection objected to” if any objection to the returning officer’s decision is made by a candidate, his election agent or his polling agent present at the count.

The returning officer must draw up a statement in the prescribed form showing the number of ballot papers rejected under the heads of –

- (a) want of official mark;
- (b) more than one vote;
- (c) writing or mark by which voter could be identified;
- (d) unmarked or invalid for uncertainty,

and any candidate, his election agent or his polling agent present may copy such statement.

The decision of a returning officer on any question in respect of any ballot paper can only be dealt with on an election petition.³²

6.05 Recounting of Votes

A candidate, his election agent or his polling agent may, if present when the counting or any recounting of the votes is completed, require the returning officer to have the votes recounted or again recounted, or the returning officer may, on his own initiative, have the votes recounted or again recounted.

The returning officer may refuse a request for a recount, if in his opinion, it is unreasonable.

Where an equality of votes is found to exist between any candidates and the addition of one vote to the votes counted for any such candidate would materially affect the result of the election, the returning officer must make a recount of the votes cast in respect of such candidates.

No steps must be taken by the returning officer on the completion of the counting or of any recounting of the votes until the candidates, election agents and polling agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred under these provisions.³³

6.06 Equality of Votes

If upon the completion of the counting of votes, it is found that an equality of votes exists between two or more candidates and the addition of one vote would entitle any one of the candidates to be declared elected, the returning officer must forthwith decide between those candidates by lot in such manner as the Commission may determine and must proceed as if the candidate on whom the lot falls has received an additional vote.³⁴

6.07 Procedure after the Count

On the completion of the counting of votes cast in an election, the returning officer must seal up in separate, marked packets the ballot papers counted in respect of each candidate, and must place the rejected ballot papers in a single marked packet.

The returning officer for a constituency in which a poll is taken must appoint a time and place at which the verification of the ballot paper accounts in that constituency must take place and must give notice in writing to the candidates in such election of such time and place.

At the time and place appointed, the returning officer must, in the presence of the assistant returning officers for that constituency and of such candidates and their election agents as may be present, proceed with the verification of the ballot paper accounts according to the following procedure –

- (a) he must open the envelopes marked “B” containing the unused ballot papers together with their counterfoils and the spoilt ballot papers, and the envelopes delivered to him in respect of each polling station in that constituency;
- (b) he must, in respect of each polling station, compare the ballot papers contained in the ballot boxes with the total number of unused and spoilt ballot papers contained in the envelope marked “B” for that polling station;
- (c) he must reseal the envelopes marked “B” with their respective contents; and
- (d) he must place all ballot paper accounts for that constituency in one envelope marked “E” and must seal such envelope.

The returning officer must then prepare and deliver to the Director of Elections a report on the verification of the ballot paper accounts and must permit such candidates and election agents as may be present at the verification to make a copy thereof.³⁵

6.08 Destruction of Election Materials

Upon the completion of the verification of the ballot paper accounts, the returning officer must forthwith deliver to the Commission –

- (a) in respect of each polling station within his constituency, the packet marked “B” containing the unused ballot papers together with their counterfoils and the spoilt ballot papers; and
- (b) in respect of each polling station within his constituency, the packet marked “C” containing the copy of the voters’ roll and the certificates placed therein; and
- (c) the packet sealed according to the relevant regulation and containing the ballot papers counted in respect of each of the candidates; and
- (d) the packet containing the rejected ballot papers and sealed in accordance with the relevant regulation,

and must forthwith deliver to the Director of Elections in respect of each polling station within his constituency –

- (i) the packet marked “D”, containing the counterfoils of the used and the spoilt ballot papers delivered to the returning officer; and
- (ii) the packet marked “E”, containing the ballot paper account; and
- (iii) the packet marked “F”, containing the official seal and the official mark, delivered to the returning officer.

The Commission must retain the packets delivered in respect of any poll in an election for a

period of thirty days after the day on which the result of such election was declared and must then cause them to be destroyed by burning, pulping or by any other efficacious method.

