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Annex F

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THE LOCAL AUTHORITIES (ELECTIONS) ACT NO. 4 OF 1979

THIS VOLUME INCORPORATES ALL AMENDMENTS MADE
BY ACT NO. 3/1983 & ACT NO. 8/1985 AND ACT. NO. 7/1992

PREPARED BY THE PRIME MINISTER'S OFFICE, DODOMA
FOR THE PURPOSE OF PREPARING COUNCILLORS'
ELECTIONS

FEBRUARY, 1993

D.S.
F Clifton White Resource Center
International Foundation for Election Systems

TANZANIA

amending Acts

+ No. 1 of 1993 - passed in Parliament February 1993. ~~It is only~~ 1/1
 a) defined "Electoral Authority" in section 2, to mean "The National Electoral Commission"
 b) Repealed Section 6 which had dealt with the establishment of electoral authorities.
 + No. 4 of 1993 - The Local Govt. Laws (amendment) Act, 1993. (Lipitishwa Bunge 23/4/93)
 ulirekebisha (a) Local Govt. (District Authorities) Act, 1982 (b) Local Govt. (Urban Authorities) Act 1982
 c) Local Authorities (Elections) Act 1979. Kwa boti
 a) and (b) above rekebisha simply give power to the Electoral Commission kwata utaratibu wa
 kuwachagua Madiwani wanawake ~~katika~~ Amendment
 za Act 4/79 (item (c) above) zilihusu sections
 9, 42, 58, 60, 63, 73, 109 na 125. Zimo huanuwa
 1/1: Tarehe hiyo (23/4/93) Bunge lilipitisha
 pia "Sheria ya Mabadiliko ya Kumi Katika
 Katiba ya Nchi ya Mwaka 1993". Sheria hiyo
 ulirekebisha fungu la 74 la Katiba ili
 f (1993) a) kuipa madaraka Tume ya Uchaguzi
 kuesimamia uchaguzi wa Madiwani
 b) kutekeleza jukumu jingine lolote itakayopenda kwa Sheria iliyotayara na
 Bunge....

THE LOCAL AUTHORITIES (ELECTIONS) ACT NO. 4 OF 1979

ARRANGEMENT OF SECTIONS

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THE UNITED REPUBLIC OF TANZANIA



No. 4 OF 1979

I ASSENT,

J. K. NYERERE,
President

An Act to consolidate the law relating to elections to Local Authorities, and to amend and repeal certain written laws in consequence of the enactment of this act

ENACTED by the Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY

1. This Act may be cited as the Local Authorities (Elections) Act, 1979 and shall come into operation on such date as the Minister shall by notice published in the *Gazette*, appoint.

Short title
and com-
mence-
ment

2.—(1) In this Act, unless the context otherwise requires—

Interpre-
tation

"the Act" means in relation to a district authority the Local Government (District Authorities) Act, 1982; and in relation to an urban authority the Local Government (Urban Authorities) Act, 1982;

"Candidate" means a person who submit himself for election to a local authority;

Provided that:

- (a) for the purpose of those provisions of this Act which relate to a time after the nomination of candidates, it does not include a candidate whose nomination is declared invalid by the Returning Officer or who withdraws his candidature.

"Certificate of registration" means a certificate issued under the provisions of this Act certifying that the person named in that certificate has been registered as a voter;

"close of polls" means the latest close of poll in a polling station in relation to any election;

"Council" means:

- (a) in relation to a district, a District Council;
- (b) in relation to a city, a City Council;
- (c) in relation to a municipality, a Municipal Council;
- (d) in relation to a town, a Town Council, established or deemed to have been established under the Act;

"counting agent" means a person appointed as a counting agent under the provision of section 71;

"District Authority" means a District Council; township authority; or as the case may be a village Council;

"election" means an election in a ward of an elected member of a local authority and includes a by-election for that purpose;

"election day" in relation to any ward means the day appointed under section 48 or any day substituted for it in accordance with the proviso to that section or, in the case of an election in which the candidate is declared elected under subsection (2) of section 45 means the date on which he was so declared elected;

"Electoral Authority" means the Electoral commission established by article 74 of the constitution; *the Act*

"Local Government Authority" means a district authority or an Urban authority established or deemed to have been established under the Act;

"Member" means an elected member of a local authority;

"local authority election" means the election of a member to a local authority;

"Minister" means the Minister for the time being responsible for local government.

"nomination" means nomination as a candidate for election to a local authority and reference to nomination except where they are by context or expressed to be reference to nomination, shall be construed as reference to final nomination.

"nomination day" means a day appointed as primary nomination day;

"Political Party" means a Party registered as such under an Act of Parliament.

"polling agent" means a person appointed under the provisions of section 58;

Acts, 1979
No. 10

"polling district" in relation to an election in a ward means a ward declared as such under the Act.

"polling assistant" means a person appointed as a polling assistant under the provisions of paragraph (b) of section 57;

"polling station" means a polling station specified under the provisions of section 49;

"presiding officer" means a person appointed under the provisions of paragraph (c) of section 57 to be in charge of a polling station;

"qualified" or "qualification" means:

- (a) When used in relation to a person claiming to be entitled to be registered as a voter qualified to be or qualification as a voter;
- (b) when used in relation to a person claiming to be qualified as a candidate for a local authority election, qualified to be or qualification as a candidate for election to a local authority for the ward in question;

"register" means a register of voters compiled and maintained in accordance with the provisions of this Act;

"Returning Officer" means a Returning Officer appointed under section 9 and includes, insofar as is provided in that section, an Assistant Returning Officer, and

"the Returning Officer" in relation to a polling district means the Returning Officer appointed for that polling district;

"voter" means any person who is for the time being qualified to vote at an election in accordance with the provisions of this Act;

"ward" means a division of the jurisdiction within the jurisdiction of a local authority demarcated as such in pursuance of the provisions of the Act; and declared to be a ward of that local government authority under section 8 for the purposes of this Act;

(2) Reference in this Act to an election in a ward, shall be construed as reference to the Local Government Authority election in a ward demarcated in pursuance of the provisions of the Act and declared as such for the purposes of this Act.

3. This Act shall apply to all local authorities in respect of which it is provided that some or all the members shall be elected. *Applicable*

4. All regulations, directions and notices which an Electoral Commission is empowered to make, issue or give, shall be deemed to have been validly made, issued or given, if they are made, issued or given under the signature of the Chairman of the Electoral Commission or the Executive Officer of the Electoral Commission. *Directions and notices of the Electoral Authority*

PART II ELECTORAL AUTHORITIES

6.—(1) There shall be established for each region a Regional Electoral Authority and for each city a City Electoral commission for the purpose of supervising the conduct of any election held under this Act. *Establishment of Electoral Authorities*

(2) Every Electoral Authority established under this Act shall consist of:—

- (a) a Chairman, who shall be appointed by the Minister by name or by reference to an office;

*Repealed by Act 11/73
Cruised in Feb 95 by Parliament*

- (b) the Regional Development Director for the region for which the Electoral Authority is established or an official appointed by the Regional Development Director, or in the case of an Electoral Authority established for a city, the City Director or an official appointed by the City Director for that city;
- (c) not less than three nor more than five members who shall be appointed by the Regional Development Committee; or in the case of a City, by the City Council;
- (3) The Regional Development Director, or as the case may be, the Regional Director of Administration, shall be the Executive Officer of the Electoral Authority.
- (4) Every Deputy City Director, Municipal Director, Town Director and every District Executive Director shall be an assistant Executive Officer of the Electoral Authority in respect of the local government authority for which the electoral Authority is established.
- (5) A person shall not be qualified for appointment as Chairman of an Electoral Authority unless he holds or has held a judicial office.
- (6) A person shall not be qualified for appointment as a member of an Electoral Authority if he is—
- a member of the National Assembly;
 - an Area Commissioner or a Regional Commissioner
 - a councillor or an officer or an employee of a council.
- (7) If the office of Chairman falls vacant or the holder of the office becomes unable for any reason to perform his functions as a member of the electoral Authority, the Minister may appoint another person qualified for appointment to be the Chairman, and if the office of any member falls vacant or the member becomes unable for any reason to perform his functions as a member of the Electoral Authority the Regional Development Committee or, as the case may be, the City Council may appoint another person to be a member of the Electoral Authority.
- (8) Subject to the provisions of this section, the office of an appointed member of an Electoral Authority shall become vacant:—
- at the expiration of five years from the appointment; or
 - if any circumstances arise that if he were not a member of the Electoral Authority, would cause him to be disqualified for appointment.
- (9) An Electoral Authority may act notwithstanding any vacancy or the absence of any member:
- Provided that any decision of the Electoral Authority shall require the concurrence of the majority of all the members present and voting.
- (10) In the exercise of its functions under this Act, an Electoral Authority shall not be subject to the direction or control of any person or authority.

7. The conduct of every election shall be subject to the direction and supervision of the Electoral Authority having jurisdiction in the area where the election is conducted.

Conduct of elections to be under the supervision of an Electoral Authority

8. The Minister shall by notice, published in the Gazette declare the wards within the area of a Local Government Authority which shall be ward for the purposes of this elections.

Wards

9.—(1) For the purposes of any local government authority election held under this Act every deputy City Director, Municipal Director, Town Director and District Executive Director shall be a returning officer for the local government authority in respect of which he is such director.

Returning officers and staff

(2) Each Returning Officer shall appoint by office such number of Assistant Returning Officers as he may think fit.

(3) Subject to such directions as the Returning Officer may from time to time issue, an Assistant Returning Officer may exercise and perform all the powers and duties conferred or imposed on Returning Officer other than the power of appointment conferred by subsection (2) and, except with respect to the power of appointment every reference in this Act to the Returning Officer shall be deemed to include a reference to an Assistant Returning Officer.

(4) Returning Officer, may, subject to the directions of the Electoral Commission, employ such staff as they may require to carry out their functions under the provisions of this Act.

(5) Every Returning Officer and Assistant Returning Officer shall upon his appointment subscribe before a magistrate an oath of secrecy in the prescribed form.

Form of oath

10.—(1) The Electoral Commission shall appoint by office a Registration Officer who shall be in charge of every polling district within the local authority for which he is appointed.

Registration Officers and staff

(2) A Registration Officer shall appoint by office such number of Assistant Registration Officers as he may think fit.

