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INTRODUCTION

The Constitution of Zimbabwe as amended deals with elections, generally indicating when a general election may be held, the qualification of voters and related matters.

It provides for the establishment of an Electoral Supervisory Commission and a Delimitation Commission. It also deals with the delimitation of constituencies.

The principal election law is the Electoral Act 1990, which is referred to herein as “the Act”.

— *Section 1* —

RELEVANT CONSTITUTIONAL PROVISIONS

1.01 Elections

A general election shall be held on such day or days within a period not exceeding four months after the issue of a proclamation dissolving Parliament under section 63(7) or, as the case may be, the dissolution of Parliament under section 63(4) as the President may, by proclamation in the Gazette, fix.

The qualifications and disqualifications for registration as a voter and for voting at elections shall be as prescribed in Schedule 3 and, subject thereto, by the Electoral Law.

An Act of Parliament shall make provision for the election of members of Parliament, including elections for the purpose of filling casual vacancies.¹

1.02 Delimitation Commission, Constituencies and Electoral Commission

The Constitution also deals with the establishment of a Delimitation Commission and the delimitation of constituencies, both of which are dealt with herein under Section 3. The Constitution establishes an Electoral Supervisory Commission which is dealt with in Section 2 below.²

— *Section 2* —

ELECTION ADMINISTRATION

2.01 Electoral Supervisory Commission

There shall be an Electoral Supervisory Commission which shall consist of –

- (a) a chairman and two other members appointed by the President after consultation with the Judicial Service Commission; and

- (b) two other members appointed by the President after consultation with the Speaker.

A person shall not be eligible for appointment if –

- (a) he is a member of Parliament or any local authority; or
(b) he is a public officer.

The Electoral Supervisory Commission shall supervise the registration of voters and the conduct of elections of members of Parliament and shall consider any proposed Bill or proposed statutory instrument relating to the registration of voters or to the election of members of Parliament that may be referred to it.

The Electoral Supervisory Commission may make such reports to the President concerning the matters under its supervision or any draft Bill or statutory instrument that is referred to it as it thinks fit and, if the Commission so requests in any such report other than a report on a draft Bill or statutory instrument, the Minister shall ensure that the report concerned is laid before Parliament.

The Electoral Supervisory Commission shall not, in the exercise of its functions be subject to the direction or control of any person or authority.

An Act of Parliament may make provision for the powers and functions of the Electoral Supervisory Commission and, without prejudice to the generality of the foregoing, may make provision for the disqualifications, tenure of office and remuneration of the members thereof.

Where the members of the Electoral Supervisory Commission are not unanimous in regard to any matter, the view of the majority shall prevail.

The salary paid to a member of the Electoral Supervisory Commission shall not be reduced during his tenure of office.³

2.02 Election Directorate

There shall be an Election Directorate which is responsible for –

- (a) co-ordinating the activities of Ministries and departments of Government in regard to the delimitation of constituencies, the registration of voters, the conduct of polls and all other matters connected with elections; and
(b) giving instructions and making recommendations to –
(i) the Registrar-General in regard to the exercise of his functions under the Act;
(ii) other persons in the employment of the State for the purpose of ensuring the efficient, proper, free and fair conduct of elections; and
(c) generally ensuring that elections are conducted efficiently, properly, freely and fairly.

The Directorate shall consist of –

- (a) a chairman, who shall be appointed by the President for his ability and experience in

administration or his professional qualifications or his suitability otherwise for appointment; and

- (b) the Registrar-General; and
- (c) not fewer than two and not more than ten other members, who shall be appointed by the Minister.

The chairman and other members of the Election Directorate shall hold office for such period as may be fixed on their appointment.

Members of the Election Directorate who are not in the full-time employment of the State, a statutory body or a local authority shall be paid such allowances as may be prescribed.⁴

2.03 Registrar-General of Elections

There is a Registrar-General of Elections whose office is a public office and forms part of the Public Service.

The Registrar-General exercises such functions as are imposed or conferred upon him by or under the Act and in the exercise of his functions, the Registrar-General shall not be subject to the direction or control of any other person or authority other than the Election Directorate, but shall have regard to any report or recommendation of the Electoral Supervisory Commission.

The Registrar-General may –

- (a) assume and exercise any function which is vested in a constituency registrar, presiding officer, polling officer, counting officer or other official;
- (b) with the consent of the Minister, delegate any of his functions to any other member of the Public Service;
- (c) assign or authorise the delegation of all or any of the functions which are vested under the Act in a constituency registrar, presiding officer, polling officer, counting officer or other official to any other such official.

For each constituency there must be –

- (a) a constituency registrar; and
 - (b) a deputy constituency registrar; and
 - (c) one or more assistant constituency registrars,
- who shall be members of the Public Service.

A deputy constituency registrar or assistant constituency registrar shall, subject to the general supervision and direction of the Registrar-General, exercise such functions as are imposed or conferred by or under the Act upon the constituency registrar of the constituency for which he has been appointed or as may be delegated to him from time to time by that constituency registrar.⁵

— *Section 3* —

CONSTITUENCIES

3.01 Delimitation Commission

From time to time, as may be required for the purposes of the Constitution, the President shall appoint a Delimitation Commission which shall consist of –

- (a) a chairman, who shall be the Chief Justice or some other judge of the Supreme Court or the High Court appointed after consultation with the Chief Justice; and
- (b) three other members appointed after consultation with the Chief Justice: provided that a person shall not be eligible for appointment if he is a member of Parliament.

If a member is for any reason unable to continue to act, the President shall –

- (a) in the case of the chairman, appoint the Chief Justice or, after consultation with the Chief Justice, some other judge of the Supreme Court or the High Court to be chairman;
- (b) in the case of any other member, appoint in his place, after consultation with the chairman, some other person.

Where the members of the Delimitation Commission are not unanimous in regard to any matter, the view of the majority shall prevail and, in the event of an equality of votes, the chairman shall have, in addition to a deliberate vote, a casting vote.

Following the first delimitation for the purposes of the Constitution, a Delimitation Commission shall be convened by the President at five-yearly intervals: provided that a Delimitation Commission may be convened before the expiration of any five-year period if it appears to the President necessary to do so.⁶

3.02 Delimitation of Constituencies

It shall be the function of the Delimitation Commission to determine the limits of the constituencies into which Zimbabwe is to be divided.

Provided that, if the President notifies the Delimitation Commission of an anticipated alteration in the number of constituencies, the Delimitation Commission shall determine the limits of the anticipated number of constituencies accordingly.

Zimbabwe shall be divided into one hundred and twenty common roll constituencies.

The boundaries of the constituencies shall be such that at the time of delimitation the number of voters registered in each common roll constituency is as nearly as may be equal to the number of voters registered in each of the other common roll constituencies.

In dividing Zimbabwe into constituencies the Delimitation Commission shall, in respect of any area, give due consideration to –

-
- (a) its physical features;
 - (b) the means of communication within the area;
 - (c) the geographical distribution of voters registered on the common roll;
 - (d) any community of interest as between voters registered on the common roll; and
 - (e) in the case of any delimitation after the first delimitation consequent upon an alteration in the number of constituencies, existing electoral boundaries.⁷

— Section 4 —

REGISTRATION OF VOTERS

4.01 Resident Qualification

In order to have the requisite residence qualifications to be registered as a voter in a particular constituency, a claimant must be resident in that constituency at the date of his claim: provided that, if a claimant satisfies the Registrar-General that, for reasons related to his place of origin, political affiliations or otherwise, it is appropriate for the claimant to be registered as a voter in a constituency in which he is not resident, the claimant may be registered as a voter in that constituency.

A claimant is deemed to be residing in a constituency while he is absent therefrom for a temporary purpose.

A voter who is registered on the voters' roll for a constituency, other than a voter who has been registered in that constituency, is not entitled to have his name retained on such voters' roll if, for a continuous period of twelve months, he has ceased to reside in that constituency: provided that his name may be struck off such voters' roll –

- (a) on his being registered in any other constituency; or
- (b) if he becomes disqualified for registration as a voter.⁸

4.02 Claims for Registration

Any person who wishes to be registered as a voter on the voters' roll for any constituency shall complete the appropriate prescribed form and lodge it with the constituency registrar for that constituency: provided that a claimant who seeks registration in a constituency in which he is not resident shall lodge his claim form with the Registrar-General.

Where a claimant seeks registration in a constituency in which he is not resident, he shall provide the Registrar-General with an address in that constituency where he shall be deemed to be resident for the purposes of any delimitation of constituencies.

If, on receipt of a claim form in which the claimant seeks registration in a constituency in which he is resident, the constituency registrar is satisfied that the claimant is entitled to be registered as a voter on the voters' roll for that constituency, he shall enter the claimant's name and particulars relating to him on that voters' roll.

If, on receipt of a claim form in which the claimant seeks registration in a constituency in which he is not resident, the Registrar-General is satisfied that it is appropriate for the claimant to be registered in that constituency, he shall direct the appropriate constituency registrar to enter the claimant's name and particulars relating to him on the voters' roll for his constituency.

If a constituency registrar considers that a claimant should be registered on the voters' roll for some other constituency, he shall forward the claim to the constituency registrar for that other constituency and shall advise the claimant accordingly.

The Registrar-General may direct any constituency registrar to register on the voters' roll for his constituency any person or class of persons who –

- (a) is or are registered in terms of the National Registration Act 1976; and
 - (b) the Registrar-General is satisfied is or are qualified to be registered,
- and the registration of any such person in accordance with any such direction shall be valid in all respects as if that person had completed a claim form and lodged it with the constituency registrar.⁹

4.03 Claims for Transfer of Registration

A voter whose name is registered on the voters' roll for a constituency and who –

- (a) has become resident in another constituency; or
 - (b) wishes for reasons related to his place of origin, political affiliations or otherwise, to be registered in another constituency in which he is not resident,
- may apply in the prescribed form for the transfer of his name to the voters' roll for that other constituency and shall submit with his application the voter's registration card, if any, issued to him.

An application shall be signed by the voter and sent to the constituency registrar for the constituency for which he is registered: provided that an application for a transfer to a constituency in which the applicant is not resident shall be sent to the Registrar-General for his approval.

Where an applicant seeks transfer to a constituency in which he is not resident, he shall provide the Registrar-General with an address in that constituency where he shall be deemed to be resident for the purpose of any delimitation of constituencies.