Where the Commission has been informed that an election petition has been presented in respect of such election, the packets must not be destroyed until such time as the trial of such election petition has been finally determined.

The Director of Elections must retain the packets marked "D" delivered to him for a period of thirty days after the day on which the result of such election was declared and must then cause them to be destroyed by burning, pulping or by any other efficacious method approved by the Commission and must notify the Commission accordingly.

Where the Commission has been informed that an election petition has been presented in respect of such election, the packets must not be destroyed until such time as the trial of such election petition has been finally determined.³⁶

6.09 Declaration of Results

When the counting of the votes has been completed and the result of the polls ascertained, the returning officer must –

- (a) complete in duplicate a declaration of the result of the polls;
- (b) declare to be elected the candidate to whom the majority of votes was cast by reading aloud in public, at the place where such counting was conducted, such completed form; and
- (c) cause to be delivered to the Commission without delay the original of such completed form.

In every constituency where a poll in respect of an election to the office of President has been taken, the returning officer for such constituency must, without delay after the counting of the votes has been completed, inform the Commission, in such manner as the Commission may direct, of the total number of valid votes for each candidate.

The Commission must, upon receipt of the information, notify the same in writing to the Chief Justice in his capacity as the returning officer for the purposes of election to the office of President.

The Commission must, in respect of each candidate declared elected, give notice in the Gazette of –

- (a) the full names of such person; and
- (b) the constituency in which such person was elected.

A person declared elected is deemed to have been elected with effect from the date appointed for the taking of the poll at the election in the constituency concerned.³⁷

— *Section 7* —

ELECTION OFFENCES

7.01 Bribery

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

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

is guilty of the offence of bribery.³⁸

7.02 Personation

Any person who –

- (a) at any election, applies for a ballot paper in the name of some other person, living or dead, or of a fictitious person; or

- (b) having voted once at any election, applies again at the same election for a ballot paper; or
 - (c) votes at any election knowing that he is not entitled to vote at that election or induces or procures any person to vote at any election knowing that that person is not entitled to vote at that election,
- is guilty of the offence of personation.³⁹

7.03 Treating

Any person who corruptly by himself or by any other person either before, during or after an election, directly or indirectly, gives or provides or pays wholly or in part the expenses of giving or providing any food, drink, entertainment, lodging or provisions to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at an election is guilty of the offence of treating.⁴⁰

7.04 Undue Influence

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

- (a) makes use of or threatens to make use of any force, violence or restraint upon any other person; or
 - (b) inflicts or threatens to inflict by himself or by any other person, or by any supernatural means or non-natural means or pretended supernatural or non-natural means any physical, psychological, mental or spiritual injury, damage, harm or loss upon or against any person; or
 - (c) does or threatens to do anything to the disadvantage of any person, in order to induce or compel that person –
 - (i) to sign a nomination paper or refrain from signing a nomination paper; or
 - (ii) to vote or refrain from voting; or
 - (iii) to refrain from claiming registration as a voter; or
 - (iv) to refrain from offering himself as a candidate for election,
 or on account of that person having –
 - (A) signed or refrained from signing a nomination paper; or
 - (B) voted or refrained from voting at any election; or
 - (C) refrained from claiming registration as a voter; or
 - (D) refrained from offering himself as a candidate,
- is guilty of the offence of undue influence.

Any person who, by abduction, duress or any fraudulent device or contrivance, impedes or prevents the free exercise of his vote by any voter or thereby compels, induces or prevails upon any voter either to give or to refrain from giving his vote at any election, is guilty of the offence of undue influence.⁴¹

7.05 Penalties for Corrupt Practices

Any person who is guilty of the offence of bribery, personation, treating or undue influence is guilty of a corrupt practice and is liable on conviction to a fine not exceeding ten thousand

Kwacha or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.⁴²

7.06 Illegal Practices

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

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

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

Any person who knowingly makes a false statement in a statutory declaration made and subscribed with respect to the nomination requirements is guilty of an illegal practice.

