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LOCAL GOVERNMENT ELECTIONS (AMENDMENT) ACT 2004

An Act to amend Local Government Elections Act 1998¹ and to provide for matters incidental thereto.

Enacted by the Parliament of Lesotho

Short title and commencement

1. This Act may be cited as the Local Government Elections (Amendment) Act 2004, and shall come into operation on such date as may be determined by the Minister by notice published in the Gazette.

Interpretation

2. The Local Government Elections Act 1998, hereinafter referred to as "the principal law" is amended in section 2-

(a) by inserting the following definition in its appropriate alphabetical order:

““Electoral Division Registration Officer” means an officer appointed under sub-section (1) of section 4;”;

(b) by deleting the definition of “director of elections” and substituting the following:

“Director of Elections” means the person appointed as such under section 9D of the National Assembly Election Act 1992²;”;

(c) by deleting the definition of “illegal practice” and substituting the following:

““illegal practice” means any illegal practice specified in sections 55 and 56 of this Act;”;

(d) by deleting the definition of “registration officer”, “Electoral Division Registration Officer” and substituting the following:

““Registration Officer” means an officer appointed under sub-section (1) (b) of section 3.”.

General amendment

3. The principal law is amended by deleting the words “he”, “his” and “him” wherever they appear and substituting the words “he or she”, “his or hers” and “him or her”.

Appointment of Director of Elections and Registration Officers

4. The principal law is amended in section 3-

(a) by deleting subsection (1) and substituting the following:

“(1) The Electoral Commission may-

(a) in terms of section 9D of the National Assembly Election Act, 1992 appoint a Director of Elections;

(b) in terms of section 9F of the National Assembly Election Act, 1992 appoint such Registration Officers as it may deem necessary.”;

(b) by deleting sub section (3) and substituting the following:

“(3) The Electoral Commission may, at any time, revoke an appointment made by it under this Act or any other electoral law if the appointment was made for the purposes of this Act.”.

5. The principal law is amended by deleting section 4 and substituting the following:

“Appointment of other electoral staff

4 (1) The Electoral Commission may, from time to time, appoint such Returning Officers, Electoral Division Registration Officers and Assistant Returning

Officers and such number of clerks and interpreters as may be necessary for the purposes of this Act.

- (2) An Assistant Registration Officer shall have all the powers and may perform all the duties of the Registration Officer.
- (3) The Electoral Commission may revoke any appointment made under this section.”.

The franchise

6. The principal law is amended in section 5 –

(a) by deleting the figure “28” in subsection (1) (b) and substituting the figure “18”;

(b) by deleting the word “continuos” in subsection (1) (c) line one and substituting the word “continuous”;

(c) by deleting subsection (2) and substituting the following:

“(2) The name of a person who is entitled to have his or her name entered or retained in any register of voters prepared under the provisions of this Act shall be entered in such register in a common list or roll and the following particulars shall be recorded:

(a) the voter's surname and Christian or given names;

(b) the voter's residential address or where he or she has no permanent residential address, the address of his or her business or place of employment;

(c) the voter's sex and date of birth;

(d) the voter's identifying number; and

(e) any other information that may be required by

Regulations that may be made under this Act.”.

Disqualification of voters

7. The principal law is amended by deleting section 6 and substituting the following:

“6. (1) A person is qualified to be registered as a voter if he or she is so qualified in accordance with subsection (2) of section 57 of the Constitution.

(2) Where a court convicts a person or finds him or her guilty of an offence referred to in Chapter 9, Part 2 (except sections 114 and 118), Part 3 or Part 4 of the National Assembly Election Act 1992, it shall inform the Director of Elections in writing who, if the person concerned is registered as a voter, shall -

(a) delete his or her name from every register of voters in which he or she is registered; and

(b) inform all other electoral officials whose duties include the registration of voters of the deletion of that person's name from the register as well as the period of that person's disqualification and order them to delete that person's name from all electoral lists.”.

8. The principal law is amended by deleting section 9 and substituting the following:

“Polling districts

9(1) Whenever an electoral division of a Community, Urban or Municipal Council is created or altered, the Director of Elections shall -

(a) where necessary, subdivide that division into polling districts;

- (b) assign to each such polling district a distinguishing number; and
- (c) publish in the Gazette and in such other manner as he or she shall think fit a notice as in Form 3 in Schedule 1 specifying –
 - (i) the polling districts into which that electoral division has to be subdivided;
 - (ii) the distinguishing number assigned to each such polling district.