On receipt of an application in which the applicant seeks transfer to a constituency in which he is resident, the constituency registrar, if satisfied that the applicant is entitled to the transfer, shall –

- (a) remove the applicant's name from the voters' roll for his constituency; and
- (b) forward the applicant's name and particulars to the constituency registrar for the constituency to which the applicant has applied to be transferred.

On receipt of an applicant's name and particulars forwarded to him, a constituency registrar,

if satisfied that the application is in order, shall register the applicant on the voters' roll for his constituency and, as soon as he has done so, notify the voter thereof.

If, on receipt of an application in which the applicant seeks transfer to a constituency in which he is not resident, the Registrar-General is satisfied that it is appropriate for the applicant to be registered in that constituency he may direct –

- (a) the constituency registrar for the constituency in which the applicant is registered to remove the applicant's name from the voters' roll for his constituency and forward the applicant's name and particulars to the constituency registrar for the constituency to which the applicant has applied to be transferred; and
- (b) the constituency registrar of the constituency to which the applicant has applied to be transferred, on receipt of the applicant's name and particulars forwarded to him, to register the applicant on the voters' roll for his constituency, and, as soon as he has done so, to notify the voter thereof,

and the constituency registrars concerned shall comply with any such direction.¹⁰

4.04 Voters' Registration Cards

On registration of a voter, the constituency registrar shall furnish him with a voter's registration card in the prescribed form.

On the transfer of the registration of a voter, the voter shall be issued with a voter's registration card by the constituency registrar of the constituency to which he has been transferred.¹¹

4.05 New Registration of Voters

The President may at any time, by proclaiming in the Gazette, order that there shall be an entirely new registration of voters and such proclamation shall fix –

- (a) the day upon which such new registration shall begin; and
- (b) the latest day upon which claims and applications for registration shall be received, which day shall not be less than six months after the day fixed in terms of paragraph (a).

Any person who, immediately before the day of publication of a proclamation for a new registration is registered as a voter on the voters' roll for any constituency shall be entitled to be registered on the new voters' roll for that constituency without completing a claim form on the submission of a written application in the prescribed form to the constituency registrar for that constituency in which he was so registered.

A person who, immediately before the day of publication of a proclamation for a new registration, was registered with the approval of the Registrar-General in a constituency in which he was not resident may, in his written application, provide the address where he is deemed to reside in the constituency and he shall be entitled to have his name registered on the voters' roll of the constituency in which such address is situated.¹²

4.06 Objections to Registration of Voters

If a constituency registrar has reason to believe that –

- (a) a claimant is not entitled to be registered; or
- (b) a claimant is not entitled to be registered on the voters' roll on which he has claimed to be registered; or
- (c) a voter registered on a voters' roll is not qualified for registration on that voters' roll, he shall send to the claimant or voter, as the case may be, a written notice of objection to which a form of notice of appeal shall be annexed: provided that no such objection shall be taken and notice sent during the period between the issue of a proclamation for the holding of an election and the close of polling at the election to which such proclamation relates.

A notice of objection shall be in the prescribed form and shall set forth –

- (a) the ground of objection; and
- (b) that, unless notice of appeal is given within a time stated therein, being not less than seven days, or the constituency registrar, on representation made to him by the person to whom the objection relates, withdraws his objection, the claim will be rejected, and the claimant registered on the appropriate voters' roll or the voter's name struck off the voters' roll, as the case may be.

If –

- (a) notice of appeal is not duly given or is withdrawn or the constituency registrar does not withdraw his objection, the constituency registrar shall reject the claim, register the claimant on the appropriate voters' roll or strike the voter's name off the voters' roll, as the case may be;
- (b) notice of appeal is duly given –
 - (i) the constituency registrar shall, unless he withdraws his objection, forthwith set down the objection for hearing before a designated magistrate of the province in which the claimant or voter resides; and
 - (ii) the designated magistrate shall appoint a day and a place for the hearing, the day so appointed being not more than thirty days after the date of receipt of the notice of appeal.

The constituency registrar shall give written notice to the appellant of the day and place appointed for the hearing.

A notice of appeal must be accompanied by the sum of fifty dollars as a deposit.

A voter may object to the retention of any name on the voters' roll of the constituency in which he himself is registered.

An objection must be –

- (a) in writing, setting forth the grounds of the objection; and

-
- (b) lodged in duplicate with the constituency registrar; and
 - (c) accompanied by the prescribed deposit.

If an objection is lodged –

- (a) the constituency registrar shall forthwith set down the objection for hearing before a designated magistrate of the province in which the person to whom the objection relates resides; and
- (b) the designated magistrate shall appoint a day and place for the hearing, the day so appointed being not more than thirty days after the date of lodging of the objection.

The constituency registrar shall –

- (a) give written notice to the person lodging the objection and to the person to whom the objection relates of the day and place appointed for the hearing; and
- (b) send with such notice to the person to whom the objection relates a copy of the objection, setting forth the grounds thereof.

If the constituency registrar receives an objection during the period of thirty days immediately prior to the polling day or first polling day, as the case may be, fixed for an election in the constituency in which the person to whom the objection relates is registered, he shall take no action on such objection until after the close of the polling day or last polling day, as the case may be.

On the hearing of an objection by a designated magistrate the following provisions apply –

- (a) the person lodging the objection may appear either in person or by an agent appointed in writing under his hand;
- (b) the person to whom the objection relates may –
 - (i) appear either in person or by an agent appointed in writing under his hand; or
 - (ii) forward by post addressed to the designated magistrate a statement in writing signed by him and witnessed by another voter of the same constituency setting forth his reasons for his claim or for remaining on the voters' roll, as the case may be;
- (c) if the person lodging the objection does not appear, the designated magistrate shall disallow the objection unless the person to whom the objection relates has, in writing, admitted the validity of the objection;
- (d) if the person to whom the objection relates has, in writing, admitted the validity of the objection, the designated magistrate shall direct the constituency registrar –
 - (i) in the case of a claim for registration as a voter, to reject the claim or to register the voter on the correct voters' roll;
 - (ii) in the case of an objection to a registered voter, to strike his name off the voters' roll or to place it on the correct voters' roll;
- (e) if the person lodging the objection appears, the designated magistrate shall hear and determine the objection and may direct the constituency registrar –
 - (i) in the case of a claim, to register the claimant or reject the claim; or

- (ii) in the case of an objection to a registered voter, to retain his name on the voters' roll, to place it on the correct voters' roll or to strike it off the voters' roll, as he may consider fit.
- (f) no grounds of objection shall be entertained except such as one specifically set forth in the objection as lodged;
- (g) if any party to the proceedings appears by an authorised agent, the designated magistrate may, if he considers it necessary, adjourn the hearing for the attendance of that party in person and may make an order requiring his attendance accordingly;
- (h) if the designated magistrate holds that an objection is frivolous or vexatious, he may make such order as to costs as he thinks fit.

The designated magistrate may order the forfeiture and the payment into the Consolidated Revenue Fund of –

- (a) the sum deposited by the appellant if –
 - (i) the appellant or his duly authorised agent fails to appear on the date appointed for the hearing and fails to lodge with the clerk of the court of the designated magistrate, within twenty-four hours after that date, a reasonable excuse for such failure to appear; or
 - (ii) he has disallowed the appeal and held that the grounds of appeal were frivolous or vexatious; or
- (b) the sum deposited by the objector if –
 - (i) the person lodging the objection does not appear and the person to whom the objection relates has not in writing admitted the validity of the objection; or
 - (ii) he has held that the grounds of objection were frivolous or vexatious,and if he makes no such order the deposit shall be returned to the depositor.

If, on the hearing of an objection –

- (a) the nature of the claim or objection is such that the designated magistrate is doubtful as to the proper decision to be given upon it, he may draw up a statement of the facts and state a question for decision and sign it; or
 - (b) a party to the proceedings so requests, the designated magistrate shall draw up a statement of the facts and state a question for decision and sign it and such statement shall be signed by the party at whose request it is made,
- and the designated magistrate shall transmit the statement to the registrar of the High Court to be laid before a judge in Chambers.

Where a case is laid before a judge, the person lodging the objection and the person to whom the objection relates and any other party interested shall be entitled to be heard in person or represented by a legal practitioner in argument upon the question stated in the case.

The judge before whom a case is laid –

- (a) may call for further information, if he thinks fit, from the designated magistrate who transmitted it; and

(b) shall give such decision thereon as appears to him right and proper, and there shall be no appeal from the decision of that judge.

The name of every person whose registration is objected to shall be publicly exhibited outside the court of the designated magistrate which is to hear and determine the objection and such other place or places as the constituency registrar may direct and maintained there until the objection is so heard and determined.¹³

4.07 Removal of Duplications, on Death and on Disqualification

The various constituency registrars shall from time to time compare the several voters' rolls with a view to ensuring that no person is registered as a voter –

- (a) more than once on the voters' roll for any one constituency; or
- (b) on the voters' roll for more than one constituency.

If a constituency registrar is satisfied that a voter is registered –

- (a) more than once on the voters' roll for his constituency, he shall remove the name where it occurs on the second or any subsequent occasion;
- (b) on the voters' roll for his constituency and on the voters' roll for any other constituency, he shall remove the name of the voter from his voters' roll unless he is satisfied that the voter is entitled to be registered on his voters' roll rather than on the other voters' roll.

If a constituency registrar is satisfied that a voter whose name is registered on a voters' roll has become disqualified for registration as a voter or is dead, he shall remove his name therefrom.

If a constituency registrar is satisfied that a voter registered on a voters' roll –

- (a) has been absent from his constituency for a period of twelve months or longer and is not a voter who was registered with the approval of the Registrar-General in a constituency in which he was not resident; or
- (b) has left Zimbabwe with the intention of residing permanently outside Zimbabwe, he shall remove such voter's name therefrom.

A constituency registrar shall not remove the name of a voter owing to absence unless he has sent to the voter concerned written notice of objection, to which a form of notice of appeal has been attached.

A person whose name has been removed from a voters' roll on the grounds of disqualification may, when no longer disqualified, claim to be registered as a voter.