(3) Subject to such direction as the Registration Officer may from time to time issue, an Assistant Registration Officer may exercise and perform all the powers and duties conferred or imposed on a Registration Officer other than those conferred or imposed by subsection (2) and, except with respect to the power of appointment, every reference in this Act to the Registration Officer shall be deemed to include a reference to an assistant registration officer.

(4) Registration Officer may, subject to the directions of the Electoral Commission, employ such staff as they may require to carry out their functions under the provisions of this Act.

Notwithstanding subsection (1), the Director of Elections may, in any case, by notice published in the Gazette appoint any person by name as a Returning Officer for a local government authority in respect of which the Electoral Commission has appointed a Registration Officer and where such a person is appointed, the Director of Elections may, by notice published in the Gazette, direct that the person so appointed shall be deemed to be a Returning Officer for the purposes of this Act.

PART III

HOLDING OF ELECTIONS AND TENURE OF OFFICE OF COUNCILLORS

Ordinary
elections

12.—(1) There shall be held an ordinary election of Councillors in every ward of a Local Government Authority throughout Tanzania on such date as the Minister shall, by an order published in the *Gazette*, prescribe and in every fifth year after the previous ordinary election whenever.

- (a) a new council is established or;
- (b) an alteration is made in the division of the area of an existing local government into wards in the definition of the boundaries of any wards.

(2) An ordinary election of Councillors of a local government authority shall be held in every ward on such a date as the Minister shall, by order published in the *Gazette*, prescribe.

(3) The Minister may, in the order made under subsection (2) direct that an ordinary election of Councillors of a local government authority specified in the order shall be held in every ward or as the case may be in any particular ward of the local government authority.

(4) An order made under this section shall specify the day or days on which Returning Officers may receive nomination of candidates for election in any ward to which the order relates.

13.—(1) Subject to the provisions of this section, a by-election to fill a casual vacancy in the office of a Councillor shall be held on such date as the Electoral Commission may prescribe, being a date not later than ninety days after the occurrence of the vacancy.

Provided that a poll shall not be taken in any by-election in respect of which only one candidate is validly nominated for election.

(2) Unless the Minister otherwise, by an order, directs, a by-election to fill a casual vacancy in the office of a Councillor shall not be held in any ward in which an ordinary election of Councillors is or may be required to be held under section 12.

(3) An order under this section shall specify the day or days on which, and the hours within which Returning Officers may receive nominations of candidates for election in any ward to which the order relates.

14.—(1) There shall be one Councillor elected for each ward into which the area of a Council is divided and every Councillor shall, with effect from the date following the date on which the election results are confirmed by the Electoral Commission, be an elected member of the Council for which he has been elected.

(2) Subject to the provision of this Act, the term of office of an elected member of a council shall be five years and all the elected members shall retire on the fifth anniversary of the date on which they assumed their office under the provisions of sub-section (1) and their place shall be filled by newly elected members who shall come in the office on that day; but a member elected in a by-election shall hold office for the remainder of the term of office of his predecessor.

PART IV

REGISTRATION OF VOTERS

15. Every citizen of Tanzania who has attained the age of eighteen years shall, unless he is disqualified by this or any other Act, be entitled to be registered under and in accordance with the provisions of this Act as a voter.

Qualifica-
tions for
registra-
tion

16.—(1) No person shall be qualified for registration as a voter or shall be registered under this Act:—

Disquali-
fication
for regis-
tration

- (a) if he is under a declaration of allegiance to some country other than Tanzania;
- (b) if, under any law in force in Tanzania, he is adjudged or otherwise declared to be of unsound mind or is detained as a criminal lunatic or during the pleasure of the President;
- (c) if he is under sentence of death imposed on him by any court in Tanzania or sentence of imprisonment (by whatever name called) exceeding six months imposed on him by the court or substituted by competent authority for some other sentence imposed on him by the court;
- (d) if he is disqualified from registering as a voter under the provisions of this Act or any other law in force relating to offences connected with any election.

(2) For the purposes of paragraph (c) of sub-section (1):—

- (a) two or more sentences that are required to be served consecutively shall be regarded as separate sentences if none of them exceeds six months but if any one of them exceeds six months they shall be regarded as one sentence; and
 - (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to, or in default of the payment of, a fine.
- (3) Where any person registered under this Act ceases to be qualified for registration as a voter his name shall be deleted from the register:

Provided that no name shall be deleted from a register, save in accordance with the provisions of this Part or on the report of a court that that person has been guilty of a practice which disqualifies him from registering or voting.

17. No person shall be registered as a voter in more than one ward.

No person
shall be
registered
in more
than one
ward.

18.—(1) The Registration Officer shall make and maintain a register of voters for every ward.

Register
of voters

(2) The register shall show, relative to every voter named in that register, the number of the certificate of registration issued to the voter, the sex of the voter and the address at which the voter ordinarily resides.

(3) Such number of copies of every register of voters shall be kept and maintained as the Registration Officer may think fit.

Place of
and dis-
qualifica-
tion for
voting

19.—(1) Subject to the provisions of this Act, a person who is registered as a voter in any ward shall be entitled to vote at any election in that ward, and shall be entitled so to vote only at the ward where he is registered and not elsewhere.

(2) Notwithstanding the provisions of subsection (1) a Presiding Officer or Polling Assistant at any ward shall not permit any person to vote at that ward unless that person satisfies the Presiding Officer or, as the case may be, the Polling Assistant, that he is the voter he claims to be by producing to him the certificate of registration issued to that person or such other proof of his identity as the Registration Officer may for the time being direct to be a sufficient proof of identity of the person claiming to be entitled to vote.

(3) Notwithstanding that a person is registered as a voter under this Act he shall not be entitled to vote in any election if any circumstances arise in relation to him which, if he were not so registered, would cause him to be disqualified for registration under (this Act.)

(4) Notwithstanding any other provision of this Act, the Executive Officer or any person authorised in that behalf by the Executive Officer may, by a certificate under his hand, authorize a registered voter who is a candidate at an election in a ward to vote at the election in that ward, at the ward specified in that certificate whether or not that candidate is registered as a voter in that ward.

(5) Notwithstanding any other provision of this Act, where a voter registered as a voter in any ward is employed as a Returning Officer, Presiding Officer, Police or in any other official capacity at a ward other than at the ward allocated to him, the Executive Officer or any person authorized in that behalf by the Executive Officer, may by a certificate under his hand, authorize the voter to vote at any other ward and that ward shall, for the purposes of this Act, be deemed to be a ward allocated to that voter.

(6) A person who is serving a sentence of imprisonment may, subject to the provisions of this Act, be registered as a voter, or vote at an election, only if permitted to do so by the written law governing his imprisonment.

Provided that nothing in this subsection shall be construed as authorizing any person to vote at any polling station other than the polling station allocated to him.

Change of
name

20. A person registered as a voter whose name has been changed consequent upon marriage or otherwise since being so registered shall, if not disqualified from voting under section 19, be entitled to vote under the name in which she or he is so registered.

21.—(1) Where an election is to take place in any local authority the Electoral Authority may, at any time within six months before the date of the election, direct the Registration of voters. Times for
Registration

(2) Any person entitled to be registered as a voter at any ward and who has not been so registered may present himself at the relevant ward and shall, upon so presenting himself and upon satisfying the Registration Officer in charge of the ward, that he is entitled to be registered as a voter, be registered as a voter in accordance with the provisions of this Act.

(3) Notwithstanding any provision of this section to the contrary the Electoral Authority may direct that the registration of voters in all or any ward specified in that direction shall be suspended for such period as the Electoral Commission may direct if, in the opinion of the Electoral Commission, it is desirable to suspend the registration of voters in view of the fact that an election is likely to take place in that ward, in the near future or for any other reason.

(4) Where a direction under subsection (3) has been issued in respect of any ward, no registration of voters shall take place in that ward during the period specified in that direction.

22.—(1) Where a person makes an application for registration as a voter in accordance with the provisions of section 21, he shall, if he satisfies the Registration Officer or any other officer for the time being responsible for the registration of voters, that he is qualified to be registered as a voter for that ward be registered a voter for that ward upon being so registered shall be issued with a certificate of registration in the prescribed form. Certificate of
Registration

(2) The Electoral Commission may by regulations made under section 125 require any person applying for registration as a voter, to fill in such forms as may be prescribed.

23.—(1) Where any voter who is registered in one ward becomes ordinarily resident in some other ward he may apply in person in accordance with the provisions of section 21 to the Registration officer in charge of the ward in which he is ordinarily resident; and the Registration Officer shall:— Change of
residence

(a) if he is satisfied that the applicant:—

(i) is qualified for registration; and

(ii) is ordinarily resident in the ward in respect of which he makes the application;

(b) on the surrender by the applicant of his certificate of registration or on the applicant's satisfying the Registration Officer that it is lost or destroyed, forthwith register the applicant in the register for the ward and issue to him a new certificate of registration for that ward.

(2) Where a Registration Officer registers an applicant under this section, he shall forthwith:—

- (a) cancel the certificate of registration surrendered by the applicant and forward it to the Executive Officer; or
- (b) if he is satisfied that the applicant's certificate of registration is lost or destroyed, give notice to the Executive Officer of the issuance by him a new certificate of registration, and shall amend the register accordingly.
- (3) Notwithstanding the provisions of subsection (1) of this section, where by reason of:—
- any change of name of a ward; or
 - any adjustment in the number of wards; or
 - any adjustment in the boundaries or areas of one or more wards,
- a ward becomes part of another ward or a ward becomes a ward of another local authority with a new name, it shall not be necessary for a voter whose name is on any register affected by that change of name or adjustment to apply for the transfer of his name to the appropriate register, but the Registration Officer, shall, as soon as possible, effect such amendments or transfers as may be necessary to give effect to that adjustment as if an application for transfer had been made by the voters concerned pursuant to the provisions of this section.

Certificate of registration lost, defaced or destroyed

24.—(1) Where a certificate of registration, issued to any person is lost, defaced or destroyed, the person to whom that certificate was issued may apply in person to the Registration Officer for the issuance of a new certificate of registration.

(2) On any application, the Registration Officer shall, if satisfied that the application is properly made and that the applicant remains qualified for registration, issue the applicant with a new certificate of registration upon the applicant paying the prescribed fee, if any, and where the application is made in respect of a defaced certificate of registration, upon the applicant surrendering the defaced certificate of registration.

