



A consolidated version of the Local Government Elections Act, 1998

Part I

Preliminary

Short title and commencement

1. This Act may be cited as the Local Government Elections Act, 1998 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-

"candidate" means a person who is nominated as a candidate for election to a Local Authority;

"constitution" means the Constitution of Lesotho;

"council" means a Community, Urban or Municipal Council constituted under the Local Government Act 1961;

"corrupt practice" means any corrupt practice specified in Part IV of this Act;

"Director of Elections" means the person appointed as such under section 9D of the National Assembly Election Act 1992;

"elections" means an election for the a Member of a Council;

"electoral commission" means the Independent Electoral Commission established under section 66 of the Constitution as amended;

"electoral division" means an electoral division specified in sub-section (2) of section 61;

"electoral division registration officer" means an officer appointed under sub-section (1) of section 4;

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

"judge" means a Judge of the High Court;

"local authority" means a Community, Urban or Municipal Council constituted under Local Government Act 1996;

"local authority area" means an area declared under section 3 of the Local Government Act No. 16 of 1996;

"member" means a Member of a Council;

"polling district" means a part of an electoral division subdivided under section 9;

"polling officer" means a polling officer appointed under section 34;
"register" or "register of voters" means the register of voters for any particular electoral division;
"registration officer" means an officer appointed under sub-section (1) (b) of section 3;
"returning officer" means a Returning Officer and Assistant Returning Officer appointed under section 4;
"voter" means a person who qualifies to vote under this Act.

General amendment

The principal law is amended by deleting the words "he", "his" and "him" or "hers" and "him" or "her".

Appointment of the Director of Elections and Registration Officers

3. (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.
- (2) Pursuant to section 66A of the Constitution as amended, the Director of Elections and such other officers appointed under this Act shall, subject to any general or special directions given to them, by the Electoral Commission: -
- (a) exercise general direction and supervision over the administrative conduct of elections;
 - (b) issue to election officers such instructions, not inconsistent with this Act as the Director of Elections may, from time, deem necessary to ensure effective execution of the provision thereof;
 - (c) execution and perform all other powers and duties which by this Act are conferred upon them.
- (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.

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.

Qualifications for registration as a voter

5. (1) Subject to the provisions of section 6, a person is entitled to be a voter under the provisions of this Act if such persons: -

- (a) is a citizen of Lesotho;
- (b) has attained the age of 18 years on the date of application for registration as a voter; and
- (c) has been lawfully resident in Lesotho for a continuous period of two months immediately before registration as a voter, absences for short temporary visits elsewhere being disregarded.

Provided that where any person who possesses the qualifications set out in paragraphs (a) and (b) of this sub-section is engaged in work or labour outside Lesotho he shall nevertheless be deemed to have the residential qualifications described in this paragraph if he or she satisfies the Registration Officer that he or she has continuously maintained a home in Lesotho for five years immediately preceding registration.

(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

(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 section 114 and 118) Part 3 or Part 4 of the National Assembly Elections 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.

Electoral Division in which elector is to be registered

7. (1) Subject to the provisions of this Act, a voter is entitled to have his name registered in the one electoral division only, which shall be the electoral division in which he or she has lawfully resided for a continuous period of two months (absences for short temporary visits elsewhere being disregarded) immediately preceding registration as a voter.

(2) For the purposes of sub-section (1) of this section, the expression an electoral division in which he or she has lawfully resided shall mean: -

- (a) the electoral division in which such person has, for the said period, been in lawful occupation of dwelling or of a trading, commercial, industrial, mission, school or other site; or

(b) if he or she qualified as a voter under sub-paragraph (ii) of the proviso to paragraph (c) of section 5, the electoral division in which such person has maintained a home for the period mentioned in sub-section (1).

(3) If a person votes at an election in an electoral division other than that in which he or she is registered, or votes in more than one electoral division, he or she is guilty of an offence and is liable on conviction to the penalties prescribed in section 61; Provided that the court before whom a person is convicted under this sub-section may, in its discretion in the circumstances in any particular case, mitigate or remit any penalty or incapacity which may be imposed in respect thereof under section 63.

(4) The residence requirement of two months referred to in subsection (1) shall not apply to a voter who is also a candidate.

(5) If the candidate referred to in subsection (4) is nominated in an electoral division in which he does not reside, he shall, immediately after his nomination, transfer his registration to the electoral division in which he has been nominated.

Delineation of Electoral Divisions

8. The Electoral Commission shall by notice published in the gazette divide a community, Urban or Municipal area into electoral divisions having regard to: -

- a. the number of voters in each division;
- b. the physical features of the divisions and any peculiarity in the distribution of population therein; and
- c. the socio and cultural ties of the communities,

and each division shall be designated by such name and serial number as may be specified by the Electoral Commission in a notice.

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 sub-divided;
 - (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 alteration 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.

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 local authority 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.