In addition to other powers of alteration conferred by the Act, a voters' roll may be altered by the constituency registrar as follows –

- (a) at any time –
 - (i) by correcting any obvious mistake or omission; or

- (ii) by changing, on the written application of a voter, the original name or address of the voter to an altered name or address;
- (b) at any time except during the period between the issue of a proclamation and the close of polling at the election fixed by any such proclamation, by striking out the name of any person on proof that he has become qualified for and has secured registration on another voters' roll.

All alterations made by a constituency registrar shall be made in such a manner that the original entry on a voters' roll or a copy of a voters' roll shall not be obliterated and the reason for the alteration and the date thereof shall be set against the alteration, together with the initials of the person making the alteration.¹⁴

— Section 5 —

CONDUCT OF ELECTIONS

5.01 Proclamation for General Election or By-election

For the purposes of the election of members of Parliament, other than Chiefs, the President shall fix –

- (a) a place or places at which, and a day or days, not less than fourteen nor more than twenty-one days after the day of publication of the proclamation, on which a nomination court shall sit to receive nominations of candidates for election as members of Parliament; and
- (b) a day or days, not less than twenty-one nor more than forty-five days after the nomination day or last nomination day, as the case may be, fixed under these provisions, on which a poll shall be taken if a poll becomes necessary for the election of members of Parliament; and
- (c) a day on which the voters' rolls for that election shall be regarded as closed for the purpose of accepting the registration of voters who may vote at the election, which day may be on or after the day of publication of the proclamation or not more than thirty-one days before that day.

For the purposes of the election of chiefs the President shall fix times and places at which and a day or days, not earlier than the nomination day fixed and not later than fourteen days after the polling day or last polling day, as the case may be, on which electoral colleges shall meet.¹⁵

5.02 Election of Chiefs to Parliament

Under the Constitution –

- (a) the Council of Chiefs referred to in section 18 of the Chiefs and Headmen Act 1982 shall constitute an electoral college which shall be convened at the time and place and on the day or days fixed by the President for the purpose of electing two chiefs to be members of Parliament; and

-
- (b) each provincial assembly of chiefs referred to in section 16 of the Chiefs and Headmen Act 1982 shall constitute an electoral college which shall be convened at the time and place and on the day or days fixed by the President for the purpose of electing one chief to be a member of Parliament to represent the province for which the provincial assembly is established.

For the purposes of the nomination and election of chiefs to Parliament, the Minister shall appoint a member of the Public Service to be the presiding officer for each electoral college. One-half of the total membership of each electoral college shall form a quorum of that electoral college.

At every meeting of an electoral college the presiding officer shall call for nominations of candidates for election to fill any vacancies in the membership of Parliament that are to be filled by the electoral college concerned.

Every candidate for election to Parliament as a chief shall be nominated by one chief who is a member and present at the meeting of the electoral college concerned and seconded by another chief who is a member and present at the meeting of the electoral college.

No nomination is valid unless the candidate has signified his acceptance of it.

If at a meeting of the electoral college which is the Council of Chiefs –

- (a) only two candidates have been duly nominated, the presiding officer shall declare such candidates to have been duly elected as members of Parliament with effect from the day of such declaration, and shall notify the Minister and cause to be published in the Gazette notice of the names of the candidates and the day with effect from which they were declared so elected;
- (b) more than two candidates have been duly nominated, a poll shall take place.

If at a meeting of electoral college which is a provincial assembly of chiefs –

- (a) only one candidate has been duly nominated to represent the province concerned, the presiding officer shall forthwith declare such candidate to have been duly elected as a member of Parliament with effect from the day of such declaration, and shall notify the Minister and cause to be published in the Gazette notice of the name of every such candidate and the day with effect from which he was declared so elected;
- (b) more than one candidate has been duly nominated to represent the province concerned, a poll shall take place.

After the close of nominations the presiding officer shall adjourn the meeting at the electoral college for three hours. The presiding officer shall, on the expiration of three hours, reconvene the meeting of the electoral college for the purpose of conducting a poll.

The presiding officer shall make, before the meeting of the electoral college is reconvened, a declaration of secrecy before a commissioner of oaths.

During the period that the meeting has been adjourned the presiding officer shall, in the presence of the candidates, seal a ballot box for each candidate which is clearly labelled with the name of such candidate.

When the meeting of the electoral college is reconvened –

- (a) the presiding officer shall conduct a secret poll in relation to the vacancies to be filled by the electoral college;
- (b) each member of the electoral college shall be entitled to one vote in relation to each member of Parliament to be elected by the electoral college;
- (c) no member of the electoral college shall cast more than one vote for one candidate;
- (d) after the members of the electoral college have voted the presiding officer shall, in the presence of the members and the candidates, cause the votes to be counted;
- (e) after the counting of the votes the presiding officer shall prepare a list with the candidate or candidates who received the greatest number of votes at the top of the list and the rest of the candidates in descending order according to the number of votes cast for each and shall –
 - (i) in the case of the electoral college which is the Council of Chiefs, declare the two candidates whose names appear first and second on the list to have been duly elected as members of Parliament with effect from the day of such declaration;
 - (ii) in the case of an electoral college which is a provincial assembly of chiefs, declare the candidate whose name appears at the top of the list to have been duly elected as a member of Parliament with effect from the day of such declaration;
- (f) if two or more candidates have received the same number of votes and the addition of a vote would entitle any of those candidates to be declared elected, the presiding officer shall arrange for a fresh vote to be taken in respect of those candidates, with each member of the electoral college being allowed one vote, and the candidate who, at the second poll, received the greatest number of votes shall be declared to have been duly elected as a member of Parliament with effect from the day of such declaration,

provided that, if after the fresh vote has been taken one or more vacancies have still not been filled because two or more candidates have received the same number of votes, the presiding officer shall, in the presence of the members of the electoral college and the candidates, draw lots for the purpose of determining which candidate or candidates shall be deemed to be duly elected and, after the drawing of the lots, he shall declare the candidate or candidates concerned to have been duly elected as a member or members of Parliament, as the case may be, with effect from the day of such declaration.

Any such declaration by the presiding officer under these provisions is final and subject to reversal only on petition to the High Court.

After the holding of a poll under these provisions, the presiding officer shall notify the Minister and cause to be published in the Gazette notice of the names of the candidates declared to have been duly elected as members of Parliament and the day with effect from which they were declared so elected.¹⁶

5.03 Nomination of Candidates for Election as Members of Parliament

A candidate for election as a member of Parliament shall be nominated by means of a separate nomination paper in the prescribed form, which –

- (a) shall be signed by not fewer than ten persons who are registered on the voters' roll for the constituency for which the candidate seeks election and shall be countersigned with the acceptance of the candidate or his election agent; and
- (b) may specify a distinctive symbol which the candidate wishes to appear on the ballot paper in conjunction with his name; and
- (c) may, if the candidate is to stand for or to be sponsored by any party, specify that fact, together with the name of the party and an abbreviation of such name which the candidate wishes to appear on the ballot paper.

Where a nomination paper refers to sponsorship by a political party, the nomination paper must be countersigned by a person who is an office-bearer of the party concerned with the authority to certify that the candidate is to stand for or be sponsored by that party.

Nomination papers in respect of candidates for election as members of Parliament may be lodged with the constituency registrars for the constituencies concerned at any time after the publication of the proclamation calling for the election concerned but before the time on nomination day specified.

On the day or days and at the place fixed for the purpose, the constituency registrar shall hold a public court, commencing at ten o'clock in the morning, for receiving the nomination of candidates for election as a member of Parliament for the constituency for which he is the constituency registrar.

The constituency registrar shall in open court –

- (a) announce whether any candidate has lodged his nomination paper before the sitting of the court and, if so, the name of every such candidate; and
- (b) receive any further nominations for election as a member of Parliament for the constituency for which he is constituency registrar.

No nomination paper shall be received by the constituency registrar after four o'clock in the afternoon of nomination day or, where there is more than one nomination day for the election concerned, the last such nomination day: provided that, if at that time a candidate or his election agent is present in the court and ready to submit a nomination paper in respect of the candidate, the constituency registrar shall give him an opportunity to do so.

The constituency registrar shall examine every nomination paper lodged with him which has not been previously examined by him in order to ascertain whether it is in order and shall give any candidate or his election agent an opportunity to rectify any defect not previously rectified and may adjourn the sitting of the court for that purpose from time to time: provided that the sitting shall not be adjourned to any other day that is not a nomination day.

If, on examining a nomination paper which specifies that the candidate concerned is to stand for or to be sponsored by a party, the constituency registrar is doubtful that such fact is true, the constituency registrar may require the candidate or his election agent to produce proof as to such fact, and may adjourn the sitting of the court for that purpose from time to time: provided that the court shall not be adjourned to any other day that is not a nomination day.

The constituency registrar in open court shall reject any nomination paper lodged with him at any time –

- (a) if he considers that any symbol or abbreviation specified therein –
 - (i) is indecent or obscene; or
 - (ii) is too complex, or elaborate to be reproduced on a ballot paper; or
 - (iii) so closely resembles –
 - (aa) the symbol of any other candidate contesting the election in the constituency concerned; or
 - (bb) the recognised symbol or abbreviation of any party, other than the party, if any, for which the candidate concerned is standing or which is sponsoring him,
as to be likely to cause confusion; or
- (b) if any symbol specified therein is a prohibited symbol; or
- (c) if the nomination paper states that the candidate concerned is to stand for or to be sponsored by a party and the constituency registrar has reason to believe that that fact is not true; or
- (d) if in his opinion the nomination paper is for any other reason not in order.

The constituency registrar shall not reject any nomination paper –

- (a) solely on account of any minor variation between the name of any person as it appears on the nomination paper and as it appears on the voters' roll, if the constituency registrar is reasonably satisfied that the variation is due to an error; or
- (b) on account of any other imperfection in the nomination paper if the constituency registrar is satisfied that there has been substantial compliance with these provisions.

The constituency registrar shall in open court announce the name of every candidate who has been duly nominated.

The sitting of the nomination court shall end immediately after the announcement and after the close of the sitting no candidate is entitled or permitted to lodge a nomination paper.

If, at the close of the sitting of the appropriate nomination court the same person has been duly nominated for more than one constituency, his nomination for all the constituencies for which he has been duly nominated is void.