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

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

Any person who –

- (a) forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper;
- (b) without authority supplies any ballot paper to any person;
- (c) without authority puts into any ballot box any ballot paper which he is not authorised by law to put in;
- (d) sells or offers to sell any ballot paper to any person or purchases or offers to purchase any ballot paper from any person;
- (e) not being a person entitled to be in possession of a ballot paper, has any such ballot paper in his possession;
- (f) without authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers in use or intended to be used for the purpose of an election;
- (g) without authority prints or makes any ballot paper or what purports to be or is capable of being used as a ballot paper at an election;

- (h) manufactures, constructs, has in his possession, supplies or uses for the purpose of an election, or causes to be manufactured, constructed, supplied or used for the purposes of any election any appliance, device or mechanism by which a ballot paper may be extracted or manipulated after having been deposited in a ballot box in the course of polling at any polling station,
is guilty of an illegal practice.

Any person who attempts to commit an illegal practice is guilty of an illegal practice.⁴³

7.07 Penalty for Illegal Practices

Any person who is guilty of an illegal practice is liable on conviction to a fine not exceeding ten thousand Kwacha or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.⁴⁴

7.08 General Election Offences

Any person who –

- (a) within a period appointed for receipt of nominations, loiters in any public place within four hundred metres from the entrance to a nomination office;
- (b) having been required to leave a nomination office fails to leave such nomination office or the precincts thereof;
- (c) puts into any ballot box anything other than the ballot paper which he is authorised by law to put therein;
- (d) without due authority takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station;
- (e) on any polling day, at the entrance to or within a polling station, or in any public place or in any private place within four hundred metres from the entrance to such polling station –
 - (i) canvasses for votes;
 - (ii) solicits the vote of any person;
 - (iii) induces any person not to vote; or
 - (iv) induces any person not to vote for a particular candidate;
- (f) on any polling day loiters in any public place within four hundred metres from the entrance to any polling station;
- (g) on any polling day exhibits in any public or private place within one hundred metres from the entrance to any polling station any notice or sign, other than an official notice or sign authorised by any officer relating to the election;
- (h) not being a presiding officer, a polling assistant, a candidate, an election agent or a polling agent in the course of his functions within a polling station, makes any record showing that any particular person has voted in an election;
- (i) without lawful authority, destroys, mutilates, defaces or removes any notice which is exhibited or any document made available for inspection;
- (j) wilfully obstructs or interferes with a returning officer, presiding officer, or polling assistant in the execution of his duties;
- (k) makes a false answer to any question put to him by a presiding officer or a polling assistant;

- (l) in contravention of the relevant regulation has any communication with a voter while such voter is in the precincts of a polling station for the purpose of voting;
- (m) being a candidate, uses a symbol in the course of an election other than the symbol registered with the Director of Elections or in the case of any other person associates any candidate with any symbol in the course of an election other than such candidate's registered symbol,

is guilty of an offence and is liable on conviction to fine not exceeding ten thousand Kwacha or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.⁴⁵

7.09 Breach of Secrecy

Every person in attendance at a polling station must maintain, and aid in maintaining, the secrecy of the voting at such station and must not communicate, except for some purpose authorised by law, to any person any information as to the name or number on the register of voters of any voter who has not applied for a ballot paper or voted at such polling station, or as to the official mark or official seal at such polling station.

No person, except a presiding officer or polling assistant acting pursuant to the law is to obtain or attempt to obtain in a polling station information as to the candidate for whom any person in such polling station is about to vote or has voted or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any person in such polling station is about to vote or has voted, or as to the number on the ballot paper issued to any person at such polling station.

Every person in attendance at the counting of the votes must maintain, and aid in maintaining, the secrecy of the voting and must not ascertain or attempt to ascertain at such counting the number on any ballot paper or communicate any information obtained at such counting as to the manner in which any vote is given by any particular ballot paper.