Part II

Registration of voters and Revision of Registers

Registration of voters

10 (1) The Registration Officer may under the general direction of the Director of Elections arrange for the recording of the names of voters for inclusion in the register of voters. The Registration Officer may require Electoral Division Registration Officers and Assistant Registration Officers to prepare a list containing the name of every person in that part of the electoral division who appears to him or her to be qualified to have his or her name entered in the register of voters for such electoral division

(2) The Electoral Commission shall wherever appropriate and immediately upon the publication of a notice under subsection (1) of section (3) of the Local Government Act 1996, constituting Community, Urban or Municipal Councils, cause a notice to be published in a newspaper circulating within the jurisdiction of such Council and in such manner as it may think fit

(3) The notice shall notify the public of the provisions of sub-sections (5), (6) and (7) and call upon any qualified voter who believes that his name has not been recorded under sub-section (1) and who wishes to have his name entered in a register of voters, to apply for registration before a date to be specified in such notice to the Registration Officer in which he or she is entitled to have his or her name entered in the register of voters under section 7.

(4) Every application for registration under sub-section (2) shall be as in Form I in schedule I or in such other form as the Electoral Commission may prescribe and shall be signed or marked by the applicant and attested by the witness who is not less than eighteen years of age.

(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.

(5) Upon the expiration of the period permitted by sub-section (2) it shall be the duty of the Registration Officer to prepare a register of voters for the Community, Urban or Municipal Council showing separately the voters for each of the several electoral divisions

(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.

(7) For the purpose of satisfying himself or herself of the qualifications of an applicant for registration, a Registration Officer, an electoral division Registration Officer and an assistant Registration Officer may make such inquiry as he or she may think necessary.

(8) The Registration Officer shall give notice, in such a manner as he or she shall think fit, that the register or a copy thereof will be open for inspection at all reasonable hours in the specified date and that all claims and objections will be adjudicated on a specified date.

(9) A person who wilfully makes a false statement or declaration in or relating to any application for registration or in an attestation of such application commits an offence and is liable on conviction to a fine not exceeding One Thousand Maluti or imprisonment not exceeding six months or both such fine and imprisonment.

(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 by-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.

Claims and Objections

11. (1) A person who considers that he or she is entitled to have his or her name entered in a register of voters and whose name has been omitted from such register (hereinafter in this section referred to as “the claimant”) may apply to the Registration Officer to have his or her name entered therein.

(2) Every claim under sub-section (1) shall be made in writing as in Form 4 in the First Schedule to the Registration Officer within a period of two weeks notified under sub-section (8) of section 10. Within four days from the expiry of the period of two weeks the Registration Officer shall exhibit a notice that claims made under sub-section (1) and (2) are open for inspection at his office.

(3) A person whose name appears in the register of an electoral division may object to the inclusion in the register of his or her name or the name of any other person appearing in that part of the register appertaining to the electoral division, or may object to the insertion in that part of the register of the name of any claimant.

(4) In this section and in section 18 every person objecting to the retention or insertion of name in the register is referred to as the objector

(5) Every objection to the retention of a name in the register shall be made in writing and shall be as in Form 5 in the Schedule I and

reach the Registration Officer within the period of two weeks notified under sub-section (8) of section 10.

(6) Every objection to the insertion of the name of a claimant in the register shall be made in writing and shall be as in Form 6 in Schedule 1 and shall reach the Registration Officer within three days from the date on which the notice that claims are open for inspection is exhibited under sub-section (2).

(7) The Registration Officer shall as soon as practicable after receiving an objection to the retention or insertion of any name in any register send a notice of such objection to the person in regard to whom objection has been made. Such notice shall be as in Form 7 Schedule 1.

(8) Three persons appointed by the Electoral Commission (hereinafter "called the adjudicators"), shall on the date notified under sub-section 10; adjudicate on all claims, which have been duly made.

(9) The adjudicators may without enquiry allow a claim in respect of which no objection has been made if they are satisfied that such claim should be allowed.

(10) Where an objection is made to the retention or insertion of a name in the register, the adjudicators may call upon any person to appear before them to give evidence relevant to the enquiry, and may-

- (a) if a person's entitlement is not proved to the adjudicators' satisfaction, order the deletion of such person's name from the register or refuse to order the insertion of such person's name in the register; or
- (b) if such person's entitlement is proved, order the retention insertion of such person's name in the register.

(11) The decision of the adjudicators in the event of a disagreement between them shall be that of the majority and shall be final. The Registration Officer shall retain or insert names in, or delete names from the register in accordance with the order of the adjudicators.

(12) If an objection is made and is overruled by the adjudicators, and in their opinion the objection was made without reasonable cause, the adjudicators may, if they think fit, order the objector in writing to pay to the person in regard to whom the objection was made a sum not

exceeding one hundred Maloti which the adjudicators consider to be reasonable compensation.

(13) A sum awarded as compensation under this section shall be recovered as though the order of the Adjudicators were an order of a court for the recovery of money by the Registration Officer.

Certification of registers

12. (1) The Director of Elections shall, as soon as may be convenient and after claims and objections have been adjudicated certify a true and correct the register of voters for each electoral division, as the case may be, of the Community, Urban or Municipal Council.

(2) Nothing in this section shall be deemed to prohibit the Director of Elections, before certifying any register from correcting any clerical or other error therein if such correction does not affect the entitlement of any person to have his name included or retained therein.

Preparation of registers on alteration of electoral divisions

13. (1) Where by notice under sub-section (2) of section 3 of the Local Government Act 1997 an electoral division of a Community, Urban or Municipal Council is altered or a new division is created, the Registration Officer shall forthwith prepare or cause to be prepared for that electoral division a new part of the register in operation immediately prior to the publication of such notice which relates to the area comprised in the altered or new electoral division, shall appear in the new register.