(2) The subdivision of an electoral division into polling districts may be altered by the Director of Elections as occasion may require. Upon any such alternation being made he or she shall publish in the Gazette and in such other manner within the jurisdiction of the area of a Community, Urban or Municipal Council a notice specifying, in relation to that electoral division, the particulars mentioned in subsection (1)(c). Any such alteration shall come into effect at the next revision of the register of voters for that electoral division and not earlier.”.

9. The principal law is amended by adding the following section after section 9:

“Establishment of polling stations

- 9A. (1) The Director of Elections shall ensure that at least one polling station is established in each polling district.
- (2) The location of such a polling station is to be determined after consultation with the candidates nominated for the election for the constituency concerned.
- (3) The Director of Elections may, after consultation with the person in charge and without charge, use as

a polling station any building, which was provided or is maintained out of public money.

- (4) The Director of Elections may also enter into contracts for the use of other buildings as polling stations.
- (5) The Director of Elections shall, out of money provided by Parliament for the conduct of elections, pay compensation for -
 - (a) any damage done to a building used under this section; and
 - (b) the loss or destruction of, or any damage to, property within, or used in connection with, the building; and
 - (c) any expense properly incurred by the owner or person in charge of the building as a result of its use as polling station.
- (6) In this section, "building" includes part of a building."

Registration of voters

10. The principal law is amended in section 10 -
 - (a) by deleting the words "is able to read English or Sesotho and" which appear in line four in subsection (4);
 - (b) by inserting the following subsection after subsection(4):

"(4A) The Director of Elections shall, if satisfied that an applicant for registration is not disqualified under the provisions of the Constitution and this Act, issue the applicant a voter's registration card in the prescribed form, being a card bearing a district identifying number -

 - (a) to which a photograph of the applicant, taken by the registration officer, is attached; and

(b) on which is placed by the applicant, the signature or the prescribed mark of the applicant.”;

(c) by deleting subsection (6) and substituting the following:

“(6) In preparing the register for a Community, Urban or Municipal Council, the Director of Elections shall, subject to the provisions of sub-section (2) of section 5, classify the names of all voters.”;

(d) by adding the following subsections after subsection (9):

“(10) A person who is 17 years of age may, during the prescribed period, make an application to the Director of Elections to be registered as a voter if he or she would, if 18 years of age, be eligible to be registered as a voter.

(11) The prescribed period is -

(a) for the first local authorities election after the commencement of this Act -the period beginning with a date to be notified in the Gazette by the Director of Elections and ending with the date from which the registration of voters is suspended for the election under subsection (1) of section 20A.

(b) for any subsequent local authority election - the period on which local authorities are dissolved immediately before the election and ending with the date from which the registration of voters is suspended for the election under subsection (1) of section 20A; and

(c) for a bye-election for a Council -the period beginning with the date in which the vacancy in the membership for a local authority

occurs and ending with the date from which the registration of voters is suspended under subsection (2) of section 20A .”.

Certification of registers

11. The principal law is amended in section 12 by deleting the words “Registration Officer” and substituting the words “Director of Elections”.

Preparation of registers on alteration of electoral division

12. The principal law is amended in section 13–
 - (a) by deleting the figure “1996” in subsection (1) and substituting it with the figure “1997”;
 - (b) by inserting the word “division” between the words “electoral” and “of” appearing in line two of subsection (1);
 - (c) by deleting the words “Registration Officer” in subsection (2) and substituting “The Director of Elections”.

Revision of registers

13. The principal law is amended in section 14 -
 - (a) by deleting the words “ Every Registration Officer” in subsection (2) and substituting the words “The Director of Elections”;
 - (b) by deleting the words “Registration Officer” in subsection (4) and substituting the words “Director of Elections”;
 - (c) by deleting subsection (5) and substituting the following :
 - “(5) Not more than one application for registration at a revision of a register shall be made in respect of the same person.”.

Method of revising registers

14. The principal law is amended in section 15 -

(a) by deleting subsection (1) and substituting the following:

“(1) For the purpose of revising a register, the Director of Elections shall prepare supplementary lists reflecting new additions (together with qualifications by age or citizenship) to the register and all renewals for whatever cause (transfers, disqualification or death).”;

(b) by deleting the words “Registration Officer” in subsection (2) and substituting the words “Director of Elections”;

(c) by deleting the word “whethet” in subsection (3) and substituting the word “whether”.

Claims and objections at revision of register

15. The principal law is amended in section 16(1) by deleting the word “*Lis B*” that appears in line 3 of the section and substituting it with the word “List B”.