Any person who contravenes any of these provision is guilty of an offence.⁴⁶

7.10 Offences by Election Officers

Any election officer who wilfully fails to perform the functions of his office is guilty of an offence.⁴⁷

— Section 8 —

ELECTION PETITIONS

8.01 Avoidance of Elections

No election of a candidate as a member of the National Assembly can be questioned except by an election petition.

The election of a candidate as a member of the National Assembly is void on any of the

following grounds which is proved to the satisfaction of the High Court upon the trial of an election petition, that is to say –

- (a) that by reason of any corrupt practice or illegal practice committed in connection with the election or by reason of other misconduct, the majority of voters in a constituency were or may have been prevented from electing the candidate in that constituency whom they preferred;
- (b) that there had been a non-compliance with the provisions of the Act relating to the conduct of elections, and it appears to the High Court that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance affected the result of the election;
- (c) that any corrupt practice or illegal practice was committed in connection with the election by or with the knowledge and consent or approval of the candidate or of his election agent or of his polling agents;
- (d) that the candidate was at the time of his election a person not qualified or a person disqualified for election.

Where, upon the trial of an election petition, the High Court finds that any corrupt practice or illegal practice has been committed by or with the knowledge and consent or approval of any agent of the candidate whose election is the subject of such election petition, and the High Court further finds that such candidate has proved that –

- (a) no corrupt practice or illegal practice was committed by the candidate himself or by his election agent, or with the knowledge and consent or approval of such candidate or his election agent, and
- (b) such candidate and his election agent took all reasonable means to prevent the commission of corrupt practice or illegal practice at such election; and
- (c) in all other respects the election was free from any corrupt practice or illegal practice on the part of such candidate or his election agent,

then the High Court shall not, by reason only of such corrupt practice or illegal practice, declare that election of such candidate was void.

No election shall be declared void by reason of any act or commission by an election officer in breach of his official duty in connection with an election if it appears to the High Court that the election was so conducted as to be substantially in accordance with the Act and that such act or omission did not affect the result of that election.⁴⁸

8.02 Who May Present Election Petitions

An election petition may be presented to the High Court by one or more of the following persons –

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

- (c) a person claiming to have been a candidate at the election to which the election petition relates;
- (d) the Attorney-General.⁴⁹

8.03 Relief Available to a Petitioner

Any of the following reliefs may be claimed in an election petition –

- (a) a declaration that the election was void;
- (b) a declaration that any candidate was duly elected.

In addition to the foregoing reliefs, a petitioner may apply to the High Court upon trial of an election petition for a scrutiny to be carried out by the High Court in such manner as the Court may determine.

On a scrutiny at the trial of an election petition, the following votes only shall be held invalid –

- (a) the vote of any person whose name was not on the register of voters assigned to the polling station at which the vote was cast or who was not authorised to vote at such polling station;
- (b) the vote of any person whose vote was procured by any corrupt practice or illegal practice;
- (c) the vote of any person who committed or procured the commission of personation at the election to which the election petition relates;
- (d) the vote of any person proved to have voted more than once at the election to which the election petition relates;
- (e) the vote of any person who was disqualified from voting at the election to which the election petition relates.

“Scrutiny” means an enquiry as to the validity of the votes cast, and includes the determination of the number of valid votes cast for each candidate in the election in respect of which the application for a scrutiny is made.⁵⁰

8.04 Procedure of Election Petition

Every election petition must be in such form and contain such matters as may be prescribed by rules made by the Chief Justice.

Presentation of an election petition to the High Court must be made by lodging it with the Registrar.

Every election petition must be signed by the petitioner or by all the petitioners if more than one, and must be presented not later than thirty days after the date on which the result of the election to which it relates is duly declared.