(2) On the completion of the preparation of the new part of the register under the provisions of sub-section (1) the Director of Elections shall give Notice in the Gazette and, in such other manner as he shall think fit, that the new part of the register is completed and that such part or copy thereof is open for inspection at all reasonable hours in the office of the Director of Elections or at such other place as may be specified in the notice. Thereafter the provisions of sections 11 and 12 shall apply to a register prepared under this section. Every such register when certified shall, notwithstanding anything in sub-section (2) of section 20, come into operation at the next election held after such certification and not earlier.

Revision of registers

14. (1) At such times as may be directed by the Director of Elections every Registration Officer shall cause a notification to be published in a Gazette and in a newspaper circulating within the jurisdiction of the

Community, Urban or Municipal Council and, in such other manner as he thinks fit, calling upon every person who being qualified to be registered and not being already registered in a register of voters, is desirous of having his or her name inserted in a register of voters or being already registered is desirous of changing his registration to one in respect of a different electoral division to forward his application to the Registration Officer so as to reach the Registration Officer on or before a date to be specified in such notice.

(2) The Director of Elections shall complete the revision of the register within two months from the date of publication of the notice under sub-section (1).

(3) Every application made in pursuance of any notification under sub-section (1) shall be as in Form 1 in the First schedule and shall contain an address within Lesotho, at which an acknowledgement of the receipt of application may be delivered in the ordinary course of the post, and shall be signed or marked by the applicant and attested by a witness who is able to read and write English or Sesotho and is not less than eighteen years of age.

(4) The Director of Election shall prepare at the end of registration period the list of persons who have applied to be registered as voters by notice published in the Gazette and in such manner as he shall think fit, notify the public that such lists of copies thereof are open for inspection at all reasonable hours of the day at the office of the Director of Elections and at such other place or places in each electoral division as may be specified in the notice.

(5) Not more than one application for registration at a revision of a register shall be made in respect of the same person.

(6) Nothing in this section shall be deemed to extend the period for application prescribed in sub-section (1).

(7) For the purpose of revising a register and of satisfying himself as to the entitlement of a person to registration or determining whether the name of a person should be inserted or retained in the register or expunged therefrom, the Registration Officer may make such enquiry as he may deem necessary whether by himself or through a person appointed by him. A notice requiring information under this sub-section may be sent by ordinary letter post to the person from whom the information is required or may be delivered to him or to an adult member of his household.

(8) All officers in the service of the Government (other than officers of the Government who are prohibited by law from furnishing information) and all chiefs and headman are hereby authorised and required to furnish to any Registration Officer or Electoral Division Registration Officer or person appointed by them for the purpose all such information as they may require to enable the Registration Officer to revise the register.

(9) Every person who is in possession of information required under sub-section (7) and who fails to give such information or wilfully give false information, is guilty of an offence is liable on conviction to a fine not exceeding two thousand Maloti or to imprisonment for a period not exceeding twelve months.

(10) Without prejudice to the provision of sub-section (9) if a person is a registered voter and fails to give such information with regard to his entitlement to registration to Registration Officer or Electoral Division Registration Officer or Electoral Division Registration Officer of to a person appointed for the purpose within fourteen days after a notice has been served upon him under sub-section (7), his name shall forthwith be expunged from the register by the Registration Officer and he shall not be entitled to have his name retained or inserted in the register for the ensuing year.

(11) Every person who is appointed under sub-section (7) and who wilfully suppresses information relating to the entitlement of a person for registration or relevant for determining whether the name of a person should or should not be retained or inserted in a register after such information has been furnished to or collected by him, is guilty of an offence and is liable on conviction to a fine exceeding two thousand Maloti or to imprisonment for a period not exceeding twelve months.

Method of revising registers

15. (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).

(2) The Director of Elections shall give Notice in the Gazette and, in such other manner as he shall think fit, that lists referred to in sub-section (1) have been completed and that the register and such lists or copies therefore are open for inspection at all reasonable hours of the day at the office of the Director of Elections and at such other place or places in each electoral division as may be specified in the notice.

(3) Once the lists have been published under sub-section 2 a person who made an application for registration as a voter shall have a duty to check whether his name has been entered in the register of voters.

Claims and objections at revision of register

16. (1) Every person who is qualified in accordance with this Act to have his or her name entered in a register of voters at a revision of that register and whose name has been omitted from that register and from "List B," or whose name has been include in "List A, and who claims to have his name inserted or retained as the case may be, in the register (hereinafter in this section referred to as "the claimant") may apply to have his name inserted or retained therein.

(2) Any person whose name appears in the register or in "List B" for an electoral division may object to the inclusion in the register of his own name or the name of any other person appearing in such register or list or may object to the insertion or retention in the register of the name of any claimant.

(3) The provisions of section 11, other than the provisions of sub-sections (1) and (3) of that section, shall apply to claims and objections under this section as though the references therein to the notice that the register or a copy thereof is open for inspection were references to the notice that the register and List "A" and "B", or copies thereof are open for inspection, given under section 15 and as though the term "objector" included a person objecting to the retention in the register of the name of claimant.

Certification of revised register

17. (1) The Registration officer shall certify as true and correct that part of the register of voters appertaining to each electoral division as in Form 8 in the first Schedule, as soon as may be convenient, after the claims and objections have been adjudicated upon and after he has revised Lists "A" and "B" in accordance with such adjudication and expunged from the register the name of every person remaining in "List A" and included in the register the name of every person remaining in "List B".