If, at the close of the sitting of the nomination court –

- (a) no person has been duly nominated for election for a constituency, the constituency registrar shall report the fact to the Minister and the Secretary to Parliament;

- (b) only one person has been duly nominated for election for a constituency, the constituency registrar shall forthwith declare such candidate to have been duly elected as a member of Parliament with effect from the polling day or last polling day, as the case may be, and shall notify the Minister and cause to be published in the Gazette notice of the name of the candidate declared so elected and the day with effect from which he was declared so elected: provided that if, by virtue of an appeal, an additional candidate is to be regarded as duly nominated, the constituency registrar shall revoke his declaration and shall notify the Minister and cause to be published in the Gazette notice thereof;
- (c) more than one person has been duly nominated for election for a constituency, a poll shall take place.

Any voter registered on any voters' roll may –

- (a) before the sitting of the nomination court, at the office of the constituency registrar and during office hours, inspect any nomination paper lodged with the constituency registrar;
- (b) after the close of the sitting and during such period as may be prescribed, inspect any nomination paper at such time and subject to such conditions as may be prescribed.

If a nomination paper has been rejected or been regarded as void –

- (a) the constituency registrar shall forthwith notify the candidate or his election agent, giving reasons for his decision; and
- (b) the candidate shall have the right of appeal from such decision to a judge of the High Court in Chambers and such judge may confirm, vary or reverse the decision of the constituency registrar and there shall be no appeal from the decision of that judge; and
- (c) if no appeal is lodged within four days after the receipt of notice of the decision of the constituency registrar, the right of appeal of the candidate shall lapse and the decision of the constituency registrar shall be final; and
- (d) if an appeal is lodged, the judge concerned may –
 - (i) direct that any further proceedings in relation to that election shall be suspended, if necessary, pending the determination of the appeal; and
 - (ii) specify a day or days on which any poll shall be held, and if he does so, the constituency registrar shall cause to be published in the Gazette notice thereof.¹⁷

5.04 Deposit on Nomination

At the same time as the nomination paper is lodged there shall be deposited with the constituency registrar, by or on behalf of the person nominated, such sum as may be prescribed.

If a poll takes place and the number of valid votes cast for an unsuccessful candidate is less than one-fifth of the number of valid votes cast for the successful candidate, the sum deposited by or on behalf of the unsuccessful candidate shall be forfeited and the money paid into the Consolidated Revenue Fund.¹⁸

5.05 Procedure When Poll to be Held

If a poll becomes necessary, the constituency registrar must as soon as practicable after nomination day –

- (a) publish in the Gazette a notice of –
 - (i) the names of the candidates in alphabetical order of surnames; and
 - (ii) the polling day or days; and
- (b) notify by such means as he thinks fit the situation of and the hours specified for the opening and closing of each fixed polling station for the constituency.¹⁹

5.06 Withdrawal of Candidates

A duly nominated candidate for election for a constituency may withdraw his nomination at any time before polling day or the first polling day, as the case may be, in the election concerned.

A withdrawal of a candidate shall be effected by means of a written notification to the constituency registrar, signed by the candidate personally.

Where a candidate has withdrawn his nomination, the sum deposited by or on his behalf shall be forfeited and the money paid into the Consolidated Revenue Fund.

If, as a result of the withdrawal of a candidate, only one candidate remains duly nominated for election for the constituency concerned, the constituency registrar shall forthwith declare such candidate to have been duly elected as a member of Parliament with effect from the polling day or last polling day, as the case may be, and shall notify the Minister and cause to be published in the Gazette notice of the name of the candidate declared so elected and the day with effect from which he was declared so elected: provided that, if by virtue of an appeal an additional candidate is to be regarded as duly nominated, the constituency registrar shall revoke his declaration and shall notify the Minister and cause to be published in the Gazette notice thereof, and a poll shall take place.

If, after the withdrawal of a candidate, two or more candidates remain duly nominated for election for the constituency, the constituency registrar shall take all such steps as are reasonably practicable to ensure that –

- (a) the withdrawal is brought to the attention of voters in the constituency; and
- (b) the name of the candidate who has withdrawn is either omitted or deleted from all ballot papers.²⁰

5.07 Death of Candidate

If –

- (a) the Minister is satisfied that a duly nominated candidate for election for a constituency died before the poll commenced or, if the poll has commenced, before the close thereof; or

(b) the proceedings relating to an election for a constituency have been stopped, the Minister shall, so far as concerns that constituency, declare that all proceedings relating to that election are void and all proceedings relating to that election shall be commenced afresh in the same manner as if a vacancy had occurred: provided that no fresh nomination shall be necessary in the case of a candidate who was duly nominated at the time when the proceedings were declared void if such candidate or his election agent notifies the constituency registrar in writing of his intention to remain a candidate.

If a constituency registrar or assistant constituency registrar is satisfied that a duly nominated candidate for election in that constituency died before the close of the poll in that constituency, he shall stop all proceedings relating to that election and forthwith notify the Minister.²¹

5.08 Preparation for and Voting at Poll

A constituency registrar shall establish, at such convenient places as he may determine, as many fixed polling stations as he may consider necessary for the purposes of conveniently taking the poll of the voters of his constituency.

A polling station may be established at a place which is outside of the boundaries of the constituency concerned: provided that –

- (i) there shall be at least one polling station at a place within the boundaries of the constituency concerned;
- (ii) no polling station shall be established as a polling station for more than one constituency.

A constituency registrar may provide for mobile polling stations that can be moved from place to place in his constituency.

Additional polling stations may be established or provided for at any time, whether before or after the commencement of the poll.

A constituency registrar –

- (a) shall cause a notice of –
 - (i) the places at which fixed polling stations are to be established; and
 - (ii) the hours during which the fixed polling stations will be open,to be published on each day during the polling period in a newspaper circulating in the constituency concerned and in such other manner as the constituency registrar thinks fit; and
- (b) may make known, in such manner as he thinks fit, the places to be visited by a mobile polling station during the polling period.

For any election the constituency registrar shall arrange for the obtaining of voting compartments and ballot boxes and shall provide papers, including ballot papers, instruments for marking ballot papers with the official mark, seals and other necessary things and shall do such other acts and things and make such arrangements to facilitate the taking of the poll as he may deem advisable for effectively conducting the election, and the

expenditure incurred upon all such acts and things shall be charged upon and paid out of the Consolidated Revenue Fund.

The constituency registrar –

- (a) shall appoint sufficient presiding officers, polling officers and counting officers for the purposes of the poll; and
- (b) may appoint a polling officer to act as presiding officer during such periods as the presiding officer is absent from the polling station.

A fixed polling station shall be open during such hours as the constituency registrar may fix: provided that such a polling station shall be open for at least eight hours continuously on each polling day.

For the purpose of fixing the hours of the poll, the constituency registrar may designate some fixed polling stations as urban stations and others as rural stations and may fix different hours for each such station.

If a constituency registrar has provided mobile polling stations, he may fix the hours during which each such station is proposed to be open at each place where it will stop on a polling day.

The presiding officer shall permit every voter who, at the time fixed for the closing of the polling station concerned –

- (a) is inside the room, tent, vehicle or other place in which the ballot box is placed;
- (b) in his opinion, was in the immediate precincts of the polling station before the proposed closing of the polling station and was prevented from entering the room, tent, vehicle or other place in which the ballot box is placed owing to congestion therein, to record his vote before closing the polling station.

Unless specific hours have been fixed, the presiding officer of a mobile polling station may permit any voter to record his vote at that polling station at any time on any polling day and at any place where such polling station is.

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

- (a) satisfy himself that the ballot box to be used at the polling station is empty; and
- (b) show the interior of the empty ballot box to such persons entitled to attend at the polling station as are present; and
- (c) immediately thereafter close and seal the ballot box in accordance with instructions issued by the Registrar-General.

The presiding officer at a polling station shall –

- (a) at the close of the poll on each polling day close and seal the aperture in the ballot box used at the polling station; and

-
- (b) break the seal and open the aperture only at the commencement of the poll on the next succeeding polling day,
in accordance with instructions issued by the Registrar-General and in the presence of such persons entitled to attend at the polling station as are present.

The ballot box used in or at a polling station shall be placed in a position where it can be seen by the presiding officer or a polling officer designated by him at all times during the continuance of the poll.

The presiding officer shall be responsible for the safe keeping of any ballot box used at his polling station until it is delivered to the appropriate constituency registrar.

The presiding officer and other officers at the polling station shall –

- (a) keep order thereat and regulate the number of voters to be admitted at a time; and
(b) exclude all other persons other than an officer, the candidates or their election agents, the police on duty and such other classes of persons as may be prescribed.

The presiding officer may order the arrest of any person who is suspected by him on reasonable grounds of having committed the offence of personation and any person empowered by law to make arrests shall carry out such an order.

At an election for a member of Parliament –

- (a) every voter registered on the voters' roll for the constituency concerned shall be entitled to vote;
(b) a voter shall not be entitled to vote more than once for a candidate who has been duly nominated for that constituency.

The presiding officer may put to an applicant for a ballot paper such questions as he considers necessary to ascertain whether or not the applicant is registered as a voter for the constituency.

Unless otherwise directed by the Registrar-General, the presiding officer shall require an applicant for a ballot paper to produce his voter's registration card and if that card –

- (a) shows that the applicant is registered for the constituency; and
(b) does not bear any indication that the applicant has previously received a ballot or postal ballot paper for the election,

he shall mark or otherwise deal with that card in a manner directed by the Registrar-General and shall hand the applicant a ballot paper.

A presiding officer, if so directed by the Registrar-General –

- (a) before handing an applicant a ballot paper, shall require the applicant to submit to an examination specified by the Registrar-General to ascertain whether or not he has previously received a ballot paper at that election, and if the applicant refuses to submit

- to the examination or the examination shows that the applicant has previously received such a ballot paper, the presiding officer shall not hand him a ballot paper;
- (b) after handing an applicant a ballot paper, shall mark him in the manner specified by the Registrar-General.