Penalty for false statements and wrongful claims

16. The principal law is amended in section 20 (2) by deleting the words “Registration Officer” in line three and substituting the words “Director of Elections” and by deleting the word “tha” in line four which appears between the words “for” and “purpose” and substituting “that”.

17. The principal law is amended by adding the following section after section 20:

“Suspension of registration

20A. (1) Whenever local authorities’ elections are to be held, the registration of voters shall be suspended for the relevant period.

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- (2) Whenever a bye-election or fresh election is to be held for a particular Council, the registration of voters shall be suspended in respect of that Council for the relevant period.
- (3) The relevant period is –
- (a) the period beginning seven days from the beginning of the election period for the local authorities' election, bye-election or fresh election and ending with the last day of that election;
 - (b) if at the end of the seven days referred to in paragraph (a) more than ninety days of the election period remain – the period beginning ninety days before the end of that period.
- (4) If an application for registration as a voter is made during a period when registration is suspended, the application is to be received, but not dealt with until the period has ended.”.

Eligibility and nomination of candidates

18. The principal law is amended in section 26 -

- (a) by deleting subsections (1) and (2) and substituting the following :

“(1) Subject to subsections (1A) and (2), and subsection (1) of section 5, every person is eligible for election as a member of a Council and may be nominated and elected as a candidate for election in the electoral division delineated by the Independent Electoral Commission under section 8.

(1A) In accordance with the Local Government Act 1997, one third of the seats in each Council shall be served for women as follows:

- (a) for the first local authority elections, one third of the seats reserved for women shall be from every third electoral division in the Council;
- (b) for subsequent local authority elections, one third of the total electoral divisions in each Council shall be reserved by rotation, but such rotation shall not exceed two terms of office.
- (2) No person referred to in subsection (1) shall be eligible for election as a member of a Council and to be nominated as a candidate for election, if he or she is disqualified in respect of the disqualifications set out in the Third Schedule.";

(b) by adding the following subsections after subsection (5):

“(6) Every candidate shall pay a registration fee to be prescribed by an authority responsible for local elections.

(7) The registration fee prescribed in subsection (6) shall be refundable on condition that the candidate has been able to win at least 10% of the electorate in the electoral division in which he or she was a candidate.”.

(c) by adding the following section after section 26:

“Rights and responsibilities of political parties and candidates

- 26A (1) Every registered political party in Lesotho shall have the right to nominate candidates to stand for elections and such nomination shall be made in accordance with the provisions of this Act.
- (2) Every party contesting an election shall have the right to monitor the registration of voters and shall do so through its designated

representatives assigned to a specified registration centre and whose names shall be notified in writing to the Director of Elections and in the absence of such notification by any political party, it shall be presumed that the concerned party has waived its right of monitoring the registration of voters at the registration centre.

- (3) Representatives of political parties and candidates shall have the following rights:
- (a) to be treated with due respect and consideration by all persons administering registration of voters and by the representatives of other political parties and candidates;
 - (b) to request and obtain information on activities relating to the registration of voters.
- (4) It is the responsibility of the representatives of political parties and candidates in exercising their rights under subsection (3) –
- (a) to monitor the registration activities conscientiously and objectively;
 - (b) to co-operate in order to ensure that the registration activities proceed normally by avoiding unjustified interference in and obstacles to the work of the Registration Officers;
 - (c) to refrain from divulging any information about a voter or prospective voter as a consequence of acting as a representative and which is not relevant to the registration process.”.

19. The principal law is amended by adding the following section after section 27:

“Extension of nomination

27A. Notwithstanding section 27, if at 5 p.m. on nomination day—

- (a) a person who is present at the nomination court is ready to propose a candidate for nomination; or
- (b) a person has been proposed but the person's nomination has not been completed,

the Returning Officer shall, unless or until satisfied that the nomination cannot be completed, continue the proceedings of the nomination court for such period as will enable the person to be properly nominated as a candidate.”.

Proceedings on nomination

20. The principal law is amended in section 28 by deleting sub-section (4) and substituting the following:

- “(4) Before five o'clock in the afternoon on the last day of the nomination period a candidate shall verify with the Registration Officer that the candidate's full names appear in the order they appear in the voters' list.”.

Objections to nomination paper

21. The principal law is amended in section 29 -

- (a) by deleting the words “the decision of the Returning Officer that a nomination is valid or invalid shall be final and shall not be questioned in any proceeding save an election petition in subsection (4)” which appear in subsection (4);
- (b) by adding the following subsection after subsection (4):

“(5) A candidate who is aggrieved by the decision of the Returning Officer may lodge an appeal to the Director of Elections in writing within a period of fourteen days.”.