Provided that the Registration Officer may certify the register in accordance with this section during the pendency of any appeal under section 19, and shall thereafter insert in or expunge from such certified register the name of any person in accordance with the decision of the Adjudicator on the determination of such appeal.

(2) Nothing in this act shall be deemed to prohibit the Registration Officer before certifying any register from correcting clerical or other error therein, if such correction does not affect the entitlement of any person to have his name included or retained therein.

Notices and adjournments

18. (1) Subject to the provision of section 14, all notices required to be given under this Part shall be sufficiently given if served personally or sent by registered post to the address if any given in the claim or objection or in the register of voters, or delivered at such address.

(2) Adjudicators may from time to time within reasonable time, and without prejudice to the objector or claimant, adjourn proceedings before them under this Act to a convenient time and place.

Notice of certification of register and commencement and duration

19. (1) On the certification of a register under this Act, the Registration Officer shall give Notice in the Gazette and in such other manner as he shall think fit

- (a) of the date of certification of the register; and
- (b) that such register or copy thereof is open for inspection at all reasonable hours of the day at the office of the Registration Officer and at such place or places as may be specified in the notice.

(2) The certified register shall come into operation upon the date of certification as specified in the notice under subsection (1) and, subject to such alterations if any, as may subsequently be made therein in accordance with section 12 or section 17, such register shall continue in operation until superseded by the next certification.

Penalty for false statements and wrongful claims

20. (1) Every person who wilfully makes a false statement or declaration in a claim or objection or at an adjudication in connection therewith is guilty of an offence and is liable on conviction to a fine not exceeding two thousand Maloti or to imprisonment for a period not exceeding twelve months.

(2) Adjudicators may on the adjudication or hearing of an application for registration, claim or objection, require that the evidence

tendered shall be given on oath or affirmation. The Director of Elections may administer an oath or affirmation for that purpose. A person who in the course of an adjudication or hearing knowingly swears or affirms anything material to the validity of such application, claim or objection, which is false commits an offence and is imprisonment for a period not exceeding twelve months.

Suspension of registration

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

(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 the 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”.

Part III

Elections

Number of members to be returned for local authority areas and electoral divisions

21. (1) Every Local Authority area shall return such number of Gazetted Chiefs as members, as prescribed under section 4 of the Local Government Act 1997;

(2) Each electoral division of a Local Authority shall return one member to the Council of such local authority;

(3) A local authority area shall return one third women candidates to fill special council seats as prescribed in section 4 (3) of the Local Government Act 1997;

(4) The Electoral Commission shall –

(a) determine one third of the total number of electoral divisions in a Council by –

(i) dividing the total number of electoral divisions by three;

(iii) rounding off to the nearest whole number if the resulting figure has a decimal fraction.

(c) Publish a list indicating the total number of additional seats for each council;

Election timetable

21A (1) When an election has been called, the electoral Commission shall compile a time table for the election and publish it in the gazette.

(2) The Commission may amend the election time table if it considers it necessary for a free and fair election or if the voting is postponed.

Assistant Returning Officers

22. (1) A person appointed as Assistant Returning Officer under section 4 shall have all the powers and may perform all the duties of a Returning Officer and any reference in this Act to a Returning Office shall, unless the context otherwise requires, be deemed to include a reference to an Assistant Returning Officer.

(2) If a Returning Officer is by sickness or other cause prevented or disabled from performing his duties under this Act and there is no time for another person to be appointed by the Director of Elections, the Returning Officer may appoint, by name or office, a deputy to act for him. Every such appointment shall as soon as possible be reported to the Director of Elections and may be revoked by him but without prejudice to the validity of anything already done by such deputy.

Writ of election

23. (1) For the purposes of every ordinary election of members of Councils and for the purposes of the election of members to fill vacancies caused by death, registration or otherwise the Electoral Commission shall issue a writ or writs to Returning Officers. Every writ shall be forwarded to the Director of Elections for transmission to the Returning Officer to whom it is addressed.

(2) Every such writ shall as in Form 2 in Schedule 1 and shall specify the days, which shall not be less than three, hereinafter referred to as "the nomination period", the place of nomination, and the day upon which a poll shall be taken if necessary.

(3) Upon receipt of such writ the Returning Officer shall proceed to hold the election in the manner hereinafter provided.

Notice of time and place of nomination

24. On the issue of a writ the Director of Elections shall give notice thereof of the period and place of the nomination by publication in such manner as he or she shall think fit before the first day of the nomination period. The Director of Elections shall give further notice of the issue of such writ and of the days, times and places of the nomination of candidates by causing notices as in Form 9 in Schedule 1 to be published in any such places, as he or she may deem necessary.

Power to issue second writ

25. If after the Electoral Commission has issued a Writ for the holding of an ordinary election or an election to fill a vacancy it is shown to its satisfaction that for any cause whatsoever no election has been held in pursuance of such writ it may issue another writ for the holding of an election in that division and the provisions of sections 23 and 24 shall apply to such a writ.

Eligibility and nomination of candidates

26. (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 special seats for women candidates drawn from party lists shall be determined in proportion to the total number of votes attained by each political party from electoral divisions in a council as set out in subsections (1B), (1C), (1D), (1E), (1F) and (1F);

(1B) A political party intending to contest a local government election shall submit a list of names for each council to the Returning Officer during nomination period.