Any person who refuses to be marked is guilty of an offence.²²

5.09 Manner of Voting

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

- (a) every ballot paper shall be in the form prescribed and there shall be printed on every ballot paper –
- (i) in type of equal size, the names of all the duly nominated candidates at the election in alphabetical order of surnames; and
 - (ii) the symbols, if any, specified by the duly nominated candidates at the election each printed to a size that permits the vertical extremities or the horizontal extremities or both such extremities to touch opposite sides of the appropriate square on the ballot paper; and
 - (iii) in capital letters of equal size, the abbreviations of every party for which duly nominated candidates at the election are standing or which are sponsoring such candidates, where the candidates concerned specified the abbreviations in their nomination papers; and
 - (iv) such other particulars as may be prescribed;
- (b) before the ballot paper is handed to the applicant, the presiding officer shall mark the ballot paper with the official mark;
- (c) when the person claiming the vote has received the ballot paper, he shall –
- (i) take the paper to the compartment provided for the purpose; and
 - (ii) then signify the candidate for whom he desires to vote by secretly placing a cross in the rectangle opposite the name of that candidate, or, if there is more than one such rectangle, in the rectangle nearest to the right-hand side of the ballot paper; and
 - (iii) then fold the ballot paper so that the official mark is visible and the names of the candidates and the cross made by him are not visible and, having held up the ballot paper so that the presiding officer can recognise the official mark, drop the ballot paper in the ballot box placed in front of the presiding officer, provided that, if he has spoiled the ballot paper, he may return it to the presiding officer and shall deal with the second ballot paper given to him in accordance with these provisions.

If a voter inadvertently spoils a ballot paper, he may return it to the presiding officer who shall, if satisfied of the inadvertence, give him another ballot paper and retain the spoiled paper, and the spoiled paper shall be immediately cancelled and the fact of the cancellation shall be noted upon the counterfoil.

At the request in person of a voter who cannot read or write or who is incapacitated by blindness or other physical cause from voting in the manner prescribed, the presiding

officer shall cause the vote of such voter to be there and then marked on a ballot paper in the manner directed by the voter and the ballot paper to be placed in the ballot box, and if the directions of the voter as to the manner in which his vote is to be marked on the ballot paper are not sufficiently clear to enable the vote to be so marked without further directions from the voter, the presiding officer may cause such questions to be put to the voter as, in his opinion, are necessary to elicit such further directions.

The name of every person whose ballot paper is so marked and the reason why it is so marked must be entered on a list.

A presiding officer shall, immediately after the close of the poll, in the presence of such candidates and their election agents as are present –

- (a) close and seal the aperture in the ballot box and affix his seal thereto and permit any such candidates and election agents to affix their seals thereto; and
- (b) make up into separate packets sealed with his own seal and with the seals of those candidates and election agents, if any, who desire to affix their seals –
 - (i) the unused and spoilt ballot papers and counterfoils of the unused ballot papers placed together;
 - (ii) the counterfoils of the used ballot papers, including the counterfoils of the spoilt ballot papers;
 - (iii) the list of voters marked by the presiding officer;
 - (iv) the postal ballot papers and the declarations of identity delivered to him by a voter,

and shall forthwith deliver or cause to be delivered the ballot box and the packets to the constituency registrar.

The ballot box and the packets listed in the foregoing provisions shall be accompanied by a statement made by the presiding officer showing the number of ballot papers entrusted to him and accounting for them under the heads of used ballot papers, excluding spoilt ballot papers, unused ballot papers and spoilt ballot papers.²³

5.10 Voting by Post

When an election is to take place in a constituency a voter ordinarily resident in Zimbabwe who is resident in that constituency or was, within twelve months of the polling day or first polling day, as the case may be, fixed in relation to that constituency, resident therein and –

- (a) has good reason to believe that he will not be in the constituency on any such polling day during polling hours; or
- (b) has good reason to believe that on account of ill-health, infirmity or other like cause or his duty as a member of a disciplined force he will be prevented from attending at a polling station on any such polling day; or
- (c) resides more than twenty kilometres from nearest polling station for that constituency, may apply to the constituency registrar for that constituency for a postal ballot paper.

An application for a postal ballot paper shall be –

- (a) in the prescribed form; and
- (b) signed by the applicant in the presence of a competent witness and accompanied by the voter's registration card of the applicant; and
- (c) delivered by hand or by registered post so as to reach the constituency registrar concerned not later than noon of the day before the polling day or first polling day, as the case may be, fixed in relation to the constituency concerned.

The constituency registrar shall number in consecutive order all applications for postal ballot papers received by him and all such applications shall be kept by the constituency registrar and shall be open for public inspection, without fee, until the declaration of the result of the poll.

For the purposes of these provisions, a person is deemed to have resided in his constituency during any period –

- (a) in which he resided outside his constituency while he was the Vice-President, or a Minister, Provincial Governor or Deputy Minister; or
- (b) occupied in the discharge of his duties outside Zimbabwe while in the service of the State; or
- (c) in which he resided temporarily outside Zimbabwe by reason of –
 - (i) his service with an international organisation of which Zimbabwe is or was at the time a member; or
 - (ii) his employment by –
 - (aa) a person resident in Zimbabwe; or
 - (bb) a society, body of persons or company the control and management of which are in Zimbabwe; or
 - (cc) a body incorporated directly by an enactment in force in Zimbabwe; or
 - (iii) his attendance at a university or other educational institution; or
- (d) during which he resided outside Zimbabwe on account of ill-health or disability; or
- (e) during which he, being the spouse of a person referred to in paragraph (a), (b), (c) or (d) was absent from his constituency for the purpose of being with him.

If the constituency registrar is satisfied in regard to an application received by him not later than noon on the day before the polling day or first polling day, as the case may be, fixed in relation to the constituency, that –

- (a) it has been properly completed and signed by the applicant and is properly witnessed; and
- (b) the name of the applicant is on the voters' roll for the constituency and the application is otherwise in order,

he shall issue a postal ballot paper to the applicant in the manner stipulated.

A postal ballot paper shall be in the same form as, and indistinguishable from, the ballot papers delivered to voters at the polling stations.

The constituency registrar shall enter or cause to be marked upon the prescribed form of declaration of identity the number of the ballot paper issued to the applicant.

The constituency registrar shall then place in an envelope addressed to the applicant at the address to which he has, in his application for the postal ballot paper, requested that the ballot paper be sent –

- (a) the ballot paper; and
- (b) the form of declaration of identity; and
- (c) an envelope addressed to the constituency registrar; and
- (d) a smaller envelope marked “Ballot Paper Envelope” bearing the number of the ballot paper.

The constituency registrar shall then effectively close the envelope addressed to the applicant and –

- (a) deliver it to the nearest post office for registration and dispatch; or
- (b) hand it to the applicant upon signature by the applicant of a receipt therefor, and the constituency registrar shall keep the receipt signed by the applicant or the receipt for such registration, as the case may be.

A voter to whom a postal ballot paper has been issued is not entitled to vote at a polling station in the constituency in which he is registered unless he first delivers to the presiding officer for cancellation such ballot paper, together with the form of declaration of identity and all envelopes received therewith.

The constituency registrar may, if he considers it desirable, before polling day or first polling day, as the case may be, send to the presiding officer of every polling station in the constituency a list of persons to whom postal ballot papers have been issued.

The following directions for voting by post shall be substantially observed by every person to whom a postal ballot paper has been issued –

- (a) before marking the ballot paper the voter shall produce before a competent witness –
 - (i) the ballot paper issued to him showing the number thereon; and
 - (ii) the declaration of identity; and
 - (iii) the envelope in which he has received the ballot paper;
- (b) the voter shall sign the declaration of identity in the presence of the competent witness who shall, if satisfied as to the identity of the voter, sign the declaration of identity in his own handwriting and add the title under which he acts as a competent witness;
- (c) the voter shall signify the candidate for whom he wishes to vote by secretly placing on the ballot paper a cross and no other person except the competent witness shall be present and the voter shall not allow the competent witness to see how he has voted;
- (d) immediately after voting the voter shall, in the presence of the competent witness but without disclosing how he has voted, place the marked ballot paper in the ballot paper envelope, effectively close that envelope and place it, together with the declaration of identity, in the covering envelope and effectively close the covering envelope;

- (e) the voter shall then dispatch the covering envelope by registered post without delay, or hand it to the constituency registrar who, when it is so handed to him, shall issue a receipt for it.

At the request of a voter who cannot read or write or who is incapacitated by blindness or other physical cause, the competent witness may mark the vote of the voter on the ballot paper in the manner directed by the voter. A competent witness who has marked a vote on a ballot paper shall make a written statement of what he has done and the reasons for doing so, specifying the nature of the inability or incapacity suffered by the voter and enclose it in the covering envelope together with the ballot paper envelope and the declaration of identity.

The constituency registrar shall provide a postal ballot box for the reception of the covering envelopes when returned by the voters.

The constituency registrar shall, not later than three days after nomination day, give to each candidate or his election agent notice of the time and place at which he will seal the postal ballot box.

At the time and place notified the constituency registrar shall show the postal ballot box open and empty to such candidates and election agents as are present and it shall then be sealed with the seal of the constituency registrar and the seals of such candidates and agents as wish to affix their seals and shall be marked "Postal Ballot Box" with the name of the constituency.

The constituency registrar shall, immediately on receipt, place unopened in the postal ballot box all covering envelopes received by him before the close of the poll.

After the close of the poll and before the time fixed for the counting of the votes, the constituency registrar shall open the postal ballot box in the presence of such candidates and their election agents as are present.

The constituency registrar shall give to each candidate or his election agent at least twenty-four hours' notice in writing of the time and place at which he will open the postal ballot box and the envelopes contained therein.

When the postal ballot box has been opened, the constituency registrar shall count and note the number of envelopes and shall then open each covering envelope separately, examine the declaration of identity and compare the number thereon with the number on the ballot paper envelope.

If the numbers agree and the declaration of identity is found to be duly signed and witnessed, the constituency registrar shall place the declaration of identity and the ballot paper envelope unopened in separate receptacles.

If the constituency registrar is not satisfied that the declaration of identity has been duly signed and witnessed, he shall endorse the declaration of identity "Vote Rejected" and shall attach thereto the ballot paper envelope without opening such envelope or, if there is no such envelope, the ballot paper.

If the constituency registrar finds that the numbers on the declaration of identity and on the ballot paper envelope do not agree or if the envelope has no number on it, he shall open the envelope and, if the number on the ballot paper agrees with the number on the declaration of identity, he shall mark the ballot paper with the official mark and place the ballot paper in the ballot box provided for the purpose.

In every case in which the number on the ballot paper does not agree with the number on the declaration of identity, the constituency registrar shall replace the ballot paper in the ballot paper envelope, if any, attach such envelope or ballot paper, as the case may be, to the declaration of identity and endorse the declaration of identity "Vote Rejected".