22. The principal law is amended by adding the following section after section 31:

“What is to happen when an election fails

31A. If an election has failed because of the death of a candidate, no fresh nomination is necessary for any other candidate who had been nominated at the time when the election notice was cancelled. However, any such other candidate may elect to withdraw his or her consent to nomination and in that case the Returning Officers shall ensure that the deposit lodged in respect of that candidate is returned to the person who lodged it or, if not, then to that person's representative.”.

Uncontested elections

23. The principal law is amended by deleting section 32 and substituting the following:

“32. If on the last day of the nomination period in a local authority area or an electoral division after the decision by the Returning Officer, on any objection which may have been lodged only one candidate stands nominated for an electoral division, the Returning Officer shall, forthwith, declare the nominated candidates or candidate, as the case may be, to be elected and shall, forthwith, report the names of the members so elected to the Director of Elections.”.

Contested elections

24. The principal law is amended in section 33 (1) by deleting the words “and the identifying colour or” which appear in line thirteen.

25. The principal law is amended by adding the following sections after section 33:

“Register of official symbols

- 33A. (1) The Director of Elections shall, in accordance with this Part, establish and maintain a register called the register of official symbols.
- (2) The register shall contain pictures (in black and white) of all registered official symbols and specify the political parties and persons authorized to use the symbols at elections.
- (3) Subject to subsection (2), the Director of Elections may maintain the register in a form and manner in which he or she considers appropriate.
- (4) The Director of Elections shall ensure that the register is made available for public inspection during ordinary office hours without charge, at the office of that officer.
- (5) A person who wishes to make a copy of an entry in the register may do so without charge.

Application for registration of official symbols

33B. (1) An application for registration of an official symbol shall be made to the Director of Elections in a form provided or approved by that officer for the purposes of this section, and shall -

- (a) if made by or on behalf of a political party –
 - (i) specify the party's name and address; and
 - (ii) contain a representation (which shall be in black and white) of the official symbol that the party candidates propose to use for election purposes; and

-
- (b) if made by or on behalf of a person who proposes to stand for election as an independent candidate -
 - (i) specify the person's name and residential address; and
 - (ii) contain a representation (which shall be in black and white) of the official symbols that the person proposes to use for election; and
 - (c) set out any other information and be accompanied by any other document, required by Regulations to be made for the purposes of this paragraph.

(2) Subject to sections 33C, 33E and 33F, a political party which, at the date of coming into operation of this Act, has an official symbol registered in terms of Chapter 5 of the National Assembly Election Act 1992, is not required to apply for the registration of the symbol under this Act.

Registration of official symbols

- 33C.(1) If an application complies with section 33B, the Director of Elections shall register the official symbol that is the subject of the application unless he or she refuses the application under subsection (3).
- (2) On registration of an official symbol under this section the Director of Elections shall give written notice of the registration to the applicant.
 - (3) The Director of Elections shall refuse an application made under section 33B if, in his or her opinion, the design of the symbol -
 - (a) is the same as another official symbol that is already registered under this Chapter or so closely resembles that other symbol as to confuse voters or to be likely to be mistaken for it; or

- (b) is or contains a representation of the national flag, or the national armorial design of Lesotho or closely resembles that flag or design as to be likely to be mistaken for it; or
 - (c) is or contains a representation of any coat of arms or emblems used by or associated with the Royal Family of Lesotho or so closely resembles that coat of arms or emblems as to be likely to be mistaken for it; or
 - (d) is or contains a representation of the logo, mark or symbol of a prominent public body or so closely resembles that logo, mark or symbol as to be likely to be mistaken for it; or
 - (e) is obscene or is likely to cause offence to members of the public or is such that if registered the electoral system would be likely to be brought into disrepute.
- (4) The Director of Elections shall, if he or she refuses an application under subsection (3), give the applicant written notice of the refusal and a statement of the reasons for the refusal.
- (5) Unless cancelled under section 33F, the registration of an official symbol under this section remains in force for a period of five years and then expires unless previously renewed under section 33E.

Director of Elections to make official symbols available for use by certain independent candidates

- 33D. (1) The Director of Elections shall make available a selection of symbols for use by persons who may be nominated as independent candidates and in respect of whom official symbols are not registered under section 33C.

-
- (2) The Director of Elections shall not make a symbol available under this section if the symbol –
- (a) is registered under section 33C; or
 - (b) is such that, if an application for registration of the symbol had been made under section 33B, the Director of Elections would have been required to refuse the application under section 33C.