Amendment of particulars

25. Where any of the particulars on a certificate of registration or in a register requires amendment by reason of a change of name, or of any other alteration in the circumstances affecting the person to whom it was issued, other than a change of residence from one ward, the person to whom that certificate of registration was issued may apply in person to the Registration Officer for issuance of a new certificate of registration, and the Registration Officer shall, upon an application being made to him and upon being satisfied that the application is properly made and that the applicant remains qualified for registration, issue to the applicant a new certificate of registration, and shall make any necessary amendments to the register:

Provided that no new certificate of registration shall be issued under this section unless the applicant surrenders his certificate of registration or satisfies the Registration Officer that it is lost or destroyed and pays the prescribed fee, if any.

26. Where, under the provisions of this Part, an application is made to a registration Officer by a person who claims that he has lost his certificate of registration issued to him or that the certificate of registration has been destroyed, the Registration Officer shall require the applicant to make a declaration in the prescribed form relating to that loss or destruction, and without prejudice to his power to refuse the application on other grounds, may refuse the application unless the applicant makes the declaration.

Declaration relating to lost or destroyed certificate of registration

27. Where a Registration Officer refuses an application under the foregoing provisions of this Part, he shall, if so required by the applicant, give to the applicant a written statement in the prescribed form setting out the grounds of his refusal, and any applicant aggrieved by that refusal may, within twenty-one days after receipt by him of the statement appeal against that refusal to a Resident Magistrate.

Refusal of application

28. Any person may, on application made in that behalf to the Registration Officer or to the Executive Officer, inspect the Register of any ward on such day and at such time as the Registration Officer or, as the case may be, the Executive Officer, may appoint.

Inspection of register

29.—(1) Where any person who has been registered as a voter and holds a valid certificate of registration in respect of a ward discovers, pursuant to an inspection made in accordance with the provisions of section 28 that his name does not appear in the register of the ward he may apply to the Executive Officer or the Registration Officer for inclusion of his name in the register, and the Executive Officer or, as the case may be, the Registration Officer shall, if satisfied that the name of such person should have been included in the register of the polling district, amend or cause to be amended the register by inclusion of the name of that person.

Inclusion of name in register

(2) Where the Executive Officer or the Registration Officer refuses to amend or cause to be amended the register to include the name of any person, the person aggrieved by that refusal may object to that refusal.

30.—(1) Any person whose name appears in the register for any ward may object to the retention in that register of his own name or the name of any other person on the ground that he or that other person is not qualified or is no longer qualified to be registered in that register or that other person is dead.

Objections

(2) The Executive Officer or the Registration Officer may object to the retention of any name in the register of any polling district on any such ground aforesaid.

(3) Any person who makes an objection under this section or under section 29 shall hereinafter be referred to as the objector.

Procedure
for mak-
ing objec-
tions

31.—(1) Except in the case of an objection made by a Registration Officer, every objection shall be made in duplicate in the prescribed form and shall be made to the Registration Officer within such period as may be prescribed.

(2) Every objection, other than an objection made by the Executive Officer or Registration Officer, shall be accompanied by the sum of five hundred shillings as a deposit.

(3) Only such objections as are made in accordance with the provisions of this section shall be by the Registration Officer.

(4) The Registration Officer shall, as soon as practicable after receiving an objection made in accordance with this Part or, in the case of an objection made by himself, within such period as may be prescribed send a notice of such objection to the person in regard to whom that objection has been made.

Inquiry
and deter-
mination
by Regis-
tration
Officer

32.—(1) The Registration Officer shall as soon as practicable hold a public inquiry into all objections which have been duly made, giving not less than fourteen clear days' written notice of the date on which and the time and place at which the inquiry will commence to each objector and person in regard to whom the objection has been made. At any public inquiry any person appearing to the Registration Officer to be interested in or affected by the subject matter of the inquiry may appear and be heard either personally or by any other person duly authorized by him in writing in that behalf.

(2) Where an objection is made to the retention or non-inclusion of any name in the register, the Registration Officer shall call upon the objector, or any person authorized in writing in that behalf by the objector, to give *prima facie* proof of the objection.

(3) If, in the opinion of the Registration Officer, the *prima facie* proof is genuine the Registration Officer shall require proof of the present qualification for registration of the person in regard to whom the objection has been made, and:—

(a) If that person's qualification is not proved to the Registration Officer's satisfaction, he shall delete or cause to be deleted such person's name from the register;

(b) If that person's qualification is so proved, he shall retain, or as the case may be, include, or cause to be retained or included that person's name in the register.

(4) If, on the date fixed for inquiry into any objection, the objector or any person authorized in writing in that behalf by the objector fails to appear, or appears but fails to give *prima facie* proof of the ground of objection to the satisfaction of the Registration Officer, the Registration Officer shall retain or cause to be retained the name of the person in regard to whom the objection is made in the register or, as the case may be, take steps for the amendment of the register of the name of the person objecting against the non-inclusion of his name in the register.

(5) If an objection made by any person other than the Registration Officer or the Executive Officer is disallowed by the Registration Officer and, in his opinion, the objection was made without reasonable cause, the Registration Officer may, if he thinks fit, order in writing the objector to pay the person in regard to whom the objection has been made such sum, not exceeding one thousand shillings, as the Registration Officer considers reasonable compensation for any loss suffered by that person in consequence of the objection.

(6) Any sum awarded as compensation under this section shall be recoverable as though the order of the Registration Officer were a decree of a district court for the recovery of the money.

(7) If an objection is disallowed by the Registration Officer and he is of opinion that the objection was made without reasonable cause, the deposit of five hundred shillings shall be liable to be forfeited to the Government by order of the Registration Officer, but otherwise that deposit shall be refunded.

(8) The validity of any proceedings under this section shall not be questioned by reason only of the Registration Officer hearing and determining an objection made by himself, and in any such case the procedure at an inquiry under this section shall be commenced at the stage at which the Registration Officer required proof of the present question of the person in regard to whom the objection is made.

33. If any objector or person in regard to whom objection has been made is dissatisfied with the decision of the Registration Officer under Section 32 he may, within twenty days from the date of that decision appeal to a Resident Magistrate.

Objector
or person
objected
to may ap-
peal

34.—(1) Every appeal under section 27 or 33 shall state shortly the grounds of appeal, and shall be accompanied by the sum of five hundred shillings as deposit.

Appeals
to resi-
dent
Magis-
trates

(2) The Resident Magistrate shall hear every appeal in public giving notice of the time, date and place of the hearing of the appeal to the parties concerned. It shall be in his discretion whether to hear or not to hear any evidence. His determination of the appeal shall be final and conclusive and shall not be called in question in any court.

(3) When the Resident Magistrate has determined the appeals which have been lodged with respect to any register or the issue of certificates of registration, he shall forward to the Registration Officer a statement under his hand containing the names which he has decided shall be inserted or retained in the register and those which he has decided shall be deleted from the register, and a statement of the names of the persons to who certificates of registration shall be issued, and the Registration Officer shall amend or cause to be amended the register and issue the certificates of registration accordingly.

Provided that:—

- (a) the Resident Magistrate shall not require a Registration Officer to issue a certificate of registration to any person who claims he has lost a certificate of registration issued to him and relevant to the proceedings, or that any that certificate of registration has been destroyed, unless such person shall have made the declaration provided for in section 26 and
- (b) in any case to which section 24, 25 or 26 applies and no declaration has been in accordance with section 26 the Registration Officer may refuse to issue a new certificate of registration until the previous certificate of registration issued to the person concerned has been surrendered.

(4) If an appeal is dismissed and the resident magistrate is of opinion that the appeal was made without reasonable cause, he may order that the deposit of five hundred shillings shall be forfeited to the Government, but in any other case the deposit shall be refunded.

(5) No party to an appeal shall be entitled to any cost or compensation:

Provided that if an appeal is made and is not allowed by the Resident Magistrate and in his opinion the appeal was made without reasonable cause, the resident magistrate may, if he thinks fit, order the appellant to pay compensation of such amount, not exceeding one thousand shillings, as he considers reasonable. Any sum so awarded shall be recoverable as though the order was decree of a district court for the recovery of money.

(6) Where an appeal has been made under this section, the Resident Magistrate may, whether he allows or dismisses the appeal, order that any deposit forfeited or be forfeited or any sum of money paid or to be paid by way of compensation in accordance with an order of the registration made under section 32 (or so much of such deposit or such sum as the Resident Magistrate may specify) shall not be paid or forfeited, or shall be returned to the objector, as the case may be and any sum ordered to be returned shall be recoverable as though the order was a decree of a district court for the recovery of money.

(7) Witnesses may be summoned and sworn at the hearing of an appeal under the provisions of this section in the same manner as nearly as circumstances admit as in a trial by a district court in the exercise of its criminal jurisdiction and shall, without prejudice to the provisions of any other law, be subjected to the same penalties for the giving of false evidence or for non-attendance.

(8) Any person entitled to appear as a party at an appeal brought under the provisions of this section may appear either in person or by advocate.

(9) The procedure and practice of hearing of appeals under this section shall be regulated in such manner as the Resident Magistrate shall decide, and without prejudice to the generality of the foregoing, a Resident Magistrate may, if satisfied that two or more appeals involve the same question, declare that the decision given in any appeal heard previously shall be binding on the parties to that of the other appeal or appeals as he shall specify.

35.—(1) Where the name of person has been added to a register under section 34, or any certificate of registration has been issued to any person in pursuance of that section, the Registration Officer shall take such steps in relation thereto as if he had not refused the application to which the appeal relates.

Provisions consequential to additions to or deletions from register under this Part

(2) Where the name of any person has been deleted from a register under section 32 or 34, Registration Officer shall require that person either:—

- (a) to surrender any certificate of registration issued to such person under this Act; or
- (b) to make and deliver to the Registration Officer the declaration provided for in section 26.

within such period (not being less than ten days) as the Registration Officer shall specify; and the Registration Officer shall cancel any certificate of registration so surrendered.

PART V

VOTING

36.—(1) Subject to the provisions of this Act every person, who is a citizen of the United Republic, and who at the time when any election is held in any ward under this Act is duly registered in that ward, as a voter, shall be entitled to vote at that election in the ward in which he is registered or was registered is situated.