Where a declaration of identity does not appear to accompany the ballot paper envelope, the constituency registrar shall open the envelope and, if it is found to contain the declaration of identity, he shall deal with such declaration and ballot paper accordingly.

A declaration of identity not accompanied by a ballot paper and a ballot paper not accompanied by a declaration of identity shall be marked "Rejected".

The constituency registrar shall show to the candidates and their election agents present every –

- (a) declaration of identity which he proposes to reject on the ground that it has not been properly signed and witnessed; and
- (b) written statement of a competent witness where the constituency registrar proposes to reject the vote concerned on the ground that the competent witness was not entitled to mark the ballot paper concerned,

and, if a candidate or his election agent objects to his decision, the constituency registrar shall add to the endorsement on the relevant declaration of identity the words "Rejection Objected To".

The constituency registrar shall keep all rejected declarations, with the attached envelope or ballot papers, as the case may be, separate from other documents.

("Competent Witness" is defined to include several categories of Government servants and several categories of professionals.)²⁴

5.11 Counting of Votes

The constituency registrar shall receive into his custody the ballot boxes and the sealed packets and shall, as soon as practicable after he has received all the boxes and sealed packets, make arrangements for verifying the statements and counting the votes given at the poll and shall give notice in writing to each candidate or his election agent of the time and place where he will –

- (a) verify the said statements; and
- (b) count the votes.

At the verification of the statements and at the counting of the votes in the presence of the candidates and election agents and such other persons who may be present, the constituency registrar is required to adopt the following procedure in relation to each ballot box and the sealed packets received by him therewith –

- (a) he shall open the ballot box;
- (b) he shall then open each sealed packet containing the unused and spoilt ballot papers and the list of votes marked by the presiding officer;
- (c) he shall then verify the statement given by the presiding officer by comparing it with the number of ballot papers;
- (d) he shall then re-seal, after examination, each of the packets opened by him and shall report to the Registrar-General the result of such verification and shall on request allow a candidate or election agent of a candidate to copy the report before it is sent.

When the constituency registrar has –

- (a) completed the verification of the statements, whether or not he has found them to be correct; and
 - (b) verified the postal ballot papers,
- he shall, in the presence of the persons entitled to be present, mix together in one container all the ballot papers contained in each of the ballot boxes so that it is impossible to determine from which ballot box a particular ballot paper was taken.

At the time and place notified by the constituency registrar the votes shall be counted in the manner provided.

The constituency registrar shall reject and not count any ballot paper –

- (a) which does not bear the official mark of a presiding officer or the constituency registrar; or
- (b) which bears no mark other than the official mark; or
- (c) which does not indicate with certainty the candidate for whom the voter intended to vote.

At the counting of the votes the constituency registrar shall not reject any ballot paper where the voter has indicated with certainty the candidate for whom he intended to vote merely by reason of the fact that the voter has so indicated otherwise than by means of a cross.

If the aggregate of the ballot papers which do not bear the official mark of a presiding officer or the constituency registrar –

- (a) does not exceed five per centum of the votes cast at the election; and
- (b) together with all the other ballot papers does not exceed the total number of ballot papers issued by the presiding officers and the constituency registrar for that constituency,

the constituency registrar shall not reject any ballot paper merely by reason of the fact that it does not bear the official mark of a presiding officer or the constituency registrar.

If the constituency registrar –

- (a) rejects as invalid a ballot paper, he shall endorse “Rejected” on the ballot paper and shall add to the endorsement “Rejection Objected To” if an objection to his decision is made by a candidate or his election agent and all such ballot papers shall be placed together in an envelope within the packet containing the rejected ballot papers;
- (b) accepts as valid a ballot paper he shall endorse “Acceptance Objected To” on the ballot paper if an objection to his decision is made by a candidate or his election agent and all such ballot papers shall be placed together in an envelope within the packet containing the accepted ballot papers.

After the counting is completed the constituency registrar shall forthwith declare the candidate who has received –

- (a) where there are two candidates, the greater number of votes;
 - (b) where there are more than two candidates, the greatest number of votes,
- to be duly elected as a member of Parliament with effect from the day of such declaration.

Where an equality of votes is found to exist between two or more candidates and the addition of one vote would entitle any of the candidates to be declared elected, the constituency registrar shall at once communicate the fact to the Registrar-General who shall, as soon as possible thereafter, arrange for the determination of the candidate to whom such one additional vote shall be deemed to have been given by the drawing of lots by the Registrar-General in the presence of a judge of the Supreme Court or the High Court and shall thereafter declare the candidate so determined to be duly elected as a member of Parliament with effect from the day of such declaration.

A declaration of the constituency registrar or the Registrar-General is final, subject to reversal on petition to the High Court that such declaration be set aside or to the proceedings relating to that election being declared void.

A constituency registrar shall, while counting the ballot papers for the purpose of the verification of the statements and while counting the votes, take such precautions as may be appropriate to prevent any person from seeing the number printed on any ballot paper.

As soon as the constituency registrar has declared a candidate to be duly elected, he shall, without delay, transmit by telegram in the prescribed form to the Registrar-General who shall transmit to the Minister and to the Secretary to Parliament the names of the person declared duly elected, the day with effect from which he was declared elected, the number of votes received by the respective candidates and the number of rejected ballot papers.

This information shall be confirmed by notice in writing which is signed by the constituency registrar and sent to the Registrar-General by the first postal delivery after the transmission of the telegram.²⁵

— *Section 6* —

ELECTION EXPENSES AND ELECTION AGENTS

No election expenses of a candidate shall be lawful except in respect of the following matters –

- (a) purchasing voters' rolls;
- (b) the expenses of printing, the expenses of advertising, and expenses of publishing, issuing and distributing addresses and notices;
- (c) stationery, messages, postage, telegrams and the use of telephones;
- (d) one central committee room, which may consist of two or more adjoining rooms;
- (e) public meetings and hiring of halls or premises therefor;
- (f) one election agent for the candidate and no more;
- (g) a number of clerks not exceeding such number as may be prescribed;
- (h) a number of clerks not exceeding such numbers as may be prescribed and the same number of messengers;
- (i) miscellaneous expenses not exceeding in the whole three thousand dollars, and not being expenses incurred in respect of any matter constituting an offence;
- (j) personal expenses;
- (k) the supply to unpaid helpers of the candidate of a reasonable amount of petrol for the purpose of bringing voters and returning them from the polling station: provided that the total sum expended in terms of these provisions does not exceed one thousand dollars.

Before, on or after nomination day but not later than seven days before polling day or the first polling day, as the case may be, in the election concerned, a candidate may appoint one and only one person to be his election agent and shall forthwith notify in writing the full names and address of his election agent to the constituency registrar, and the constituency registrar shall forthwith give public notice of the full names and address of the election agent so appointed.

If a candidate revokes the appointment of his election agent or the election agent dies –

- (a) the candidate may appoint another election agent and shall forthwith notify in writing the full names and address of such election agent to the constituency registrar;
- (b) if the candidate appoints another election agent he shall forthwith give public notice, by an advertisement in a newspaper circulating in the constituency, of the full names and address of the election agent so appointed.

If a candidate –

- (a) fails to give the notification required; or
- (b) on the revocation of the appointment or the death of his election agent does not appoint another election agent,

the candidate shall be deemed to be his own election agent and thereupon shall, so far as circumstances admit, be subject to the Act both as a candidate and an election agent.

Not later than three days before the polling day or the earliest polling day, as the case may be, an election agent may appoint one or more persons, not exceeding such number as may be prescribed to be his polling agents and shall forthwith –

- (a) notify in writing the full names and address of every polling agent so appointed to the constituency registrar; and
- (b) give public notice, by an advertisement in a newspaper circulating in the constituency, of the full names and address of every polling agent so appointed.

Anything done for the purposes of the election by or to a polling agent is deemed to be done by or to the election agent and any act or default of a polling agent which if he were the election agent would be a corrupt practice or an illegal practice or other offence shall be a corrupt practice or illegal practice or other offence, as the case may be, committed by a polling agent, and –

- (a) the polling agent shall be liable to punishment accordingly; and
- (b) the candidate shall, subject to the Act, incur the same consequences as if the act or default had been the act or default of the election agent.

The election agent of a candidate, by himself or a polling agent, shall appoint every person employed for hire or reward on behalf of the candidate at an election, and hire every committee room hired on behalf of the candidate.

A contract whereby any expenses are incurred on account of or in respect of the conduct or management of an election shall not be enforceable against a candidate unless made by the candidate himself or by his election agent, whether by himself or through a polling agent: provided that the inability to enforce such a contract against the candidate shall not relieve the candidate from the consequences of any corrupt practice or illegal practice having been committed by his agent.

An election agent shall, where a poll is to be held, send to the constituency registrar not later than three days before polling day or the earliest polling day, as the case may be, a list containing the full names and addresses of every person employed by him for hire or reward on behalf of the candidate in connection with the election, and if any such person is registered on the voters' roll, his number on such roll.

An election agent who fails to comply with the foregoing provision is guilty of an offence.

No payment and no advance or deposit shall be made or promised by a candidate or by any person at any time, whether before, during or after that election, in respect of any expenses incurred or to be incurred on account of or in respect of the conduct or management of that election otherwise than by or through the election agent of the candidate, whether acting in person or by a polling agent.

All monies provided by an association or group of persons or by any person for the election expenses of a candidate, whether as a gift, loan, advance or deposit, shall be paid or promised to the candidate or his election agent and not otherwise.

Every payment in respect of any election expenses shall, except where it is less than ten dollars in all on any account, be vouched for by a bill stating the particulars, and by a receipt or some other evidence of payment.

Every claim against a candidate at an election or his election agent within the time limited by the Act shall be barred and shall not be paid and an election agent who pays a claim in contravention of the Act is guilty of an illegal practice.

The time for sending in claims is sixty days after the day on which the candidate who was returned was declared elected.

All election expenses in respect of a candidate shall be paid within the time limited by the Act and, subject to such exceptions as may be allowed, an election agent who makes payment in contravention of this provision is guilty of an illegal practice.

The time limit for the payment of election expenses is seventy-two days after the day on which the candidate who was returned was declared elected.

If the election agent, in the case of any claim sent in to him within the time limited by the Act, disputes it or refuses or fails to pay it within the period of seventy-two days, the claim shall be deemed to be a disputed claim.