(1C) In order for a party to qualify for special seats, it shall field candidates in at least one third of the electoral divisions contested in a council as determined under section 21 (4).

(1D) The list shall –

- (a) be at least one third of the total seats and not more than the total number of council seats;
- (b) arrange the candidates in order of preference; and
- (c) remain closed until the next election.

(1E) The list for special seats for women may include any woman candidate who is nominated for election in an electoral division in terms of section 26(1).

(1F) The list for special seats for women shall be accompanied by –

- (a) an undertaking, signed by the duly authorised representative of a political party, binding the party, persons holding political office in the party and its representatives and members to abide by the Electoral Code of Conduct;
- (b) a declaration, signed by the duly authorised representative of the political party, that each candidate on the list is qualified to stand for election in terms of the Constitution or this Act;
- (c) a statement signed by each candidate on the list consenting to nomination, in the prescribed manner.

(1G) Notwithstanding sub regulation 6, there shall be no registration fee in respect of the list of special council seats for women.

(1H) If a political party that submitted a list of candidates has not complied with the provisions of this section, the Director of Elections shall –

- (a) Notify the party of its non-compliance in the prescribed form;
- (b) Allow the party to comply by a date stated in the election time table.

(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.

(3) Each candidate shall be nominated by means of a nomination paper. The nomination paper shall be signed by two persons as a proposer and seconder respectively all of whose names shall appear in the register of voters in the electoral division for which the candidate seeks election. The written consent of the candidate shall be endorsed on the nomination paper, which shall be as in Form 10 in the first Schedule.

(4) Every candidate shall make and sign a statutory declaration of his qualifications as in Form 11 in the first Schedule. The declaration shall be delivered to the Returning Officer together with the nomination paper and a true copy thereof as prescribed in sub-section (1) of section 28. If the statutory declaration is not delivered as aforesaid the nomination of such candidate shall be void.

(5) The Returning Officer may at any time between the date of issue of the writ referred to in section 24 and four o'clock in the afternoon of the last day of the nomination period supply a form of nomination paper and statutory to any registered voter requiring it.

(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.

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 consequence of acting as a representative and which is not relevant to the registration process.

Nomination period

27. The Returning Officer shall, during the nomination period and at the place of nomination receive nomination papers and statutory declarations from eight o'clock in the forenoon until five o'clock in the afternoon.

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

28. (1) Every nomination paper shall be delivered to the Returning Officer together with a true copy thereof during the nomination period and at the place and between the hours prescribed in the preceding section, by the candidate or by his proposer or seconder, and if not delivered as prescribed herein it shall be rejected.

(2) The Returning Officer shall forthwith cause a copy of each nomination paper to be posted in a conspicuous position at the place of nomination.

(3) The Returning Officer shall permit the candidates and their proposers and seconders and one other person appointed in writing by each candidate to be present during the nomination period and at the place of nomination and there and then to examine the nomination papers of candidates which have been received for the local authority area or an electoral division.

(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

29. (1) Objections may be made to the nomination paper on all or any of the following grounds but on no other grounds-

- (a) that the description of the candidate is insufficient to identify him;
- (b) that the nomination paper does not comply with or was not delivered in accordance with the provisions of this Act; and
- (c) that it is apparent from the contents of the nomination paper that the candidate is not capable of being elected as a member of the council.

(2) No objection on a nomination paper shall be admissible unless it is made to the Returning Officer during the nomination period and during the hours prescribed in section 27.

(3) Every objection shall be in writing signed by the objector and shall specify the grounds of objection. The Returning Officer may himself lodge objection on any of the grounds set out in sub-section (1).

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

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

Persons entitled to be present at nomination

30. No person other than the returning officer, the candidates, and their respective proposers and seconders and one other person appointed in writing by each candidate shall, except with the consent of and for the purpose of assisting the returning officer, be entitled at the proceeding specified in section 28 and 29.

Withdrawal of candidature

31. (1) a candidate may before five o'clock in the afternoon on the last day of the nomination period, but not afterwards, withdraw his candidature by giving notice, signed by him or her to that effect to the returning officer.

(2) The Returning Officer shall forthwith cause notice of such withdrawal to be posted in a conspicuous position at the place of nomination.

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 that person's representative.

Uncontested elections

32. (1) 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.

(2) In the event of a failed or uncontested election, in an electoral division, the election for special seats for the council shall still proceed.

Contested elections

33. (1) If on the last day of the nomination period in a Local Authority area or in an Electoral division after the decision by the Returning Officer of any objections which may have been lodged more candidates than the number prescribed as Gazetted Chiefs stand nominated for that Local Authority area or more candidates than one stand nominated for an electoral division, the Returning Officer shall forthwith adjourn the election to enable a poll to be taken in accordance with the provisions of this Act and shall forthwith post at the place of nomination and cause to be posted at the office of the Town Clerk or Council Secretary as the case may be, or at a place or places in every polling district within the Local

Authority area or Electoral Division, a notice as in Form 15 in the first Schedule setting out the date of the election, the hours of polling, the place or places where polling stations have been established, the names of candidates arranged alphabetically in the order of their surnames and the identifying symbol, as the case may be, which he or she shall after consulting the candidates allot to them for the purposes of assisting voters to identify candidates when voting.