Persons entitled to vote

(2) Every person shall, whenever he wishes to vote at an election under this Act, identify himself to an election officer in such manner as may be prescribed and no person shall be entitled to vote more than once at that election.

37. Notwithstanding the provisions of section 36, a person who is registered as a voter shall not be entitled to vote at any election if circumstances arise in relation to that person that, if he were not registered, would cause him to be disqualified for registration as a voter.

Disqualification for voting

38. Every person entitled to vote under the provisions of section 36 shall vote at a ward or, in which he is registered as a voter for the purposes of election to a local authority, but not elsewhere.

Place of Voting

PART VI

QUALIFICATION OF CANDIDATES FOR ELECTION

39.—(1) A person shall be elected as a member of Local Authority or stand as a candidate at an election for Local Authorities if he is qualified for Election.

(2) A person shall be qualified for Election if he satisfies the following conditions that is to say—

- (a) he is a citizen of the United Republic;
- (b) he has attained the age of twenty one years;
- (c) he is not disqualified for election under the provisions of section 40;
- (d) he is ordinarily resident within the area of jurisdiction of the Local Authority;
- (e) he can read and write in Kiswahili or English;
- (f) he is member of and sponsored by a political party registered as such by an Act of Parliament; and
- (g) he has a lawful means of livelihood.

40.—(1) A person shall be disqualified for election as a member of a local authority—

- (a) if he is under a declaration of allegiance to some country other than the United Republic;
- (b) if under any law in force in Tanzania he is adjudged or otherwise declared to be of unsound mind;
- (c) if—
 - (i) he is under sentence of death imposed on him by any court in Tanzania or a sentence of imprisonment exceeding six months imposed on him by a court; or
 - (ii) he is detained under an order made under the preventive Detention Act, 1962 and has so been detained under the order for a period exceeding six months; or
 - (iii) he has been deported, in accordance with the provisions of the Deportation Ordinance, under an order made under that ordinance which has been in force for a period exceeding six months, and is still in force;
- (d) If he is a party to, or a partner in a firm or manager of a company which is a party to any subsisting contract with the local authority to which he seeks election and has not, within one month before the date of election, published in the Kiswahili and English language newspapers circulating within the area of authority concerned, a notice setting the nature of the contract and his interest or the interest of the firm or company in the contract;

- (e) if he is disqualified from becoming a member of a local authority by or under any written law;
- (f) if he is disqualified from registering as a voter under this Act or disqualified from voting at any election under this Act or under any written law relating to offences connected with any election;
- (g) subject to such exceptions and limitations as the President may, by order published in the *Gazette* prescribe if he holds or acts in any offices or appointment in the United Republic or a local authority;

(2) For the purpose of sub-paragraph (i) of paragraph (c) of sub-section (1) —

- (a) two or more sentences that are required to be served consecutively shall be regarded as separate sentences if none of them exceeds six months but if any of them exceeds six months they shall be regarded as one sentence; and
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to, or in default of, the payment of a fine.

PART VII

NOMINATION OF CANDIDATES FOR ELECTION

41.—(1) Where a local authority election is to be held in a ward or where the election is countermanded and the election procedures are to be commenced afresh, the Electoral Authority shall, by notice published in the *Gazette*, appoint a day (here-in-after in this Part referred to as the nomination day) for the nomination of candidates for the election.

Nomina-
tion day

(2) The Electoral Commission may appoint different nomination days for different wards and may revoke the appointment of a nomination day and appoint some later day as nomination day.

(3) The Electoral Commission shall give at least seven days notice of the nomination day.

42.—(1) In order to be validly nominated at a nomination to stand as a candidate for a ward, a person must be nominated in writing by not less than ten voters registered in the ward for which he is a candidate.

Nomina-
tion of
Candi-
dates

(2) The writing shall be in the prescribed form, shall be signed by the candidate and by the persons nominating him, and shall contain the following particulars—

- (a) the name, address and occupation of the candidate;
- (b) the names and addresses of the nominators of the candidate; and
- (c) a certificate by the candidate that he is willing and qualified to stand for election.

(3) Every nomination paper shall be accompanied by—

- (a) a statutory declaration in the prescribed form, made and signed by the candidate before a magistrate and declaring the candidate's qualifications and that he is not disqualified for elections; and
- (b) a certificate in the prescribed form by the Registration Officer in charge of the ward certifying that the nominators are registered as voters in the ward in respect of which the candidate has been nominated;
- (c) such biographical information relating to the candidate as may be required to be given by regulations in such form as may be prescribed.

(4) Where, in any case, a nomination paper is not accompanied by the documents specified in subsection (3) the nomination of the candidate shall be deemed to be void:

Provided that the Electoral Commission may, in any particular case, if it thinks reasonable so to do, direct that the nomination paper shall be accepted as valid notwithstanding that nomination paper was not accompanied by any of the documents if the documents in question is submitted to the Returning Officer within further time as the Electoral Commission may allow.

(5) The Returning Officer shall provide nomination papers and shall supply any voter with such number of nomination papers as he may require. The Electoral Commission shall determine the number of nomination papers to be provided.

(6) Every candidate or one of the persons nominating him, shall deliver his nomination paper (together with one copy of it) signed as provided in this section at the office of the Returning Officer not later than four o'clock in the afternoon of the nomination day.

(7) The Returning Officer shall forthwith cause a copy of the nomination paper to be posted in a conspicuous place outside his office.

(8) No person shall nominate more than one candidate for any one election and where a Registration Officer has issued a certificate under paragraph (b) of subsection (3) in respect of a person's nomination of one candidate he shall refuse to issue a certificate in respect of that person's nomination of another candidate for the same election.

Provided that a person shall not be prevented from signing a nomination paper by reason only of his having signed that of a candidate who has died or withdrawn his candidature before delivery of the first mentioned nomination paper.

(9) Where, notwithstanding the provisions of subsection (8), a person nominates more than one candidate for the same election and certificates have been issued under paragraph (b) of subsection (3) in respect of that person's registration, that person's nomination shall be valid only in respect of the nomination paper first delivered to the Returning Officer, and any nomination made by that person in respect of any candidate whose nomination paper is subsequently delivered shall be invalid.

(10) A Registration Officer shall, when requested by or on behalf of a candidate to issue a certificate in respect of a nominator who is registered in a ward of which he has charge, issue a certificate accordingly.

(11) The fact that, subsequent to nomination day, the name of a person who has nominated a candidate is deleted from a register of voters for the relevant ward shall not invalidate the nomination of the candidate.

43. No person shall be nominated as a candidate for election in more than one ward

Candidate to be nominated for one seat only

44.—(1) Objection may be made to a nomination paper on all or any of the following grounds, but on no other ground, namely—

- (a) that the particulars given in respect of the candidate are insufficient to identify him;
- (b) that the nomination paper does not comply with or was not delivered in accordance with the provisions of this part;
- (c) that it is apparent from the contents of the nomination paper that the candidate is not qualified to stand for election;
- (d) that the requirements of subsection (3) of section 42 have not been complied with.

Objections in and decision as to validity of nomination papers

(2) No objection to a nomination paper shall be allowed unless it is made to the Returning Officer, before four o'clock in the afternoon of the day following nomination day.

(3) The objection may be made by another candidate in the ward or by the Returning Officer of his own motion and shall be in writing, signed by the objector and shall specify the grounds of objection.

(4) The Returning Officer shall, with the least possible delay, decide on the validity of every objection and inform the candidate concerned of his decision, and, if the objection is allowed, of the grounds of his decision.

(5) Where a candidate is aggrieved by the decision of the Returning Officer on an invalid nomination, the aggrieved candidate may appeal to the Electoral Commission, whose decision may be subject to review by an election petition pursuant to the provisions of Part XIII on one or other of the grounds specified in that Part; and save that, a decision on such petition shall be final and conclusive and shall not be called in question on any court of law.

45.—(1) A Returning Officer shall, after he has determined the validity of the nomination papers lodged with him, inform the Electoral Commission of the names of the candidates validly nominated and of the particulars stated in respect of each such candidate under paragraph (2) of section 42.

Procedure after determination of validity of nomination

(2) Where only one candidate is nominated for an election in a ward, the Returning Officer shall declare the candidate to have been elected and shall so inform the Electoral commission of the Council in the area where the ward is situated.

(3) Where a Returning Officer for any ward determines that no candidate has been validly nominated for election in that ward, the Returning Officer shall so inform the Electoral commission of the Council where the ward is situated.

46. Where the Electoral commission of the Council where the ward is situated, has been informed under subsection (3) of section 45, that no candidate has been validly nominated for election in a ward such Electoral commission shall exercise its powers under the Act to appoint another day for receiving the nomination of candidates for election in such ward and for taking a poll therein.

47.—(1) For the purposes of assisting voters to identify a candidate when voting, every candidate shall be identified by a photograph of the candidate which has been approved by the Returning Officer.

(2) The display of the photograph of a candidate during the election campaign shall be subject to the control of the Returning Officer.

PART VIII

ELECTION DAY

48.—(1) Where candidates are nominated for election in a ward, the Electoral commission shall appoint a day not less than twenty one days and not more than twenty-eight days after the day on which they have been deemed to have been nominated to be election day in the ward.

Provided that—

- (a) where there are two or more contested elections during a local authority general election the Electoral commission may appoint different election days for wards; and
- (b) the Electoral commission may revoke the appointment of an election day and appoint some other day within the period prescribed by this subsection to be election day.

(2) The Electoral commission may delegate any of its functions under this section in relation to a local authority election to a Returning Officer.

49.—(1) Where there is a contested election, the Returning Officer shall, on or before the eighth day before the election day, give notice in the ward in such manner as he may think fit as to the following matters—

- (a) the day or days and (subject to the provisions of subsection (4)) the time or times of commencement and close of the poll;

- (b) the address of the polling station or stations;
- (c) in any polling district where there are two or more polling stations the Voters assigned to each polling station; and
- (d) the full names, addresses, photographs and occupations of the candidates;

(2) The day appointed for polling pursuant to the provisions of paragraph (a) of subsection (1) in any polling district may differ from that appointed for any other polling district:

Provided that—

- (a) one day but not more than one day shall be appointed as polling day for each ward; and
- (b) the last day appointed for polling in any ward, shall be not later than such time after election day for that ward as the Electoral commission may appoint.