The person making such a claim may bring an action for a disputed claim in any competent court and any sum paid by the candidate or his agent in pursuance of the judgment or order of such court shall be deemed to be paid within the time limit and to be an exception to the provisions of the Act requiring claims to be paid by the election agent.

The court, on application by the person making the claim or by the candidate or his election agent may, if cause is shown to its satisfaction, by order, give leave for the payment by a candidate or his election agent of a disputed claim or of a claim for any election expenses, although sent in after the expiration of the time limit for sending in claims, or although the claim was sent in to the candidate and not to the election agent, and any payment made in pursuance of such order shall be deemed to be made within the time limit.

Where the court reports that it has been proved to it by a candidate that any payment made by an election agent in contravention of the Act was made without the sanction or connivance of such candidate, the election of such candidate shall not be void nor shall he be subject to any incapacity under the Act by reason only of such payment having been made in contravention of the Act.

A candidate at an election may pay any personal expenses incurred by him on account of or in connection with or incidental to that election, to an amount not exceeding five thousand dollars, but any further expenses so incurred shall be paid by or through his election agent.

Any expenses incurred and paid by supporters of a candidate in travelling or living at hotels or elsewhere for the purposes of and in relation to an election shall not be deemed to be expenses incurred in the interests of the candidate.

A candidate shall send to the election agent within the time limited for sending in claims a written statement of the amount of personal expenses paid by him, giving the principal details of such expenditure.

Any person, if so authorised in writing by the election agent of the candidate –

- (a) may pay any necessary stationery, postage, telegrams and other petty expenses to a total amount not exceeding that named in the authority, but any excess above the total amount so named shall be paid by the election agent; and
- (b) shall send to the election agent within the time stipulated for sending in claims, a statement of the particulars of payment made by him and such payments shall be vouched for by a bill containing the receipt of that person.

Any person who –

- (a) fails to send a statement as required; or
- (b) in this connection, makes a statement that is false in a material particular, is guilty of an offence.²⁶

— Section 7 —

OFFENCES

7.01 Treating

Any person who corruptly by himself or by any other person, whether done before or after an election directly or indirectly, gives or provides or pays wholly or in part the expense of giving or providing, any food, drink, entertainment, lodging or provisions to or for any person –

- (a) for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at any election; or
 - (b) on account of such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at an election,
- is guilty of the offence of treating.

Any voter who corruptly accepts or takes any food, drink, entertainment, lodging or provisions supplied by a person guilty of the offence of treating is also guilty of that offence.

The giving, providing, accepting or taking of such food, drink, entertainment, lodging or provisions as are reasonably necessary to enable voters to attend any meeting or rally shall not amount to an offence.²⁷

7.02 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 or any unnatural means whatsoever upon or against any person; or

- (b) inflicts or threatens to inflict by himself or by any other person any temporal or spiritual injury, damage, harm or loss upon or against any person; or
- (c) does or threatens to do anything to the disadvantage of any person, in order to induce or compel that person –
 - (i) to sign a nomination paper or refrain from signing a nomination paper; or
 - (ii) to vote or refrain from voting,is guilty of the offence of 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 or against any person; or
- (b) inflicts or threatens to inflict by himself or by any other person any temporal or spiritual injury, damage, harm or loss upon or against any person; or
- (c) does or threatens to do anything to the disadvantage of any person, on account of that person –
 - (i) having signed or refrained from signing a nomination paper; or
 - (ii) having voted or refrained from voting at any election,is guilty of the offence of undue influence.

Any person who by abduction, duress, threats to invoke any unnatural means or by fraudulent device or contrivance –

- (a) impedes or prevents the exercise of his vote by a voter; or
 - (b) compels, induces, or prevails upon a voter either to vote or to refrain from voting at an election,
- is guilty of the offence of undue influence.
- ²⁸

7.03 Bribery

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

- (a) gives, lends or procures or agrees to give, lend or procure or offers, promises or promises to procure or to endeavour to procure, any money to or for any person on behalf of a voter, or to or for any other person in order to induce such 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; or
- (b) gives, lends or agrees to give or lend, or offers or promises to procure or to endeavour to procure, any money to or for a voter or to or for any other person on behalf of a voter, or to or for any other person, for acting or joining in any procession or demonstration before, during or after an election; or
- (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 a candidate at an election or the vote of a voter at an election; or
- (d) upon or in consequence of any such gift, loan, offer, promise, procurement and agreement, procures or engages or promises or endeavours to procure, the return of a candidate at an election or the vote of a voter at an election; or

- (e) advances or pays any money to or for the use of any other person, with intent that such money, or any part thereof, shall be expended in bribery at an election, or who knowingly pays any money to any person in discharge or repayment of any money wholly or in part expended in bribery at an election; or
 - (f) before or during an 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 an election; or
 - (g) after an 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 an election; or
 - (h) conveys or transfers any property or pays any money to any person for the purpose of enabling him to be registered as a voter, thereby to influence his vote at a future election, or pays any money on behalf of a voter for the purpose of inducing him to vote or refrain from voting,
- is guilty of the offence of bribery.²⁹

7.04 Personation

Any person who –

- (a) at an 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 an election, applies again at the same election for a ballot paper; or
- (c) not being entitled to do so marks a postal ballot paper so as to indicate thereon a vote for a candidate,

is guilty of the offence of personation.³⁰

7.05 Illegal Transportation of Voters

Any person who corruptly conveys any other person or causes any other person to be conveyed to any constituency for the purpose of enabling or assisting that other person to vote unlawfully in that constituency, is guilty of the offence of illegally transporting voters.³¹

7.06 Penalties for Corrupt Practices

Any person guilty of the offence of personation is liable to imprisonment for a period not exceeding three years.

Any person guilty of a corrupt practice other than personation is liable to a fine not exceeding two thousand dollars or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Any person convicted of a corrupt practice by the High Court may, in addition to any other punishment, be declared to be incapable, for a period not exceeding five years from the date of his conviction, of –

- (a) being registered as a voter or of voting at an election; or

- (b) filling a public office, other than a public office the tenure of which is regulated exclusively by or in terms of the Constitution and, if he holds any such office, the High Court may declare that that office shall be vacated by him as from the said date.³²

7.07 Illegal Practices

No person shall for the purpose of promoting or procuring the election of a candidate at an election –

- (a) incur election expenses in respect of any matter or in any manner constituting an offence under the Act or any other law or in respect of any matter or thing payment for which is prohibited; or
- (b) receive any payment or be a party to any contract for payment, whether before, during or after an election –
- (i) for any of the matters specified in paragraph (a); or
- (ii) to a voter on account of the use of any premises for the exhibition of any address, bill, poster or notice or on account of the exhibition of any address, bill, poster or notice.

Any person who contravenes these provisions is guilty of an illegal practice.

Any person who, without the express or implied authority of a candidate or his election agent, incurs election expenses in relation to that candidate shall be guilty of an illegal practice.

Any person who knowingly provides money –

- (a) for any payment which is contrary to the Act; or
- (b) for any election expenses in excess of the maximum amount allowed by the Act; or
- (c) for replacing any money expended in any such payment or expenses, except where the same is allowed as an exception under the Act,
- is guilty of an illegal practice.

Any person who corruptly induces or procures any other person to become a candidate or to withdraw from being a candidate at an election in consideration of any payment or promise of any nature is guilty of an illegal practice and any person who becomes a candidate or withdraws from being a candidate in pursuance of such inducement or procurement is also guilty of an illegal practice.

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

Any person who prints, publishes or posts, or causes to be printed, published or posted, any printed matter which does not bear upon the face thereof the name and address of the printer and publisher is guilty of an illegal practice unless he proves that such failure was due to inadvertence.

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

No candidate shall issue or distribute any document, including any bill, placard, poster, pamphlet, circular, or card, which contains any facsimile or imitation of a ballot paper and advises or purports to advise any person as to the manner in which such person should record his vote, unless the candidate has first obtained from the constituency registrar for the constituency concerned a certificate, in duplicate, stating that, in his opinion, such document contains no representation likely to mislead a voter as to his rights.³³

7.08 Obstruction of Voters

Any person who, at an election, wilfully obstructs a voter, either at the polling station or on his way thereto or therefrom is guilty of an illegal practice.³⁴

7.09 Philanthropical Societies Prohibited from Funding Political Purposes

It is not lawful for any philanthropical society or body to devote any of its funds for political purposes.

If a philanthropical society or body contravenes this provision, the president or chairman and the secretary or other officer of such society or body is guilty of an offence and is liable to a fine not exceeding two thousand dollars.³⁵

7.10 General Penalty for Illegal Practices

Where under the Act no penalty is expressly provided for an illegal practice, a person guilty of an illegal practice is liable to a fine not exceeding two thousand dollars.

Where a person has been convicted by the High Court of an illegal practice and no other incapacity is specially provided for in the Act in respect of such conviction, that person shall be liable, in addition to any other penalty, to be declared by the High Court to be incapable, for a period not exceeding five years from the date of his conviction, of –

- (a) being registered as a voter or of voting at an election; or
- (b) filling a public office other than a public office the tenure of which is regulated exclusively by or in terms of the Constitution and if he holds any such office, the High Court may declare that that office shall be vacated by him as from the said date.³⁶

7.11 Election Void Owing to Corrupt or Illegal Practices

If upon the trial of an election petition the High Court certifies to the Minister that any corrupt or illegal practice has been committed with reference to the election the subject of the petition, by or with the knowledge and consent or approval of any of his election agents, the election of that candidate shall be void, and a fresh election shall thereupon be held.

If a candidate or any of his election agents is found at the said trial to have committed any corrupt or illegal practice, that candidate or agent may be declared by the High Court to be incapable, for a period not exceeding five years from the date of the finding of –

- (i) being a registered voter or of voting at an election; or
- (ii) filling a public office, other than a public office the tenure of which is regulated exclusively by or in terms of the Constitution, and, if he holds any such office, the High Court may declare that that office shall be vacated by him as from the said date.