(2) The Director of Elections shall cause to be published in such manner as he or she thinks fit a notice specifying -

(a) in the case of an election to fill a casual vacancy, the Local Authority area or the electoral division, as the case may be, in which the election is contested; and

(b) the date prescribed in the writ issued under section 24 for the taking of the poll.

(3) If after notice has been given that an election is contested one of the candidates nominated dies before the poll has commenced the Returning Officer shall upon being satisfied of the fact of such death countermand the notice for the poll. The Director of Elections shall thereupon appoint by notice published in such manner as he thinks fit a fresh date for the election in the Local Authority area or the electoral division. In such a case all proceedings with reference to the election shall be commenced afresh but no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time when the poll was countermanded.

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 official symbol that the party candidates propose to use for election purpose; 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 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 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 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 cause 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

34. (1) The Electoral Commission shall appoint one or more persons, hereinafter called polling officers at each polling station. If more than one polling officer is appointed for a polling station the Electoral Commission may appoint one of the polling officers to be the Presiding officer who shall exercise general supervision over the other polling officers and over all arrangements for the conduct of the poll in such polling station. Each polling officer shall be supplied with one or more copies of that part of the register of voters containing the names of voters in such register assigned to his or her polling station.

(2) If any polling officer is by sickness or other cause prevented from acting at an election and there is no time for another person to be

appointed by the Director of Elections, the polling officer may appoint a deputy to act for him. Every such appointment shall as soon as possible be reported to the Director of Elections and may be revoked by him, but without prejudice to the validity of anything already by such deputy.

(3) The Electoral Commission may appoint the Returning Officer to be the Presiding Officer at any polling station within the electoral division for which the said Returning Officer has been appointed.

Facilities to be provided at polling station

35. (1) At each polling station there shall be affixed in a conspicuous place by the polling officer before the commencement of the poll a notice showing the names of all candidates nominated for the local authority area and for the electoral division arranged alphabetically in the order of their surnames. Against the name of each candidate shall be shown the symbol allotted to him by the Director of Elections under subsection (1) of section 33.

(2) It shall be the duty of the Returning Officer to provide at each polling station facilities for the voters allotted to such station to enable them to cast their votes screened from observation and to vote in accordance with the provisions of this Act. The Returning Officer or the polling officer authorised by him shall determine in what manner such facilities shall be distributed among the voters entitled to vote at such an election.

Registers of voters to be conclusive evidence of right to vote

36. (1) That part of the register of voters appertaining to registers of voters to be conclusive evidence of right to vote to the particular electoral division and in operation in accordance with this Act at the time of any election of a member to represent the electoral division to which the part of the register relates shall be conclusive evidence for the purpose of determining whether a person is or is not entitled to vote at such election. The right of voting of a person whose name is for the time being contained in such register shall not be prejudiced by an appeal pending before an Adjudicator in respect of the inclusion of such person's name in the register, and a vote given by such person during the pendency of such appeal shall be as good as though no such appeal were pending and may be affected by the outcome of such appeal and affect the result of the elections.

(2) If by reason of his or her conviction of a corrupt or illegal practice under this Act or by reasons of a report of the Judge made under the provisions of this Act or by reason of his conviction of an

offence under section 50 a person is incompetent to vote at the election and votes at the election he or she shall on be liable on conviction to a fine not exceeding two thousand Maloti or to imprisonment for a period not exceeding twelve months.

(3) Nothing in this section shall affect the liability of a person to a penalty for contravention of the provision of section 7 relating to plural voting.

Admittance to polling station

37. (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.

(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.

(3) The polling officer may in his or her discretion permit polling to continue on the following day if he or she bona fide believes that there will not be sufficient time to admit to the polling station and to issue ballot papers to all those voters who are present at the polling station and who wish to cast their votes.

(4) The polling officer shall take action in the exercise of his or her discretion under this subsection only during the hour before the time prescribed for closing the polling station, and shall forthwith announce verbally and by posting up a notice outside the polling station, the hours during which polling will be continued on the following day.

(5) The polling officer shall keep order in his or her polling station and shall regulate the number of voters to be admitted at one time. He or she shall exclude all other persons except the candidates, the polling agent appointed in writing by each candidate, the Returning Officer, the members of the Lesotho Mounted Police Service on duty and other persons officially employed at the polling station.

(6) Not more than one polling agent of each candidate shall be admitted to a polling station.

(7) No polling agent whose name has not been notified to the polling officer in writing under subsection (5) shall be admitted to a polling station.

(8) If a person misconducts himself or herself in a polling station or fails to obey the lawful orders of a polling officer he or she may immediately by order of the polling officer be removed from the polling station by a member of the Lesotho Mounted Police Service in or near that station or by any person authorised in writing by the polling officer or by the Returning Officer to remove him or her. The person so removed shall not, except with the permission of the polling officer, again be allowed to enter the polling station. A person so removed, as aforesaid, if charged with the commission in such station of an offence may be kept in custody until he or she can be brought before a court of law. The powers conferred in this section shall not be exercised so as to prevent a voter, who is otherwise entitled to vote at a polling station, from voting there.

Form of ballot paper

38. There shall be two ballot papers issued to a voter at a polling station.

(1) First ballot paper for the electoral division shall be –

- (a) in accordance with form 12A in the Schedule;
- (b) included in the book of ballot papers;
- (c) attached two counterfoils with the same serial number; and
- (d) printed in alphabetical order according to Surname, the names of the candidates nominated for elections for the Council concerned.