When the election of any person (referred to as “the respondent”) is questioned upon

an allegation of a corrupt practice or an illegal practice, the election petition may be presented –

- (a) at any time before the expiry of twenty-one days after the day on which the returning officer receives the return of the election expenses of the respondent; or
- (b) if the election petition specifically alleges a payment of money or some other act to have been made or done since the day referred to in paragraph (a) by the respondent or his election agent, or with the privity of the respondent or of his election agent in pursuance or in furtherance of the corrupt practice or illegal practice alleged in the election, at any time within thirty days after the date of payment or other act.

Where an election petition is presented, the Registrar must in writing inform the Speaker of the National Assembly and the Commission of such presentation.⁵¹

8.05 Duty of the Registrar

The Registrar is required to make out a list of all election petitions presented, placing them on such list in the order in which they are presented, and he must keep at his office a copy of such list which must be open for inspection by any person making application for inspection thereof.

Every election petition must, unless the High Court orders otherwise, be tried in the order in which it stands on the list made out by the Registrar, but where more election petitions than one are presented in respect of the same election such election petitions must be bracketed together and must be dealt with as one petition, standing, unless the High Court orders otherwise, in such list in the place where the last of such election petitions would have stood if it had been the only election petition presented in respect of that election.⁵²

8.06 Security Costs

After the presentation of an election petition, every petitioner thereto must give such security for costs as the High Court may order, and such security must be given within such time and in such manner and form as the Chief Justice may prescribe by rules or, in the absence of such rules, as the High Court may order.

Where, after the presentation of an election petition no security for costs is given, no further proceedings must be had on that election petition.⁵³

8.07 Withdrawal of Election Petition

A petitioner must not withdraw an election petition without leave of the High Court.

No application for leave to withdraw an election petition must be made until notice of intention to withdraw such election petition has been given in such manner as the Chief Justice may prescribe.

Where an election petition is presented by two or more petitioners an application to

withdraw such election petition must not be made except with the consent of all the petitioners thereto.

The High Court may, upon an application for leave to withdraw an election petition, make such order as to costs as it may think just.⁵⁴

8.08 Substitution of New Petitioners

Upon the hearing of an application for leave to withdraw an election petition, any person who might have been a petitioner in respect of the election to which that election petition relates may apply to the High Court to be substituted for the petitioner so applying to withdraw, and the High Court may, if it grants leave to such petitioner to withdraw, order that such person (“the substituted petitioner”) be substituted for such petitioner.

The substituted petitioner must, as nearly as may be, stand in the same position, and be subject to the same liabilities as the petitioner for whom he is substituted (“the original petitioner”).

Where the High Court makes an order, it may direct that the security for costs given by the original petitioner must remain as security for any costs caused thereafter by the substituted petitioner upon the trial of the election, and may direct that, to the extent of the amount of such security, the original petitioner must be liable to pay the costs of the substituted petitioner.⁵⁵

8.09 Abatement of Election Petition

If a sole petitioner or the survivor of several petitioners dies, then no further proceedings shall take place upon the election petition.

The death of a petitioner does not affect his liability for the payment of costs previously incurred.

On the abatement of an election petition, any person who might have been a petitioner in respect of the election to which that election petition relates may apply to the High Court to be substituted as a petitioner in place of the deceased petitioner and the High Court may, if it thinks fit, order that such person be substituted accordingly.

Where the High Court makes an order for the substitution of a person in place of a deceased petitioner such person must, as nearly as may be, stand in the same position, and be subject to the same liabilities as the deceased petitioner would have been but for this death.⁵⁶

8.10 Trial of Election Petitions

An election petition is tried by the High Court in open court. The trial may be adjourned from time to time and from place to place.

The High Court may, in respect of the trial of an election petition exercise such powers within its civil jurisdiction as it may deem appropriate.