When upon the trial of an election petition the High Court finds that a candidate at the election the subject of the petition has been guilty by his agent of the offence of treating or undue influence or of an illegal practice with reference to that election, and the candidate has proved to the satisfaction of the High Court that –

- (a) no corrupt practice or illegal practice was committed at that election by the candidate himself or by his election agent and the offences mentioned in the said finding were committed without the sanction or connivance of the candidate or his election agent; and
- (b) the candidate and his election agent took all reasonable precautions for preventing the commission of corrupt and illegal practices at that election; and
- (c) the offences mentioned in the findings were of a trivial, unimportant and limited character, then the election of that candidate shall not, by reason of the offences mentioned in the finding, be void, nor shall the candidate or the election agent be subjected to any incapacity under the Act.

Proceedings against a person in respect of a corrupt or illegal practice or any other offence shall be commenced within six months after the offence is alleged to have been committed or within three months after the report of the High Court, if any, whichever period last expires: provided that no proceedings shall be commenced after the lapse of one year from the date on which the offence is alleged to have been committed.³⁷

— *Section 8* —

ELECTION PETITIONS

8.01 Who May Present Election Petition

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

- (a) by any person claiming to have had a right to be elected at that election; or
- (b) by any person alleging himself to have been a candidate as such election; or
- (c) by a registered voter in the constituency concerned.

Whenever in a petition, the seat is claimed for some person other than the petitioner, such person shall be party to the petition as a co-petitioner.³⁸

8.02 Provisions Governing Election Petitions

An election petition shall be –

- (a) presented by lodging it with the Registrar of the High Court; and
- (b) signed by the petitioner or all of the petitioners if more than one.

An election petition shall be presented within thirty days after the day on which the result of the election has been notified: provided that, if the return or election is questioned upon an allegation of an illegal practice, the petition may be presented if it specifically alleges a payment of money or some other act to have been made or done since that day, by the member or an agent of the member or with the consent of the member or his election agent, in pursuance of the illegal practice alleged in the petition, at any time within thirty days after the day of such payment or other act.

Not later than seven days after the presentation of the election petition, security of an amount fixed by the Registrar of the High Court, being not less than one thousand dollars, for the payment of all costs, charges and expenses that may become payable by the petitioner –

- (a) to any person summoned as witness on his behalf; and
 - (b) to the respondent,
- shall be given by or on behalf of the petitioner.

Security given under these provisions shall be by recognizance entered into by the petitioner and sureties not exceeding four in number in a form approved by the Registrar of the High Court, which recognizance shall be signed in the presence of the Registrar of the High Court or a magistrate.

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

The respondent may, by notice in writing served upon the petitioner, within such period as may be prescribed in the rules of court, object to any recognizance given on the ground that –

- (a) the sureties or any of them are insufficient; or
- (b) a surety is dead or cannot be found; or
- (c) the recognizance has not been signed by the person named therein; or
- (d) the recognizance is otherwise invalid or defective.

An objection shall be heard and decided by the High Court and if the objection is allowed –

- (a) the petitioner may, within a further period to be fixed by the High Court not exceeding

ten days, remove the objection by a deposit of such sum of money as may be deemed necessary by the High Court to make the security sufficient;

- (b) if the petitioner does not remove the objection in the manner specified in paragraph (a), no further proceedings shall be heard on the petition.³⁹

8.03 Trial of Election Petition

An election petition shall be tried by the High Court in open court.

If, on the trial of an election petition praying the High Court to determine that some person other than the respondent is entitled to be declared duly elected in place of the respondent, it is proved that any person who voted for the respondent –

- (a) was bribed or treated or subjected to undue influence by the respondent or anyone on behalf of the respondent; or
- (b) was guilty of personation or of an illegal practice or was not qualified or was disqualified as a voter at the election,
- the vote given for the respondent by such person shall be deducted from the total number of votes given for the respondent at the election.

At the conclusion of the trial of an election petition the High Court shall determine whether the respondent was duly elected or whether any, and if so what, person other than the respondent was or is entitled to be declared duly elected, and if the High Court determines that –

- (a) the respondent was duly elected, such election shall remain as valid as if no petition had been presented against his election;
- (b) the respondent was not duly elected but that some other person was or is entitled to be declared duly elected –
- (i) the respondent shall forthwith be deemed to have vacated his seat; and
- (ii) the High Court shall forthwith certify its determination to the Minister and the Speaker, and the Minister shall thereupon, by notice published in the Gazette, declare such other person duly elected with effect from the day of the determination of the High Court;
- (c) the respondent was not duly elected and that no other person was or is entitled to be declared duly elected –
- (i) the seat of the respondent shall forthwith become vacant; and
- (ii) the High Court shall forthwith certify its determination to the Speaker who shall notify the President that the vacancy has occurred, and the cause of such vacancy.

Where a charge is made in an election petition of a corrupt practice or illegal practice having been committed at the election to which the petition refers, the High Court shall, in addition to the certificate, at the same time report in writing to the Speaker –

- (a) whether any corrupt practice or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of a candidate at that election or by or

- with the knowledge and consent of any of his agents, and the nature of such corrupt practice or illegal practice; and
- (b) the names of all persons who have been proved at the trial to have been guilty of any corrupt practice or illegal practice; and
 - (c) whether corrupt practices or illegal practices have, or whether there is reason to believe corrupt practices or illegal practices have, extensively prevailed at the said election.

The High Court may, in addition to the certificate required, at the same time make a special report to the Speaker as to any matter arising in the course of the trial, including the commission or possible commission of any corrupt practice or illegal practice, where the High Court considers that an account of such matter ought to be submitted to Parliament.

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 action from all or a portion of the costs thereof, then –

- (a) if the High Court finds that the election of the respondent was due to a mistake or improper performance or failure of performance of any function *bona fide* made by any member of the Public Service, it may, after sufficient notice to the Minister to show cause to the contrary, make such order as to the payment from the Consolidated Revenue Fund of the costs of the action or portion thereof as it thinks fit;
- (b) if the High Court finds that the election of the respondent was due to a mistake or improper performance or failure of performance of any function *mala fide* made by any member of the Public Service, it may, after sufficient notice to such member of the Public Service to show cause to the contrary, make such order as to payment by such member of the Public Service of the costs of the action or portion thereof as it thinks fit.⁴⁰

8.04 High Court Reports on Corrupt and Illegal Practices

If the High Court states in the report on the trial of an election petition that any person has or may have been guilty of a corrupt practice or an illegal practice or that there is reason to believe that corrupt or illegal practices have extensively prevailed at the election to which the petition refers –

- (a) that statement, with the evidence taken at the trial, shall be transmitted by the Registrar of the High Court to the Attorney-General with a view to the institution of any prosecution proper to be taken in the circumstances; and
- (b) the report shall, so far as it concerns any such person, be transmitted by the Registrar of the High Court to the Registrar-General.⁴¹

8.05 Witnesses

On the trial of an election petition –

- (a) any witness shall be summoned and sworn in the same manner as a witness may be summoned and sworn in civil proceedings before the High Court;

- (b) the High Court may examine any witness or any person in court, even though such witness or person is not called or examined by any party to the petition;
- (c) after any examination the witness or person may be cross-examined by or on behalf of the petitioner and the respondent or either of them.

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

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

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

No evidence given by a witness shall, except upon a charge of making a false statement, be admissible in evidence against him in any criminal or civil proceedings to which he is a party.

On the trial of a petition complaining of an undue election or undue return and claiming the seat for some person the respondent may give evidence to prove that the election of that person was undue, in the same manner as if the respondent had presented the petition complaining of such election.⁴²

8.06 Withdrawal of Election Petitions

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

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

The High Court may, if it thinks fit, substitute as a petitioner any applicant, and may further, if the proposed withdrawal has been, in the opinion of the High Court, induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may become payable by the substituted petitioner and that the original petitioner shall be liable to pay such costs.

If no order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within fourteen days after the order of substitution.

If a petition is withdrawn the petitioner is liable to pay the costs of the respondent.

Where there are more petitioners than one, no application to withdraw a petition shall be made without the consent of all the petitioners.⁴³

8.07 Costs of Petitions

All costs, charges and expenses of and incidental to the presentation of an election petition, and to the proceedings consequent thereon, shall be defrayed by the parties to the election petition in such manner and in such proportions, as the High Court may determine, regard being had to –

- (a) the disallowance of any costs, charges or expenses which may, in the opinion of the High Court, have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or of the respondent; and
- (b) the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful.

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

If –

- (a) any petitioner makes default, for a period of thirty days after demand, in paying to any person summoned as a witness on his behalf or to the respondent any sum certified to be due to him for his costs, charges or expenses; and
 - (b) the default is proved to the satisfaction of the High Court,
- every person who has entered into a recognizance relating to the petition shall be held to have made default in his said recognizance, and the Registrar of the High Court shall thereupon certify such recognizance to be forfeited, and execution may thereupon, by leave of the High Court, be sued out thereon at the suit of any such witness or respondent as occasion may require.⁴⁴

NOTES

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| 1. Constitution of Zimbabwe, see section 58 | 8. Electoral Act 1990, see section 11 |
| 2. Ibid., see sections 59-61 | 9. Ibid., see section 12 |
| 3. Ibid., see section 61 | 10. Ibid., see section 13 |
| 4. Electoral Act 1990, see sections 4 and 5 | 11. Ibid., see section 14 |
| 5. Ibid., see sections 6 and 7 | 12. Ibid., see section 15 |
| 6. Constitution of Zimbabwe, see section 59 | 13. Ibid., see sections 16-20 |
| 7. Ibid., see section 60 | 14. Ibid., see sections 21-27 |

15. Ibid., see section 29
16. Ibid., see sections 31-35
17. Ibid., see section 38
18. Ibid., see section 39
19. Ibid., see section 40
20. Ibid., see section 41
21. Ibid., see section 42
22. Ibid., see sections 43-48
23. Ibid., see sections 49-52
24. Ibid., see sections 53-62
25. Ibid., see sections 64-68
26. Ibid., see sections 76-84
27. Ibid., see section 97
28. Ibid., see section 98
29. Ibid., see section 99
30. Ibid., see section 100
31. Ibid., see section 101
32. Ibid., see section 102
33. Ibid., see sections 103-109
34. Ibid., see section 114
35. Ibid., see section 115
36. Ibid., see section 116
37. Ibid., see sections 117, 118 and 122
38. Ibid., see section 125
39. Ibid., see sections 126-128
40. Ibid., see section 129
41. Ibid., see section 130
42. Ibid., see sections 131-133
43. Ibid., see section 134
44. Ibid., see section 137