(2) In relation to political party candidate –

- (a) the name of the political party that has endorsed the candidate; and
- (b) a picture of the political party's registered official symbol shown in black and white.

(3) In relation to an independent candidate –

- (a) the word "independent"; and

- (b) a picture of a candidate's registered official symbol shown in black and white.
- (4) A ballot paper to be issued to an advance voter shall –
 - (a) be included in the book of ballot papers; and
 - (b) be in accordance with Form 12A in the Schedule.
- (5) The second ballot paper for a political party shall be –
 - (a) in accordance with Form 12B in the Schedule;
 - (b) included in the book of ballot papers; and
 - (c) attached to two Counterfoils with the same serial number.

Ballot boxes

39. (1) A ballot box shall be so constructed that a ballot paper can be placed into the ballot box but cannot be taken out unless the ballot box is opened.

(2) Immediately before the commencement of the poll the polling officer at a polling station shall show a ballot box to be used at the poll to such persons as may be present in such station so that they may see that it is empty. He or she shall then close it up and place his or her seal upon it in such a manner as to prevent its being opened without such seal being broken and ensure that each ballot box for which he or she is responsible is kept under safe custody.

(3) The provisions of subsection (2) shall apply to every ballot box used during the poll. It shall be sufficient compliance with those provisions if another ballot box other than a ballot box used at the commencement of a poll is shown, closed up and sealed as aforesaid, before it is used.

Manner of voting

40. (1) Each voter shall be entitled to cast 2 votes, one for the candidate in the electoral division and one for the party.

(2) The ballot paper shall be delivered to the voter by the polling officer or a person acting under his or her authority. Immediately before the ballot papers are delivered to the voter, the papers shall be stamped with the official mark by the polling officer. The serial number, name and description of the voter as stated in the copy of

the register of voters shall be called out. The mark shall be placed in the register against the number of the voter to denote that he has received the ballot papers.

(3) The voter on receiving the ballot papers shall forthwith proceed to a place in the polling station indicated by the polling officer or by a person acting under such officer's authority and shall there secretly record his or her vote. He or she shall then fold the ballot papers in such a way that the official mark at the back of the paper is visible. Lastly, he or she proceed and in the presence of the polling officer, place the ballot papers into the ballot box.

(4) The polling officer shall not permit more than one voter to be in the place set aside in the polling station for voting and the voter shall vote without undue delay and shall quit the polling station as soon as he or she has put his or her ballot papers into the ballot boxes.

(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.

(5) The polling officer may if a voter appears to him or her not to understand the method of voting, or to be unable to read the candidates' names, ask such voter if he or she requires assistance. If such voter or any other voter applies for assistance the polling officer shall explain to the voter in the presence of the polling agents of the candidates if present the method of voting in accordance with this Act. In doing so he or she shall carefully abstain from any action which might violate the secrecy of the ballot or which might be construed by the voter as advice or a direction to vote for a particular candidate.

(6) The polling officer on the application of a voter who is prevented by blindness or other physical cause from voting in the manner prescribed shall go immediately into the screened compartment in the place set aside in the polling station for voting, with the voter or any person of the voters choice with no other person being present or within hearing, and ascertain from him the name of the candidate for whom he wishes to

vote, and ascertain from him the name of the candidate for whom he wishes to vote, and assist the voter to cast his or her vote and to place the ballot in the appropriate ballot box. The polling officer shall keep secret the identity of the candidate for whom such incapacitated voter recorded his vote.

(7) The polling officer may while a poll is proceeding take such steps as may be necessary to ensure that no voter delays unduly in the screened compartment set aside in the polling station for voting.

(8) During the taking of the poll the polling officer shall cause to be posted outside his polling station a notice in the form set out in the second Schedule giving directions for the guidance of voters in voting.

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

41. (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.

(2) If a person fails to furnish such evidence of his or her identity or refuses to make such declaration the polling officer may refuse to give him the ballot papers.

(3) If a person wilfully makes a false statement in such declaration he or she is guilty of an offence and is liable on conviction to a fine not exceeding two Thousand Maloti or imprisonment for a term not exceeding twelve months.

Spoilt ballot papers

42. (1) A voter who has inadvertently dealt with his or her ballot paper in such a manner that it cannot be conveniently used as a ballot paper may on delivering it to the polling officer and providing the fact of the inadvertance to the satisfaction of the polling officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper). The spoilt ballot paper shall be immediately cancelled by the polling officer.

Tendered votes

43. (1) If a person representing himself or herself to be a particular voter named in the register applies for a baloot paper after another person has voted as such voter, the aplicant shall on taking an oath or making an affirmation of Identity, which may be administered by the polling officer and which shall be as in Form 16 of the First Schedule, be entitled to receive a ballot paper, in this Act called a "tendered ballot paper", and shall before being placed in a separate packet endorsed by the polling officer with the voter's serial number in the register.

(2)The number and the name of the voter shall be entered on a list in this Act called "the tendered voter's list" and shall be as in Form 14 of the First Schedule.

(3)Tendered ballot papers shall be dealt with in the manner hereinafter provided.