(3) Where the Returning Officer has appointed a polling day for a ward pursuant to the provisions of this section, he may, where it appears to him to be in the public interest so to do, give notice in the ward in such manner as he may think fit altering; the polling day appointed for any ward and thereupon polling shall take place in that ward on the polling days specified in the notice.

(4) For the purpose of paragraph (a) of subsection (1), unless the Electoral commission otherwise directs, the time of commencement of the poll shall be eight o'clock in the morning and the time of the close of the poll shall be six o'clock in the evening or such earlier time as may be specified in the notice.

PART IX

WITHDRAWAL, DEATH AND ABSENCE OF CANDIDATE

50.—(1) A candidate may withdraw his candidature by notice in writing signed and delivered by him to the Returning Officer not later than the day following the nomination day.

With-
drawal of
candi-
date

(2) Where a candidate withdraws his candidature after nomination day, no party shall nominate a substitute candidate.

51.—(1) Where, after four o'clock in the afternoon on nomination day and before the close of the poll in an election, a candidate in ward dies, the Returning Officer shall, upon being satisfied of the fact of death, countermand the election in the ward.

Absence
of candi-
dates

(2) In the case where the Returning Officer countermands an election pursuant to the provisions of subsection (1), the Electoral commission shall appoint some other convenient day, not later than thirty days after the countermand, for the nomination in the ward and the electoral procedure in that ward shall be commenced afresh:

Provided that no new nomination shall be required in respect of any candidate validly nominated at the nomination and every such candidate shall be deemed to have been nominated unless he gives a notice of his withdrawal.

52. If after a nomination day by reason of death, withdrawal or any other reason, there are no candidates in a ward the Electoral commission shall countermand the election and appoint some other day not later than thirty days after such countermand for the nomination of candidates for election in the ward and the electoral procedure in that ward shall be commenced afresh:

PART X

THE ELECTION CAMPAIGN

53.—(1) Where there is a contested election in a ward—

- (a) the Electoral commission shall fix dates for the start and end of the election campaigns within the area of jurisdiction of the Electoral commission.
- (b) any candidate or person acting with approval or consent of political party of the candidate may convene or address any public meeting in the ward for the purposes of furthering the candidate's election or undertake any public or door to door canvassing.
- (c) each candidate shall furnish to the Electoral commission for information, the programme of public meeting to be held by the candidate, and the District Commissioner shall provide security for the purposes of facilitating peacefull and orderly meetings.

55.—(1) Every candidate shall be responsible for expenses during an election.

(2) A candidate in a countested election may remunerate, at such rates as the Electoral commission may prescribe, one counting agent.

(3) Any payment to a person as a counting agent in excess of the rates prescribed by the Electoral commission, any payment by or on behalf of a candidate to any other person who assists a candidate at an election on account of the assistance, and any payment by or on behalf of a candidate for and on account of the transportation of voters to or from the poll, shall be deemed to be treating within the meaning of this Act.

(4) Save as provided in subsection (1) or (2) of this section, no candidate shall expend any sum in furtherance of his campaign for election.

PART XI

ELECTION PROCEDURE

56. In a contested election polling shall take place in each polling district in the manner provided in this Part on the day appointed for polling in that polling district pursuant to the provisions of section 49.

57. The Returning Officer shall—

- (a) provide a sufficient number of polling stations in each polling district in accordance with the terms of any notice given under the provisions of subsection (1) of section 49;
- (b) appoint in respect of each polling district such persons, to be known as polling assistants, as he may think fit to assist at the voting in the election;
- (c) appoint from among polling assistants, a person to be in charge of each polling station, to be known as the presiding officer;
- (d) furnish each polling station with such number of Compartments as in the opinion of the Returning Officer may be necessary, in which the voters can be screened from observation, record their votes;
- (e) place or cause to be placed outside each polling station in a conspicuous place a notice showing the full names in alphabetical order as the Electoral commission may direct, addresses, photographs and occupations, if any, of the candidates and stating the number of candidates for whom the voter may vote;
- (f) provide both within and without each polling station notices containing instructions relating to the voting procedure to be followed;
- (g) provide each presiding officer with such number of ballot boxes and ballot papers as in the opinion of the Returning officer may be necessary.

Arrangements for contested elections

58.—(1) Each candidate may appoint one person to be known as a polling agent to attend at each polling station within the ward for the purpose of detecting personation, or violence, for which he is liable.

(2) Notice in writing of the appointment, stating the names and addresses of the polling agents, together with the polling stations to which they have been assigned, shall be given to the Returning Officer not later than seven days before election day.

(3) If any polling agent dies or becomes incapable of acting as an agent, the candidate may appoint another polling agent in his place, and shall forthwith give to the Returning Officer and the presiding officer concerned notice in writing of the name and address of the polling agent so appointed and the polling station to which he is appointed.

59.—(1) Every ballot box shall be so constructed that the ballot papers can be put in it by the voter but cannot be withdrawn by him.

Ballot boxes

(2) Immediately before the commencement of the voting, the presiding officer at each polling station shall show the ballot box empty to such persons as may lawfully be present so that they may see that it is empty, and shall then close it and place a seal upon it in such manner as to prevent it being opened without breaking the seal, and shall place it in view for the receipt of ballot papers and shall keep it so closed and sealed.

for the purpose of (a) detecting personation, (b) preventing and safeguarding the interests of the candidates at the polling station; and (c) co-operating with the presiding officer and polling assistants to secure the smooth running of the poll and the procedure pertaining to the count.

Form of
ballot
paper

60. Every ballot paper shall—

- the name is correct
of his party*
- (a) contain the full name, addresses photographs and description of the candidates in the ward as shown in their respective nomination papers, arranged in the order in which they appear in the notice placed in accordance with paragraph (c) of section 57.
- (b) be capable of being folded up;
- (c) have a serial number printed on it;
- (d) be attached to a counterfoil bearing the same serial number as that printed on the ballot paper.

Prohibi-
tion of dis-
closure of
vote

61. No person who has voted at the election shall in any legal proceeding to question the election or return, be required to state for whom he voted.

Methods
of voting

62. The voting at an election shall be conducted in the following manner:—

- (a) every voter who wishes to vote shall present himself at the polling station allocated to him in the ward for which he is registered and shall satisfy the presiding officer or a polling assistant at the polling station that he is the voter he claims to be and that he has not voted already at that polling station or elsewhere.

A person may satisfy the presiding officer or polling assistant that he is the voter he claims to be by producing to that officer or a polling assistant of such documentary evidence as to his identity as the officer or assistant may think satisfactory;

- (b) upon being satisfied as to the identity of the voter and that person's name appears in the register for the ward in which the polling station is situated, the presiding officer or polling assistant shall deliver to the voter concerned a ballot paper;
- (c) immediately before presiding officer or polling assistant delivers a ballot paper to any person—

- (i) the ballot paper shall be perforated or stamped with an official mark;
- (ii) the number and particulars of the voter, as stated in the copy of register of the voters or part of it maintained at the polling station, shall be called out;
- (iii) the number of the voter in the copy of the register of voters or part of it shall be marked on the counterfoil; and

- (iv) a mark shall be placed against the number of the voter in the copy of the register of voters or part of it to denote that a ballot paper has been received by the voter:

Provided that the number of the ballot paper delivered to the voter shall not be shown in the register:

And provided further that where no copy of the register or part of it is available at the polling station, the presiding officer or the polling assistant shall in lieu of complying with

the provisions of sub-paragraphs (ii), (iii) and (iv), comply with such directions as the Electoral commission may give in that behalf:

- (d) subject to the provisions of paragraph (h) a voter on receiving a ballot paper shall go immediately into one of the compartments in the polling station, and shall there secretly record his vote in the manner provided in paragraph (e), fold up the ballot paper so as to conceal this vote and shall then show to a polling assistant the back of the paper so as to reveal the official mark and shall then put the folded paper into the ballot box;
- (e) a voter shall record his vote by putting a mark against the name of the candidate for whom he wishes to vote thereby recording no more than one vote;
- (f) a voter shall not place on the ballot paper any writing or mark by which he may be identified;
- (g) a voter shall vote without undue delay;
- (h) if a voter is incapacitated by blindness or other physical cause, or is unable to read, he may call the presiding officer aside, and shall tell him, no other person being present or within hearing, the name of the candidate for whom he wishes to vote, and shall, in the presence of the voter, place the ballot paper in the ballot box and every ballot paper marked in accordance with this paragraph shall be deemed to have been marked by the voter in accordance with paragraph (e);
- (i) If the voter is illiterate or does not understand how to record his vote, the presiding officer may, in the presence of the polling agent, explain to the voter the procedure;
- (j) subject to the provision of paragraphs (h) and (i), a voter shall not show the mark which he has placed upon his ballot paper to any person, and if he does so the ballot paper shall be treated as a spoilt paper;
- (k) a voter who has accidentally dealt with a ballot paper in a manner that it cannot conveniently be used as a valid ballot paper may, on delivering that ballot paper to the presiding officer, and after satisfying the presiding officer that the ballot paper has been spoilt by accident, obtain another ballot paper in the place of the paper delivered up, and the spoilt paper and its counterfoil shall be immediately marked "cancelled."

63.—(1) No person shall be admitted to vote at any polling station except at a polling station in the ward in which he is registered as a voter.

(2) the presiding officer shall regulate the admission of voters to the polling station and shall exclude all other persons except candidates, the polling agent, if any, polling assistants, police officers on duty and any other person who in his opinion has lawful reason to be admitted.

Admit-
tance
polling
station

*Director of Elections, or any other person
authorized by him in writing in that behalf
and*

*(Ait
4/93)*

(3) If any person misconducts himself in the polling station or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any police officer in or near that station or by any other person authorized in writing by the presiding officer or by the Returning Officer to remove him; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station.

(4) Any person removed from polling station if charged with the commission in the station of any offence, may be kept in custody until he can be brought before a magistrate. The powers conferred by this section shall not be exercised so as to prevent any voter who is otherwise entitled to vote at that polling station, from having an opportunity of voting at the station.