Renewal of registration of an official symbol

- 33E. (1) An application may be made in accordance with this section to the Director of Elections for the renewal of registration of an official symbol registered under section 33C.
- (2) The application shall be made in a form provided or approved, and in the manner specified, by the Director of Elections.

Cancellation of registration of an official symbol

- 33F. (1) The Director of Elections may cancel the registration of an official symbol on the written request of an officer of the political party or, as the case may be, of the person by whom or on whose behalf the application for registration was made.
- (2) The Director of Elections may also cancel the registration of an official symbol if satisfied on reasonable grounds that –
- (a) the political party concerned has ceased to exist; or
 - (b) the person concerned has died; or

- (c) the registration was obtained by fraud or misrepresentation.”.

Polling officers

26. The principal law is amended in section 34 -
- (a) by deleting the words “Director of Elections” and substituting the words “Electoral Commission” and the words “Senior Polling Officer” with the words “ Presiding Officer” in subsection (1);
 - (b) by deleting the word “appointing” in subsection (1) line three and substituting the word “appointed.”.
 - (c) by deleting the words “Director of Elections”, “Electoral Division Returning Officer” and “Senior Polling Officer” and substituting the words “Electoral Commission”, “Returning Officer” and “Presiding Officer” respectively in subsection (3).

Facilities to be provided at polling station

27. The principal law is amended in section 35 (1) by deleting the words “Registration Officer” and substituting the words “Director of Elections”.

Registers of voters to be conclusive evidence of the right to vote

28. The principal law is amended in section 36(1) by deleting the words “shall not be affected by the outcome of such appeal” appearing at the end of the subsection and substituting the words “may be affected by the outcome of such appeal and affect the result of the elections.”.

Admittance to polling station

29. The principal law is amended in section 37 -
- (a) by deleting subsection (1) and substituting the following :

“(1) A voter is not entitled to vote at a place other than a polling station allocated to him or her for which he or she is registered as a voter or at which he or she is entitled to vote as an advance voter.”;

(b) by deleting subsection (2) and substituting the following :

“(2) Subject to subsections (3) and (4), the poll in an electoral division shall open at seven o'clock in the forenoon of the day prescribed in the writ issued under section 23 for the taking of the poll and shall close at five o'clock in the afternoon of that day:

Provided that the Presiding Officer for a polling station shall allow any person to vote who wishes to vote and is in the immediate vicinity of the polling station at five o'clock in the afternoon and polling is extended until all those persons have voted.”.

30. The principal law is amended by deleting section 38 and substituting the following :

“Form of ballot paper

38 (1) A ballot paper to be issued to a voter at a polling station shall –

- (a) be included in a book of ballot papers;
- (b) be in accordance with form 12A in the Schedule;
- (c) comply with subsection (2);
- (d) have attached two counterfoils with the same serial number.

(2) There shall be printed on the ballot paper, in alphabetical order according to surnames, the names of the candidates nominated for elections for the Council concerned and -

- (a) in relation to a party candidate -
 - (i) the name of the political party that has endorsed the candidate; and
 - (ii) a picture of the party's registered official symbol shown in black and white; and
- (b) in relation to an independent candidate -
 - (i) the word "independent"; and
 - (ii) a picture of the candidate's registered official symbol shown in black and white.

(3) A ballot paper to be issued to an advance voter shall -

- (a) be included in a book of ballot papers; and
- (b) be in accordance with Form 12A in the Schedule.

Manner of voting

31. The principal law is amended in section 40 -

(a) by inserting the following subsection after subsection (4):

“(4A) On receiving the ballot paper, the voter shall, except in the case of a voter who has no hands, place or allow to be placed on indelible mark -

- (a) in a place to be determined by the Presiding Officer on his or her left hand; or
- (b) in the case of a voter who has only a right hand, on a place to be determined by the Presiding Officer on his or her right hand.”;

(b) by adding the following section:

“Voting by advance voters

40A. (1) Any person who is registered as a voter and who will not be able to attend at a polling station in the polling district in which he or she is registered at any time while polling is in progress at an election-

- (a) because the person will be carrying out official duties at the election as an election official or as a police officer;
- (b) because the person is a candidate at the election;
- (c) because the person will be carrying out duties at the election as a candidate’s agent at the election; or
- (d) because the person will be carrying out official duties as a journalist, medical personnel or security personnel,

may, during the period beginning 28 days and ending 4 days before the start of polling at polling stations, apply to vote as an advance voter, in a form to be prescribed by the Director of Elections, to the Electoral Division Registration Officer nearest to the applicant’s place of residence.

(2) Sections 40, 41, 42, 43, 44, 45, 46 and 47 shall, with necessary modifications, if any, apply to an advance voter.”.