On the trial of an election petition, a verbatim record of all evidence given orally in such trial shall be taken, and transcript of such record must, at the conclusion of the proceedings, be delivered to the Commission by the Registrar.⁵⁷

8.11 Witnesses

On the trial of an election petition, the High Court may –

- (a) order any person who appears to the High Court to have been concerned with the election to attend as a witness at such trial;
- (b) examine any witness or any person who is present at such trial although such witness or person is not called as a witness by any party to the proceedings, provided that after such examination by the High Court of such witness or person, such witness or person may be cross-examined by or on behalf of the petitioner or the respondent.

A person who is called as a witness at the trial of an election petition is not excused from answering any question relating to any offence connected with an election on the ground that the answer thereto may tend to incriminate him, or on the ground of privilege: provided that –

- (a) where a witness answers to the satisfaction of the High Court every question which he is required to answer and the answers to which may tend to incriminate him, he shall not be liable to prosecution for any offence committed by him in connection with that election and in respect of which he is so examined and such witness is entitled to receive a certificate of indemnity under the hand of the Registrar stating that he is freed and discharged from liability to prosecution for that offence;
- (b) an answer by a witness to a question before the High Court must not, except in the case of any criminal proceedings for giving false evidence in respect of such evidence, be admissible in any proceedings, civil or criminal in evidence against him.

Where a person has received a certificate of indemnity and any legal proceedings are at any time brought against him for any offence to which such certificate relates, the court having cognizance of the case must, on proof of the certificate of indemnity, stay such proceedings and may award to that person such costs as he may have been put to in such proceedings.

All reasonable expenses incurred by any person in attending at or appealing before the High Court to give evidence as a witness at the trial of an election petition must be allowed to such person according to the scale of allowance and expenses appropriate in civil proceedings before the High Court.⁵⁸

8.12 Conclusion of Trial

At the conclusion of the trial of an election petition, the High Court must determine whether the respondent, or any other and which person, was duly elected, or whether the election to

which the election petition relates was void, and the Registrar must as soon as may be, submit a copy of such determination to the Speaker of the National Assembly and to the Commission.

Where the High Court determines that the respondent was duly elected, such election remains valid.

Where the High Court determines the respondent was not duly elected but that some other person was duly elected, such other person is deemed to have been elected accordingly.

Where the High Court determines that the respondent was not duly elected, and that no other person was duly elected, at the election concerned, the vacancy in the membership of the National Assembly in respect of which that election was held is deemed to continue until duly filled.

Where a determination alters the results of an election as previously declared, it is the duty of the Commission to publish the results as so altered in the Gazette.

Where it appears to the High Court upon the trial of an election petition that any corrupt practice or illegal practice has been committed by any person in connection with the election to which such election petition relates, the High Court must, at the conclusion of the proceedings, prepare a report stating –

- (a) the evidence given in the proceedings in respect of such corrupt practice or illegal practice;
- (b) the names and particulars of any person by whom such corrupt practice or illegal practice was, in the opinion of the Court, committed: provided that the Court must not state the name of any person unless such person has been given an opportunity of appearing before the Court and of showing cause why his name should not be so stated.

The Registrar is required to deliver a copy of every report prepared by the High Court with respect to corrupt practice or illegal practice to the Commission and the Director of Public Prosecutions.⁵⁹

8.13 Costs

All costs, charges and expenses of and incidental to the presentation and trial of an election petition must be borne in such manner and in such proportions as the High Court may order and in particular, any costs which in the opinion of the High Court have been caused by any vexatious conduct or by any frivolous or vexatious allegations or objections on the part of the petitioner or of the respondent, may be ordered to be paid by the party by whom such costs have been caused.

Where, on the trial of an election petition, the High Court determines that the respondent was not duly elected and is of the opinion, having regard to the circumstances, that it would be just and reasonable to relieve any party to the election petition from all or a portion of the costs thereof, then –

- (a) if the Court finds that the objection of the respondent was due to a mistake or improper performance or failure of performance of any function *bona fide* made by any election officer, it may, after sufficient notice to the Attorney-General to show cause to the contrary make such order as to the payment by the state of the costs of the proceedings or a portion thereof, as it may deem proper;
- (b) if the Court finds that the election of the respondent was due to a mistake or improper performance or failure of performance by any function *mala fide* made by any election officer, it may, after sufficient notice to such officer to show cause to the contrary, make such order as to the payment by such election officer of the costs of the proceedings or a portion thereof, as it may deem proper.