Allegations of irregularities

64.—(1) Where the presiding officer at any polling station has reason to believe, or where a candidate or a polling agent present at any polling station alleges, that any person wishing to vote at that polling station is not a voter entitled to vote at that polling station, the presiding officer shall warn the person that he may commit an offence under this Act by so voting.

(2) If, notwithstanding the warning, such person persists in his wish to vote and—

- (a) Produces any evidence to show that he is the person entitled to vote at the polling station in question; and
- (b) being required to make and subscribed declarations to which that section refers,

the presiding officer shall deliver a ballot paper to the person and permit him to vote at that polling station.

(3) A presiding officer shall record in writing the full name and address which a person warned under subsection (1) gives as his name and address and, if the person has voted the presiding officer shall state that fact in the record.

(4) Before warning a person under subsection (1), presiding officer shall state to that person the reasons for his belief that the person is not a voter entitled to vote at the polling station in question or, in the case of an allegation as mentioned in subsection (1) having been made by a candidate or a polling agent present in the polling station in question, shall require the candidate or polling agent to state in his presence and the presence of the person wishing to vote, and so as to be heard by both of them, the reason for the allegation and if a candidate or a polling agent refuses to comply with the requirement the presiding officer shall disregard the allegation made by him.

65.—(1) If a person representing himself to be a voter entitled to vote at a polling station applies for a ballot paper after another person has voted as such voter, the applicant shall, upon identifying himself to the satisfaction of the presiding officer as the person in the register and being required as to make and subscribe declarations as prescribed by section 66 makes and subscribe one or both of the declarations to which that section refers, be entitled to vote in the same manner as any other voter, but the ballot paper in this section called a tendered ballot paper, shall be of a colour different from the ordinary ballot paper, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the copy of the current register or part of it, and set aside in a separate packet, and shall not be counted by the Returning officer provided in this part, and the name of the voter and, where copy of the register or part of it is available at the polling station, the person's number or the register or part of it, shall be entered on a list, and this list shall be admissible in any legal proceedings arising out of the election.

Tendered
ballot
papers

(2) The presiding officer may require any person to whom a tendered ballot paper is delivered to make and subscribe one or both the declarations to which section 66 applies.

66.—(1) The presiding officer at any polling station may, in his discretion, and shall, on the request of a candidate present at the polling station or of the polling agent, require any person wishing to vote, before he is given a ballot paper, to furnish such evidence of his identity with the person described in the certificate of registration which he presents as the presiding officer may deem necessary and to make and subscribe one or both of the prescribed declarations.

Declaration
by
voters

(2) If any person fails to furnish that evidence of his identity or refuse to make the declaration, the presiding officer may refuse to give him a ballot paper.

67.—(1) Notwithstanding the provisions of section 62, a person appointed a Returning Officer, presiding officer, police officer, or appointed in any other official capacity in any ward than the ward in which he is entitled to vote, may vote in the ward in which he is registered as a voter by writing the name of the candidate of his choice on a special ballot paper, and sending it to the Returning Officer for that ward in a sealed envelope marked "Ballot".

Voting by
Returning
Officers

(2) Ballot papers for the purposes of this section, shall be provided by the Electoral Commission entitled to vote in the manner specified in subsection (1) from the Returning Officer in the ward for which they are appointed. Before issuing a special ballot paper to the person, a Returning Officer shall stamp the person's certificate of registration with his official stamp and shall certify on the ballot paper that he has done so.

(3) Where a Returning Officer receives a special ballot paper from a person entitled to vote in the manner specified in subsection (1) who is registered as a voter in his ward he shall on election day in his ward, if the paper is certified in accordance with subsection (2), detach the certificate and deliver it to the presiding officer and, in the presence of the presiding officer, place the ballot paper in a ballot box.

(4) A Returning Officer shall account to the Electoral Commission for every special ballot paper issued by him under this section and shall return to the Electoral Commission any papers received by him but not issued.

Adjournment of poll in case of riot

68.—(1) Where the proceedings at any polling station are interrupted or obstructed by riot or open violence, the presiding officer shall adjourn the proceedings until the following day and shall forthwith give notice to the Returning Officer.

(2) Where the poll is adjourned at any polling station—

- (a) the hours of polling on the day to which it is adjourned shall be the same as for the original day; and
- (b) reference in this Act to the close of the poll shall be construed accordingly.

Closing of the poll

69. At the hour of the closing of the poll at any polling station there are voters present who have not had an opportunity to vote, the poll shall be kept open for a sufficient time to enable them to vote.

Procedure on closing of poll

70.—(1) The presiding officer of each polling station, as soon as practicable after the closing of the poll, shall, in the presence of such of the candidates as attend and in the presence of the polling agent, if any, make up into separate packets, sealed with his own seal and the seal of the candidates if they desire to affix their seals—

- (a) the unused and spoilt ballot papers placed together;
- (b) the counterfoils of the used ballot papers;
- (c) tendered ballot papers;
- (d) the marked copies of registers or parts of registers, if any;
- (e) the tendered voters list.

(2) The packets shall be accompanied by a statement, to be called the ballot papers account, prepared by the presiding officer in the prescribed form.

(3) The unopened ballot boxes shall be secured by the presiding officer and sealed with his seal and with the seals of such of the candidates, as attend and desire to affix their seals, in such manner that the boxes cannot be opened and nothing can be inserted in them without the seals being broken.

(4) The presiding officer shall despatch each packet and the ballot boxes in safe custody to the Returning Officer.

71.—(1) Each candidate may appoint one person, to be known as a counting agent, to attend at the counting of the votes. Counting Agents

(2) Notice in writing of the appointment, stating the name and address of the counting agent, shall be given by the candidate to the Returning Officer not later than one day before election day; and the Returning Officer may refuse to admit to the place where the votes are counted any person surporting to be a counting agent in respect of whom notice has not been given.

(3) If a counting agent dies or becomes incapable of acting as a counting agent, the candidate may appoint another counting agent in his place, and shall immediately give to the Returning Officer notice in writing of the name and address of the counting agent so appointed.

72.—(1) The Returning Officer shall make arrangements for counting the votes in the presence of the counting agents as soon as practicable after the close of the poll in the ward and shall, so far as practicable, proceed continuously with the counting, allowing only reasonable time for refreshment, until it is complete. Counting of Votes

(2) The Returning Officer shall appoint such number of persons as he shall consider necessary to assist him in counting the votes, and those persons shall be known as enumerators.

73. Except with the consent of the Returning Officer, no person other than the Returning Officer, Assistant Returning Officers, the enumerators, the candidates and the counting agents may be present at the counting of votes. Persons who may be present

74. Before the Returning Officer and Assistant Returning Officers proceed to count the votes, they shall, in the presence of the counting agents, if any, open each ballot box and, taking out the ballot papers, shall count and record the total number of the ballot papers, and then mix together the whole of the papers contained in the ballot boxes. Method of counting votes

75.—(1) Returning Officer and Assistant Returning Officers, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards. Votes which are not to be counted

(2) Any ballot paper—

- (a) which does not bear an official mark; or
- (b) on which votes are recorded other than as provided in paragraph (d) of section 62 or which is to be treated as spoilt under the provisions of paragraph (j) of that section; or
- (c) on which anything is written or marked by which a voter can be identified otherwise than by the printed number thereon; or
- (d) which is unmarked or void for uncertainty; or
- (e) on which the voter has voted for a number of candidates exceeding the vacancies in the ward, shall not be counted.

and such persons as may be authorised in writing by the Electoral Commission

Endorse-
ments by
Returning
Officer

76.—(1) The Returning Officer or an Assistant Returning Officer shall endorse the word "rejected" on any ballot paper which, under the provisions of section 75 is not to be counted.

(2) The Returning Officer or an Assistant Returning Officer shall add to the endorsement the words "rejection objected to" if an objection to this decision is made by any counting agent.

Rejected
Ballot
papers

77. The Returning Officer shall prepare a statement showing the number of ballot papers rejected under the following heads:—

- (a) want of official mark;
- (b) voting recorded otherwise than as provided in paragraph (d) of section 62 or to be treated as spoilt under the provisions of paragraph (j) of that section;
- (c) writing or mark by which the voter could be identified;
- (d) unmarked or void for uncertainty; and
- (e) voting for more candidates than those for whom a voter is entitled to vote under paragraph (e) of section 62 and shall on request allow any counting agent to copy the statement and shall on request.

Equality
of votes
and re-
count

78.—(1) Where an equality of votes is found to exist between any candidates in a contested election so that an addition of a vote would entitle any to be declared elected, the Returning Officer shall make a recount of the votes cast.

(2) If there is again an equality of votes as ascertained by a recount, the Returning Officer shall report the fact to the Electoral commission which shall, by notice published in the Gazette, appoint some other convenient day for the nomination of candidates for the ward and the electoral procedure for the vacancy or vacancies shall be commenced afresh.

Candidate
or count-
ing agent
may re-
quire re-
count

79.—(1) A candidate or his counting agent may, if present when the counting or any recount of the votes is completed, require the Returning Officer to have the votes re-counted or again re-counted, but the Returning Officer may refuse to do so if in his opinion the request is unreasonable.

(2) No step shall be taken on the completion of the counting or any re-count of votes until the candidates and counting or any re-count of votes until the candidates and counting agents present at the completion of the counting or recounting have been given a reasonable opportunity to exercise the right conferred by subsection (1).

80. The decision of the Returning Officer as to any question arising in respect of any ballot paper shall be final and shall be subject to review only on an election petition questioning the election pursuant to Part XIII of this Act.

Returning
Officers'
duties at
conclusion
of count-
ing

81.—(1) Upon the conclusion of the counting of the votes, the Returning Officer, with the assistance of the Assistant Returning Officers, shall seal up in separate packets the counted and rejected ballot papers.

(2) The Returning Officer shall not open the sealed packet containing the counterfoils of used ballot papers, but shall proceed, in the presence of the counting agents, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded in accordance with sections 78 and 79 and the unused and spoilt papers in his possession and shall re-seal each packet examination.

(3) The Returning Officer shall prepare a statement as to the result of the verification and shall on request allow any counting agent to copy the statement.

82. When the result of an election has been ascertained the Returning Office shall:—

- (a) forthwith declare to be elected the candidate or candidates for whom the majority of votes has been cast;
- (b) cause a full report to be displayed at the office of the Electoral commission setting out the names of the successful candidates; and
- (c) report the results of the election to the Electoral commission which shall cause the results, together with the number of votes recorded for each candidate in each ward to be published in the Gazette.