Declaration by voters

32. The principal law is amended in section 41 by deleting subsection (1) and substituting the following:

“(1) The Presiding Officer at a polling station shall require a voter before he or she is given the ballot papers to furnish a

registration card or other proof of identity in the form of a passport or verification by an official witness in conformity with section 75 of the National Assembly Election Act 1992.”.

Counting of votes and functions of Presiding Officer

33. The principal law is amended in section 46 -

(a) by deleting subsection (1) and substituting the following:

“(1) Each candidate may appoint an agent, (hereafter referred to as “the candidate’s agent”), to attend to the counting of votes. Written notice of the name and address of the candidate's agent so appointed shall be given by the candidate to the Presiding Officer.”;

(b) by deleting the words “Returning Officer” whenever they appear in the section and substituting the words “Presiding Officer” ;

(c) by deleting subsection (7) and substituting the following:

“(7) When the counting of votes has been completed, the Presiding Officer shall, forthwith, declare those candidates who polled the highest number of votes as elected members to a local authority:

Provided, however, that upon the application of any candidate or his or her counting agent, a recount shall be made before the Presiding Officer makes the declaration.”.

(d) by adding the following subsections after subsection (8):

(8A) When the result of the counting of votes has been announced at a polling station, the Presiding Officer shall prepare a ballot account in the prescribed form showing the number of books of ballot papers issued to that officer and accounting for the ballot papers under the following heads:

-
- (a) ballot papers used by voters for voting at the station and not rejected or objected to but allowed;
 - (b) ballot papers so used which were rejected;
 - (c) ballot papers so used which were objected to but allowed;
 - (d) ballot papers not used by voters for voting at the station;
 - (e) spoiled ballot papers;
 - (f) tendered ballot papers;
 - (g) spoiled tendered ballot papers.
- (8B) The Presiding Officers shall then, sign the ballot account and invite the candidates or the candidates' agents to sign the account and if the candidate or agent refuses either to sign the account or register a protest, that candidate or the political party represented by that agent may not challenge the election account.
- (8C) The Presiding Officer shall, as soon as the ballot account has been signed, announce to both inside and outside the polling station the provisional results for the polling station.
- (8D) After signing the ballot account, the Presiding Officer at a polling station shall enclose in the ballot box the following items in separate packets addressed to the Returning Officer:
- (a) all ballot papers that were used by voters for voting at the station other than ballot papers referred to in paragraphs (b), (c) and (d);
 - (b) any rejected ballot papers;

- (c) any ballot papers referred to that officer, or objected to and allowed;
- (d) any tendered ballot papers;
- (e) spoiled ballot papers (including spoiled tendered ballot papers);
- (f) the ballot papers not issued to voters for voting at the station;
- (g) the marked extracts of the certified copy of the electoral list for the council and any certificates presented at the polling station.

(8E) The Presiding Officer shall then enclose in the ballot box the following items in separate packets addressed to the Director of Elections:

- (a) the counterfoils of the used ballot papers referred to in subsection (8D) (b), (c) and (d);
- (b) declarations of secrecy and the documents of appointment (if any) of electoral officials and candidates' agents;
- (c) any declarations on oath made under section 41;
- (d) the instruments used for marking ballot papers with the official mark;
- (e) any items printed for purposes of the election (including forms and stationery but excluding ballot papers) that were not used for those purposes.

(8F) When the items referred to in subsections (8D) and (8E) have been enclosed in packets, the Presiding

Officer shall seal the packets with the officer's own seal and allow the candidates or their agents to affix their seals if they wish to do so.

- (8G) Subject to subsection (8I) and unless the Returning Officer has given a direction, the Presiding Officer shall, immediately after doing the things referred to in subsections (8A), (8B), (8D), (8E) and (8F), arrange for the packets referred to in subsection (8D) and the ballot account to be delivered to the Returning Officer for the Council concerned -
- (a) under the escort of a police officer; and
 - (b) if the candidates or their agents wish to accompany that escort- in the company of those candidates or their agents.
- (8H) If the Presiding Officer does not personally carry out the delivery of the packets and ballot account, the Deputy Presiding Officer or a Polling Officer shall carry out the delivery.
- (8I) If the Presiding Officer so decides, subsection (8G) may, instead of being complied with immediately after the things referred to in subsections (8A), (8B), (8D), (8E) and (8F) have been done, be complied with on the day following the announcement of the result of polling at the polling station.
- (8J) In that case, the Presiding Officer shall, until delivery can be made-
- (a) ensure that the packets, ballot account and ballot boxes are kept in a place, of safe custody and under guard; and
 - (b) allow any of the candidates or candidates' agents who wish to do so, keep those things under observation.