The High Court may, on application made by any person to whom any costs, charges or expenses are payable, order the same to be paid out of any deposit made to secure the same, or by any surety who gave a recognizance to secure the same: provided that notice of such application shall be given in such manner as may be prescribed by rules of court to the party by or on whose behalf such deposit was made or for whom such surety gave a recognizance, requiring such party, or such surety and such party, as the case may be, to state, within such time and in such manner as may be so prescribed, whether he resists the application.

Where, on the trial of a petition any person appears to the High Court to have been guilty of any corrupt practice or illegal practice relating to the election which is the subject of such election petition, the Court may, after giving that person opportunity of making a statement to show cause why the order should not be made, order the whole or a portion of the costs of or incidental to the trial of such election petition to be paid by the said person to such person or persons as the Court may determine.

Execution may be levied under any order for payment made by the High Court in the same manner and to the same extent as execution may be levied under a judgment of the High Court for the payment of money.

Money deposited as security must, when no longer needed as security for costs, be returned to the person in whose name it is deposited or to any person entitled to receive the same by order of the High Court, which may be upon motion after notice and proof that all just claims have been satisfied or otherwise sufficiently provided for as the High Court may require.⁶⁰

NOTES

1. Constitution of Zambia 1991, see section 21
2. *Ibid.*, see section 75
3. *Ibid.*, see section 76
4. *Ibid.*, see section 77
5. Electoral Act 1991, see section 12
6. *Ibid.*, see section 13
7. *Ibid.*, see section 14
8. *Ibid.*, see section 15
9. *Ibid.*, see sections 16 and 17
10. See regulation 4 of the Electoral (Registration of Voters) Regulations and regulation 3 of the Electoral (General) Regulations 1991
11. Electoral (General) Regulations 1991, see regulations 4-6
12. Electoral Act 1991, see sections 3 and 4

13. Ibid., see sections 5 and 6
14. Electoral (General) Regulations 1991, see regulation 8
15. Ibid., see regulation 10
16. Ibid., see regulation 12
17. Ibid., see regulations 13 and 14
18. Ibid., see regulation 15
19. Ibid., see regulation 16
20. Ibid., see regulation 17
21. Ibid., see regulation 19
22. Ibid., see regulation 20
23. Ibid., see regulation 27
24. Ibid., see regulations 28 and 29
25. Ibid., see regulations 30-34
26. Ibid., see regulation 35
27. Ibid., see regulation 36
28. Ibid., see regulation 38
29. Ibid., see regulation 39
30. Ibid., see regulation 40
31. Ibid., see regulation 41
32. Ibid., see regulations 42 and 43
33. Ibid., see regulation 44
34. Ibid., see regulation 45
35. Ibid., see regulations 46 and 47
36. Ibid., see regulation 48
37. Ibid., see regulation 49
38. Ibid., see regulation 51
39. Ibid., see regulation 52
40. Ibid., see regulation 53
41. Ibid., see regulation 54
42. Ibid., see regulation 55
43. Ibid., see regulations 56-60
44. Ibid., see regulation 61
45. Ibid., see regulation 62
46. Ibid., see regulation 64
47. Ibid., see regulation 65
48. Electoral Act 1991, see section 18
49. Ibid., see section 19
50. Ibid., see section 20
51. Ibid., see section 21
52. Ibid., see section 22
53. Ibid., see section 23
54. Ibid., see section 24
55. Ibid., see section 25
56. Ibid., see section 26
57. Ibid., see section 27
58. Ibid., see section 28
59. Ibid., see section 29
60. Ibid., see section 30