Declara-
tion of re-
sult

83.—(1) The Returning Officer shall ensure the safe custody of all documents relating to the conduct of the election other than the documents which the Returning Officer is required under section 44 and 45 to forward to the Electoral commission, for the safe custody of which documents the Electoral commission shall be responsible.

Custody
of docu-
ments

(2) The Returning Officer shall cause all the documents to be destroyed after the expiration of six months from election day unless otherwise directed by an order of the Resident of Magistrates' Court arising from proceedings relating to the election.

84. A polling assistant may be authorized by the presiding officer to do any act which the presiding officer is required or authorized to do at a polling station by this Act, except that he may not order the arrest of any person, or the exclusion or removal of any person from the polling station.

Power of
polling as-
sistant

85. A candidate may do any act or thing which the counting agent may be authorized or required to do, and may assist the counting agent in the doing of any act or thing.

Candidate
has a
power to
his agent

86. Where in this Act, any act or thing is required or authorized to be done in the presence of the polling agent or the counting agents of the candidates, the non-attendance of any agent or agents at the time and place appointed for the purposes shall not if any act or thing is otherwise properly done, invalidate the act or thing done.

Non at-
tendance
of agents
not to in-
validate
proceed-
ings

PART XII
OFFENCESOffences
in relation
to registra-
tion

87.—(1) Every person who:—

- (a) for the purpose of procuring the registration of himself or of any other person or the issue to himself or to any other person of a certificate of registration knowingly makes to a Registration Officer or any other person having any duty in relation to applications for registration or for the issue of certificates of registration any false statement material to any application on his own behalf or on behalf of that other person for registration or for the issue of a certificate of registration; or
- (b) knowing or having reason to believe that he is registered in a ward, applies to be registered (otherwise than in accordance with section 23 and on disclosing to the Registration Officer his existing registration) in another ward, or
- (c) applies to be registered in any ward after he has applied to be registered in another ward, and the earlier application has not been determined, pending any investigation into the applicant's qualifications, or withdraws, or
- (d) having been issued with a certificate of registration, applies for the issue to himself of a new certificate of registration (otherwise than in the circumstances set out in section 23 section 24 or section 25) and on disclosing to the Registration Officer the circumstances in which the application is made; or
- (e) knowingly makes any declaration provided for in section 26 which is false, or which he does not believe to be true in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(2) Any person whose name has been deleted from the register and who has been required by a Registration Officer either to surrender a certificate of registration issued to him or to make and to deliver to the Registration Officer the declaration provided for in section 26 within a time specified by that Registration Officer, who, without lawful excuse, neither surrenders that certificate nor makes and delivers that declaration within the specified time, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand shillings.

Official
disclosure
agreement

88.—(1) Any person holding any office or acting in any official capacity who, in the exercise of the functions of that office or in that capacity, makes any statement or does any act with intent to discourage any other person from seeking nomination under this Act or to procure any person who has been nominated to withdraw his candidature, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both that fine and imprisonment.

(2) No proceeding shall be instituted against any person for an offence contrary to this section without the prior consent of the Director of Public Prosecutions.

(3) In this section, office and official capacity means an office in the service of the United Republic or a capacity in respect of the United Republic.

89.—(1) Every person who:—

- (a) forges or fraudulently defaces or fraudulently destroys any register of voters; or
- (b) forges; counterfeits or fraudulently destroys any certificate of registration or any official mark on that certificate of registration, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding two years or to both that fine and imprisonment.

Offence in
relation to
registers
and cer-
tificates of
registra-
tion

(2) Any person who has in his possession or under his control any certificate or registration issued to some other person and who refuses or neglects, without lawful excuse, to deliver that certificate of registration to the person to whom it was issued, when demand is made of that certificate by that person or a registration Officer in that behalf, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding twelve months or to both that fine and imprisonment.

90.—(1) Every person who:—

- (a) forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to a Returning Officer any nomination paper knowing that it is forged; or
- (b) forges or counterfeits or fraudulently destroys ballot paper or the official mark on any ballot paper; or
- (c) without due authority supplies any ballot paper to any person; or
- (d) fraudulently puts into any ballot box any paper other than the ballot paper which he is authorized by law to put in; or
- (e) without due authority, takes out of any polling station any ballot paper or is found in possession of any ballot paper outside a polling station; or
- (f) without due authority, destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding two years or to both that fine and imprisonment.

Offences
in relation
to nomi-
nation
papers or
ballot
papers

(2) Any person who, for the purpose of procuring nomination as a candidate for himself or for any other person, knowingly makes any false statement material to that nomination in a nomination paper or statutory declaration delivered to a Returning Officer shall be guilty of

an offence and shall be liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding one year or to both that fine and imprisonment.

(3) In any prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, counterfoils, marking instruments and other things in use at an election, the property in those papers, boxes, instruments and things may be stated to be in the Returning Officer for the election.

Miscellaneous offences

91. Any person who:—

- (a) wilfully furnishes false evidence or makes a false statement in a declaration made under section 66 or
- (b) contravenes the provisions of paragraph (b) of subsection (1) of section 53.

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding six months or both that fine and imprisonment.

Maintenance of secrecy at elections

92.—(1) Every officer, clerk, interpreter, candidate and agent authorized to attend at a polling station or at the counting of the votes, shall, unless he has taken an oath of secrecy under the foregoing provisions of this Act, before so attending, take an oath of secrecy in the prescribed form:

(2) The Returning Officer shall have power to administer any oaths required to be taken under the provisions of subsection (1)

(3) Every Officer, clerk, interpreter, candidate and agent in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting in the station and shall not communicate, except for some purpose authorized by the law, to any person any information as to the name or number of any voter who has or has not applied for a ballot paper or voted at, the station or as to the official mark.

(4) No officer, clerk, interpreter, candidate or agent, and no other person shall obtain or attempt to obtain in the polling station information as to the candidate for whom any person in the station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any person in the station is about to vote or has voted, or as to the number on the ballot paper given to any person at the station.

(5) Every officer, clerk, interpreter, candidate and agent in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting and shall not ascertain or communicate any information obtained at the counting as to the candidate for whom any vote is given by any particular ballot paper.

(6) No person, except a presiding officer acting for a purpose authorized by this Act, or a person authorized by the presiding officer and acting for that purpose, shall communicate with any person after that person has received a ballot paper and before he has placed the same in a ballot box.

(7) Every person who acts in contravention of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding twelve months or to both that fine and imprisonment.

93. Every person who is guilty of undue influence shall be liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Penalty for undue influence

94. Every person who is guilty of personation or of aiding, abetting, counselling, or procuring of the commission of the offence of personation shall be liable on conviction to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding two years or to both that fine and imprisonment.

Penalty for personation

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

Persons to be deemed guilty of undue influence

99.—(1) Where any person does any act as is described in section 98 to or in respect of a Returning Officer with the intent that the Returning Officer shall discriminate in favour of one or other of the candidates at the election, or where any Returning Officer does any such act as is so described on account of discriminating or having discriminated in favour of one or other of the candidates, he shall be deemed, according to the circumstances of the case, to be guilty of undue influence within the meaning of this Act.

Undue influence in relation to returning officers

(2) For the purposes of this section, section 98 shall be read as if references to voters and to voting were references to a Returning Officer and to discrimination respectively and if the references to the intent specified in those sections were references to the intent specified in subsection (1) of this section.

100. Every person who at any election:—

- (a) applies for a ballot paper in the name of another person whether that name is the name of a person living or dead or of a fictitious person; or
- (b) for the purpose of procuring the issue to himself of a ballot paper knowingly tenders a voting card issued to some other person, shall be guilty of personation within the meaning of this Act.

Persons to be deemed guilty of personation

Penalty
for per-
sons guilty
of certain
illegal
practices

101.—(1) Every person who:—

- (a) votes or attempts to vote or induces or procures some other person to vote at any election if he, or if to his knowledge that other person, has already voted at that election or at other election to a local authority; or
- (b) for the purpose of procuring the issue of any ballot paper to any other person or to himself, delivers any certificate of Registration issued to himself or to some third person to that other person, or induces or procures some third person to deliver the third person's certificate of registration to himself or that other person.

shall be guilty of illegal practice and shall be liable on conviction to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding two years or to both that fine and imprisonment.

(2) Every person who—

- (a) votes or induces some other person to vote at any election knowing that he or that person is not entitled or is prohibited, under or by this Act or any other written law, from voting at such election; or
- (b) for the purpose of procuring the issue to himself of ballot paper knowingly tenders an invalid certificate of registration; or
- (c) before or during an election, knowingly published any false statement of the withdrawal of candidate at such election for the purpose of promoting the election of another candidate, shall be guilty of an illegal practice and shall be liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or to both that fine and imprisonment.

Interfer-
ence with
lawful
public
meeting
to be an il-
legal prac-
tice

102. Any person who at a lawful public meeting held in connection with the election of any person between the day of publication of the notice appointing nomination day and the day on which the result of the election is published, acts or incites others to act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an illegal practice and shall be liable on conviction to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding six months or both that fine and imprisonment.

Display of
emblems
in vicinity
of place of
voting
prohi-
bited

(1) No person shall, within any building where voting in an election is in progress, or on any public way within a distance of fifty yards of any entrance to the building, wear or display any card, favour or another emblem indicating support for a particular candidate in the election.

(2) Any person acting in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred shillings.

(3) For the purposes of this section "public has the same meaning as in section 5 to penal Code. Cap 16

Every person who, without lawful authority, destroys, mutilates, defaces or moves any notice which is exhibited under the authority of this or any document which is made available for inspection in accordance with the provisions of this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand shillings.

Deface-
ment of
notices

(1) A person shall not:—

- (a) print or publish or cause to be printed or published any bill, placard or poster having reference to an election or any printed document distributed for the purpose of promoting or procuring the election of a candidate; or
- (b) post or cause to be posted any bill, placard or poster; or
- (c) distribute or cause to be distributed any printed document for the purpose of promoting or procuring the election of a candidate, unless the bill, placard, poster or document is authorized by the Electoral Commission and bears upon the face of it the name and address of the printer and publisher.