(8K) The Returning Officer shall, on receiving the packets referred to in subsection (8D) and the ballot account -

- (a) ensure that the packets and ballot account are kept in a place of safe custody and under guard; and
- (b) allow any of the candidates or candidates' agents, who wish to do so, keep those things under observation,

until verification of the ballot account.

(8L) Subject to any determination by the High Court to the contrary, the result of polling at a polling station, is not affected by the fact that the packets containing the ballot papers used by voters at the station are, or the ballot account is, lost or stolen or not delivered to the Returning Officer as required by this section.

(8M) As soon as conveniently possible, the Presiding Officer shall arrange for the packets referred to in subsection (8E) and the ballot boxes used at the election to be delivered to the Director of Elections or to a person authorized by that officer to receive those packets and ballot boxes on his or her behalf.”.

(e) by deleting subsection (9) and substituting the following:

“(9) Upon the completion of the counting and after the result has been declared by him or her, the Presiding Officer shall seal up the ballot papers and all other documents relating to the election as required by this Act and shall commit them into the custody of the Director of Elections who shall, subject to the provisions of subsection (10), retain them for a period of twelve months and thereafter shall cause them to be destroyed by order of the Electoral Commission.”.

34. The principal law is amended by adding the following sections after section 48:

“Return as to election expenses

48 A. (1) Seven weeks after the publication of the results of the local authorities' elections, every candidate or his or her agent shall transmit to the Director of Elections a true return in the prescribed form, containing, in relation to the candidate, a statement of all expenses incurred together with all bills and receipts.

(2) The statement shall contain -

- (a) an account of personal expenses, if any, paid by the candidate;
- (b) an account of all monies received by the candidate or any other person on his or her behalf for the purposes of elections expenses incurred with a statement of every payment and from whom they were received.

(3) A candidate or a candidate's agent who knowingly makes a false declaration under this section commits an offence and is liable on conviction to a fine not exceeding one thousand maluti or to imprisonment for a term not exceeding twelve months, or both.

Electoral model or principle

48B For the avoidance of doubt, the elections under this Act shall be conducted in accordance with the electoral model or principle known as “First Pass The Post” and not in accordance with the electoral model or principle known as “Proportional Representation” as set out in the National Assembly Election Act 1992 in respect of the National Assembly Elections.”.

Personation

35. The principal law is amended in section 51-

- (a) by deleting the expression "section 55" that appears at the end of subsection (1) and substituting "section 54";
- (b) by deleting the word "sn" that appears between the words "commits" and "offence" in line two subsection (2) and substituting the word "an";
- (c) by deleting the expression "section 55" that appear at the end of subsection (2) and substituting "section 54".

Bribery

36. The principal law is amended in section 53 by deleting the expression "section 55" appearing in the introductory part of the provision and substituting "section 54".

Certain expenditure to be illegal

37. The principal law is amended in section 55 (2), (3) and (4) by deleting the expression "section 61" and substituting "section 60".

Certain employment to be illegal

38. The principal law is amended in section 56 (2) by deleting the expression "section 61" and substituting "section 60".

Time for presentation

39. The principal law is amended in section 71(1) by deleting the expression "twenty-one days" and substituting "thirty days".

Parliamentary Registers etc... to be used for local authority elections

40. The principal law is amended in section 80 by deleting the words "Registration Officer" and substituting the words "Director of Elections".

41. The principal law is amended by adding the following section after section 80:

"Code of Conduct

80A. All political parties and candidates participating in elections under this Act shall comply with the Code of Conduct set out in the Fourth Schedule."

42. The principal law is amended by adding the following Schedule after the Third Schedule, as follows:

**"FOURTH SCHEDULE
ELECTORAL CODE OF CONDUCT****PURPOSE OF THE CODE**

1. The objective of this code is to promote conditions that are conducive to free, fair and transparent elections, including the promotion of a climate of -

- (a) democratic tolerance in which political activity may take place without fear, coercion, intimidation, violence or reprisals;
- (b) free political campaigning and open public debate;
- (c) intolerance to bribery, vote-buying and any political patronage;
- (d) intolerance to defamation of character and misinformation to the public.

PROMOTION OF THE CODE

2. Every registered party and every candidate shall:
 - (a) promote the purpose of this Code when conducting its or his or her campaigns for elections;
 - (b) publicise this Code widely in any election campaign;
 - (c) promote and support efforts in terms of this Code to educate voters;
 - (d) to adhere to an internal code of ethics which is not in conflict with this Code.