Docu-
ments to
bear name
and ad-
dress of
printer
and pub-
lisher

(2) For the purposes of this section, any process for multiplying copies of a document, other than copying it by hand, shall be deemed to be a printing, and the expression "printer" shall be construed accordingly.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months or both that fine and imprisonment.

(4) Nothing in this section applies to any bill, placard, poster or document published by or on behalf of the Registration Officer or the Returning Officer.

106.—(1) Where a court convicts a person of illegal practice under this Act, it shall report the conviction to the Registration Officer for any ward in which it has reason to believe that person is registered.

Persons
convicted
of illegal
practices
to be re-
moved
from re-
gister

(2) Where a Registration Officer receives a report under this section in respect of a person registered in a polling district of which he has charge, he shall forthwith delete that person's name from the register and take such further steps as a Registration Officer is required to take under the provisions of Part IV of this Act.

PART XIII

AVOIDANCE OF ELECTIONS AND ELECTION PETITIONS

107.—(1) The election of a candidate as a member shall not be questioned save on an election petition.

Avoid-
ance of
election
petition

(2) The election of a candidate as an elected member shall be declared void on any of the following grounds which are proved to the satisfaction of the court, namely:—

- (a) that by reason of illegal practices committed in connection with the election, or other circumstances, whether similar to those enumerated or not, the majority of voters were or, may have been prevented from electing the candidate whom they preferred;
 - (b) that during the election campaign, statements have been made by the candidate, or on his behalf and with his knowledge and consent or approval, with intent to exploit tribal, racial or religious issues or differences pertinent to the election or relating to any of the candidates or, where the candidates are not of the same sex, with intent to exploit such difference;
 - (c) non-compliance with the provisions of this Act relating to elections if it appears that the elections was not conducted in accordance with principles laid down in those provisions and that the non-compliance affected the result of the election;
 - (d) that illegal practice was committed in connection with the election by or with the knowledge and consent or approval of the candidate or by or with the knowledge and consent or approval of any of his agents; or
 - (e) that the candidate was at the time of his election a person not qualified for election as a member.
- (3) Notwithstanding the provisions of subsection (2) where, upon the trial of an election petition respecting an election under this Act, the court finds that illegal practice in connection with the election has been committed by or with the knowledge and consent or approval of any of a candidate's agents and the court further finds, after giving the Attorney-General an opportunity of being heard, that the candidate has proved to the court—
- (a) that no illegal practice was committed by the candidate himself or with the knowledge and consent or approval of that candidate or his agent;
 - (b) that the candidate took all reasonable means for preventing the commission of illegal practices at the election; and
 - (c) that in all other respects the election was free from any illegal practice on the part of the candidate and of his agents, then, if the court so recommends, the election of that candidate shall not by reason of any that practice be void.

108. When it appears to the court either on application or upon an election petition:—

- (a) that any act or omission of a candidate at any election or of his agent or another person, which but for this section would be an illegal practice, has been done or made in good faith through inadvertence or accidental miscalculation or some other reasonable cause of a like nature; and

When Court may hold certain acts or omissions to be exempt

(b) that by reason of the circumstances it would be just that the candidate or his agent or another person, or any of them, should not be subject to any of the consequences under this Act of the act or omission;

the Court may make an order allowing the act or omission to be an exception from those provisions of this Act which would otherwise make the act or omission an illegal practice, and thereupon the candidate, agent or person shall not be subject to any of the consequences under this Act of that act or omission, and the election of any candidate shall not, by reason only of that act or omission, be void.

109.—(1) Every election petition and application under this Act shall be tried by the Resident Magistrate's Court, whose determination shall be final.

Petitions triable by Resident Magistrate's Court

(2) Witnesses shall be summoned and sworn in the same manner as nearly as circumstances admit as in a trial by the High Court in the exercise of its original civil jurisdiction and shall, without prejudice to the provisions of any other law, be subject to the same penalties for giving false evidence or non-attendance.

(3) On the trial of an election petition under this Act, the court may by order compel the attendance of any person as a witness who appears to it to have been concerned in the election to which the petition refers, and any person refusing to obey that order shall be guilty of a contempt of court. The court may examine any witness so compelled to attend or any person in court, although that witness is not called and examined by any party to the petition. After the examination of a witness by the court, the witness may be cross-examined by or on behalf of the petitioner or respondent or both of them.

(4) Proceedings before a Resident Magistrate shall be governed, as far as may be practicable, by rules relating to such proceeding before the High Court.

110. An election petition may be presented by any one or more of the following persons, namely—

Who may present petitions

- (a) a person who lawfully voted or had a right to vote at the election to which the petition relates;
- (b) a person claiming to have had a right to be nominated or elected at election;
- (c) a person alleging himself to have been a candidate at the election;
- (d) the Attorney-General.

111. All or any of the following reliefs to which the petitioner may be entitled may be claimed in an election petition, namely:—

Relief which may be claimed

- (a) a declaration that the election is void;
- (b) a declaration that the nomination of the person elected was invalid;

(2) All appeals under this Section shall lie to the High Court

(c) a declaration that any candidate was duly elected;

(d) where the seat is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes, a scrutiny.

Certificate of court as to validity of election

112. At the conclusion of the trial of an election petition, the court shall determine whether the member whose nomination or election is complained of, or any other and which person, was duly nominated or elected, or whether the election was void; and shall certify such determination to the Electoral Commission. Upon a certificate being given, the determination shall be final; and the election shall be confirmed or a new election shall be held, as the case may require, in accordance with the certificate.

113. [Repealed Act. 1992 No. 7]

Time of presentation of election petition

114.—(1) Every election petition shall be presented within one month of the date of publication in the *Gazette* of the result of the election.

Provided that an election petition questioning the election upon the ground of illegal practice and specifically alleging a payment of money or other act to have been made or done since the date of publication in the *Gazette* of the result of the election by or with the knowledge and consent or approval of the member whose election is questioned or by or with the knowledge and consent or approval of an agent of the member, in pursuance or in furtherance of that illegal practice, may be presented at any time within twenty-eight days after the date of that payment or act.

(2) Without prejudice to the provisions of any rules of court made under section 125, an election petition presented in due time may, for the purpose of questioning the election upon an allegation of illegal practice, be amended with the leave of the court within the time within which an election petition questioning the return or the election upon that ground may be presented.

Votes to be struck off at a scrutiny

115.—(1) On a scrutiny at the trial of an election petition, the following votes only shall be struck off, namely:—

- (a) the vote of any person whose name was not on the register of voters of the ward in which he voted;
- (b) the vote of any person whose vote was procured bribery, treating or undue influence;
- (c) the vote of any person who committed or procured the commission of personation at the election;
- (d) the vote of any person proved to have voted more than once at the election;
- (e) the vote of any person who, by reason of a conviction for illegal practice or by reason of the report of the court, or by reason of any conviction for an offence against this Act or any other written law, was disqualified from voting at the election.

(2) The vote of a registered voter shall not, except in the cases specified in paragraph (e) of subsection (1) of this section, be struck off at a scrutiny by reason only of the voter not having been or not being qualified to have his name entered on the register of voters.

116. The Chief Justice may make rules of court regulating the procedure and practice to be followed and prescribing the fees to be paid on and in relation to petitions and applications under this part.

Rules of Court

PART XIV

FINANCIAL AND MISCELLANEOUS PROVISIONS

117. No misnomer or inaccurate description of any person or place named or described in any notice or other document of any kind prepared or issued under or for the purposes of this Act shall in any way affect the operation of this Act as respects that person or place if that person or place is so designated in the register, notice or document as to be identifiable.

Inaccuracy of descriptions

118.—(1) In the exercise of their respective duties under this Act, Registration Officers and Returning Officers shall at all times have power to demand from any person any information necessary to ascertain what persons are qualified to vote at elections and what persons are qualified to stand as candidates, and to identify any person or the place of abode of any person, and to ascertain whether any person has become disqualified from voting or standing as a candidate.

Powers of Registration and Returning Officers to demand information

(2) Any person who, after any lawful demand made under the provisions of subsection (1), fails to give such information as he possesses, or unreasonably delays in giving the information, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred shillings.

119. Returning Officers and any staff employed under the provisions of subsection (4) of section 9 shall, if not holding an office of emolument in the service of the United Republic, receive such reasonable remuneration for their services as the Electoral Commission may, after consultation with the Minister, see fit to authorize.

Remuneration of staff

120.—(1) All expenses incurred:—

- (a) by the Returning Officers and Assistant Returning Officers in conduct of an Election;
- (b) in the remuneration of the officers specified in section 119; and
- (c) by any public officer in connection with any official matter connected with or arising out of an election.

Expenses to be charged on general revenue

shall be a charge on the general revenue of the local authority in respect of which the election is held.

Service of notices

121. A notice under this Act shall be deemed to have been served on or given to any person—

- (a) if served on him personally; or
- (b) if left for him at his last known address; or
- (c) if sent by registered post addressed to him at his last known address.

In the

Exemption from stamp duty

122. Any instrument made, on oath or affirmation pursuant to the provisions of this Act in the form prescribed shall be exempt from payment of stamp duty under any written law for the time being in force relating to stamp duties.

Disposal of forms and records

123. The Electoral Commission may, subject to the provisions of this Act, from time to time, issue directions with regard to the disposal (including destruction) of any forms, records or other papers or things relating to any matter for which provision is made in this Act.

124. Repealed.

Regulations

125.—(1) The Electoral Commission may make regulations for the better carrying into effect of the purposes and the provisions of this Act.

(2)—(a) The Electoral Commission may make rules prescribing forms and declarations to be used for the purpose of this Act.

(b) Where any forms have been prescribed under this section those forms shall be used for the purpose to which they relate or to which they are capable of being adapted and may be translated into and used in such language as the Authority may direct.

District Development Councils (Elections) Act, 1975

126. The District Development Councils (Elections) Act, 1975 is repealed.

Passed in the National Assembly on the twenty-third day of January, 1979.

W. J. MAINA,
Clerk of the National Assembly

Annex G

VICE From the Desk of
THE CHAIRMAN OF THE NATIONAL ELECTORAL
^ COMMISSION

To:

Hon./Mr./Mrs./Miss. Prof Germer

This is a copy of the
gist of our letter to the
Hon. Attorney-General.

With all the best,

William

2/1/94.