PUBLIC COMMITMENT TO DEMOCRATIC PRINCIPLES AND COMPLIANCE WITH THE CODE AND ELECTORAL LAWS

3. Every registered party and every candidate shall affirm publicly the right of all participants in the elections:
 - (a) to express divergent political opinions;
 - (b) to debate and contest the politics and programmes of other political parties;
 - (c) to canvass freely for membership and support from voters;
 - (d) to hold public meetings, rallies and marches;
 - (e) to attend public meetings convened by others;
 - (f) to distribute electoral literature, posters and campaign materials;
 - (g) to publish and distribute notices and advertisements;
 - (h) to promote free electoral campaign by all lawful means.

PREVENTION OF VIOLENCE, INTIMIDATION, DEFAMATION AND VOTE-BUYING

5. All those bound by this Code in terms of section 82 shall give effect to the following undertakings and stipulations:
- (a) to publicly and repeatedly condemn violence and intimidation;
 - (b) to avoid the use of a language or any kind of action which may lead to violence or intimidation whether to demonstrate party strength, gain any kind of political advantage or for any other reason;
 - (c) to ensure that no arms or weapons of any kind are carried or displayed at political meetings or in the course of any march, demonstration or other event of a political nature;
 - (d) to refrain from publishing false or defamatory statements or allegations in connection with an election in respect of a party, its candidates, representative, or member;
 - (e) to avoid plagiarizing the symbols, colours or acronyms of other political parties, to discourage and, where possible, prevent removal, disfigurement or destruction of political materials of any political party;
 - (f) to refrain from offering any inducement or reward to any person in consideration of such person either joining or not joining any political party, attending or not attending any political event, voting or not voting (either at all, or in any particular manner) or accepting, refusing or withdrawing such person's nomination as a candidate in the election;
 - (g) to refrain abusing a position of power, privilege or influence for political purposes in particular employer or employee relationship, parental, patriarchal or traditional authority;
 - (h) to avoid any discrimination based on race, sex, ethnicity, class, gender or religion, in connection with the election and political activity.

DUTY TO COOPERATE

6. (1) Every registered party and every candidate shall ensure that they do not call a public meeting, march, demonstration,

rally or any other public political event at the same time and place as that called by another party contesting the election.

- (2) Every registered party and every candidate shall attend meetings convened by an appropriate authority to discuss enforcement and infringement of this Code.
- (3) Every registered party and candidate shall abide by the decision of an appropriate agency or authority that is empowered to enforce this Code.

ROLE OF WOMEN

7. Every registered party and every candidate shall, as far as practicable, comply with section 36A of the National Assembly Election Act 1992.

ROLE OF MEDIA

8. Every registered party and candidate shall -
 - (a) respect the role of the media before, during and after an election conducted in terms of this Act;
 - (b) not prevent access by members of the media to public political meetings, marches, demonstrations and rallies, and
 - (c) take all reasonable steps to ensure that journalists are not subjected to harassment, intimidation, hazard, threat or physical assault by any of their representatives or supporters.

ROLE OF THE COMMISSION

9. Every registered party and every candidate shall -
 - (a) acknowledge the authority of the Commission in the conduct of the election and have collective ownership in the process of the electoral process;

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- (b) ensure the attendance and participation of representatives at meetings by or on behalf of the Commission;
 - (c) implement its orders and directions;
 - (d) facilitate its rights of access through official monitors or other representatives to all public political meetings or other electoral activities;
 - (e) co-operate in the official investigation of issues and allegations arising during the election period;
 - (f) take all reasonable steps to ensure the safety of monitors and other representatives of the Commission from exposure to insult, hazard or threat in the course of their official duties;
 - (g) reassure voters with regard to the impartiality of the commission, the secrecy and integrity of the ballot, and furthermore, that no one will know how any other person has voted;
 - (h) take reasonable steps to discipline and restrain their party office-bearers, employees, candidates, members and supporters from -
 - (i) infringing this Code;
 - (ii) committing any offence in terms of this Act or any other law;
 - (iii) committing any prescribed electoral irregularity; and
 - (iv) contravening or failing to comply with any provision of this Act;
 - (i) establish and maintain effective lines of communication with all political parties, at national, district and local level, including the exchange of names, addresses and contact telephone and facsimile numbers of party election agents and of other relevant office-bearers and representatives; and

- (j) ensure that all political parties and candidates accept the final outcome of the election, and the Commission's declaration and certification of the results thereof.”

NOTE

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- ¹ Act No. 9 of 1998
² Act No. 10 of 1992