Closing of poll

44. No ballot paper shall be delivered to a voter after the hour originally fixed or if in exercise of the power contained in subsections (2) (3) and (4) of section 37 subsequently fixed by the polling officer for the

closing of the poll but if at the hour aforesaid there is in the polling station any voter to whom ballot papers have been delivered such voter shall be allowed to record his vote.

Procedure on closing of poll

45. (1) The polling officer of each polling station shall as soon as practicable after the closing of the poll in the presence of such of the candidates and their polling agents as attend, make up into separate packets seal and the seals of the candidates or their agents if they desire to fix their seals -

- (a) the unused and spoilt ballot papers together;
- (b) the marked copies of the register of voters and the counterfoils of the ballot papers; and

(c) the tendered votes list.

(2) The polling officer shall secure the unopened ballot boxes and seal them with his or her seal and the seals of such of the candidates or their agents as attended and desire to affix their seals in such manner that the boxes cannot be opened and nothing can be inserted therein without the seals being broken.

(3) If the polling officer is not also the Returning Officer he or she shall hand or despatch such packet and the ballot boxes in the safe custody to the Returning Officer.

Counting of votes and functions of Presiding Officer

46. (1) A candidate or a political party may appoint an agent to attend to the counting of votes and a written notice of the name and address of the agent so appointed shall be given by the candidate or the political party to the Presiding Officer.

(2) The counting of votes shall be done at the polling station immediately after the closing of the poll.

(3) The Presiding Officer, his or her assistants and clerks, and the candidates and their agents may be present at the counting of votes, but no other persons except with the sanction of the Presiding Officer.

(4) The Presiding Officer shall -

- a) Prepare a ballot account in the prescribed form showing the number of books of ballot papers issued as against names of voters cancelled from the electoral list for the electoral division and votes cast in the polling station;
 - b) Sign the ballot account and invite the candidates or the agents to sign the account.
- (5) As soon as the Presiding Officer is ready to count the votes he shall, in the presence of the candidates and their agents, break the seals on the ballot box and with the aid of his assistants proceed to open the ballot box and take out the papers until all the ballot papers in the ballot box have been examined and counted.
- (6) All the ballot papers in favour of each candidate or political party shall, as soon as they have been examined and counted, be placed together and secured in such a manner that they cannot be counted and confused with those in favour of any other candidate or political party.
- (7) The Presiding Officer shall, so far as practicable, proceed continuously with counting the votes and shall endorse the word "rejected" on any ballot paper which he rejects as invalid, subject to the provisions of section 47.
- (8) The Presiding Officer shall not count the tendered ballot papers but shall put them in separate packets according to the candidates or political party whom they support and shall mark each packet with the name of such candidate and shall seal the packet and retain it unless it is required for purposes of an election petition.
- (9) When counting of the votes has been completed the Presiding Officer shall fill in the result form, sign them and invite the agents to sign the result form before announcing the results.

(10) If a candidate or agent refuses either to sign the result form or not register a protest, that candidate or the political party represented by that agent may not challenge the election but upon an application of any candidate or agent, a recount shall be made before the Presiding Officer makes the declaration.

(11) The Presiding Officer shall, as soon as the result forms have been signed, announce both inside and outside the polling station the provisional results for the polling station.

(12) After signing the result forms, the Presiding Officer at the polling station shall enclose in the ballot boxes the following items in separate packets addressed to the Assistant Returning Officer:

- (a) all valid ballot papers that were used by voters for voting at the polling station bundled together for each candidate;
- (b) any rejected ballot papers;
- (c) any ballot paper referred to the Presiding 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 copies of the electoral list for the electoral division and any certificates presented at the polling station; and
- (h) all the counterfoils of used ballot papers.

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

- (a) declarations of secrecy and the documents of appointment of electoral officials and candidates' agents;
- (b) the instruments used for marking ballot papers and the official mark;

(c) any items printed for purposes of the election, including forms and stationery but excluding ballot papers that were not used for those purposes.

(14) When the items referred to in susubsection (13) have been closed in separate packets, the Presiding Officer shall seal the packets with the officer's own seal and allow the candidates or agents to affix their seals if they so wish.

(15) Subject to subsection (16) and unless the Returning Officer has given a direction, the Presiding Officer shall immediately after completing work done in the polling station deliver the ballot boxes and the result forms to the Assistant Returning Officer for the electoral division concerned:

(a) under the escort of a police officer; and

(b) if the candidates or their agents wish to accompany that escort they may do so.

(16) The Presiding Officer shall, until the delivery can be made:

(a) ensure that the packets , result forms and the ballot boxes are kept under safe custody and under guard; and

(b) allow any of the candidates or agents who wish to do so, keep those items under observation.

(17) The Assistant Returning Officer on receiving all the items from the Presiding Officer shall:

(a) ensure that the packets, the result forms and the ballot boxes are kept under safe custody and under police guard;

(b) compile the results of the electoral division;

(c) fill in the results in the prescribed form and declare the candidate who has received the highest votes;

(d) sign the result form and also invite the candidates or their agents to sign;

(e) inform the Returning Officer of any equality of votes which exists between the candidates with the highest number of votes;

(f) deliver all the items to the Returning Officer under police escort.

(18) The Returning Officer shall compile election results for the council, declare the candidates elected as members of the council and fill their results on the prescribed form, and invite the candidates or agents to sign the results form.

(19) As soon as conveniently possible, the Returning Officer shall arrange for all election materials to be delivered to the Director of Elections.

Ballot papers to be rejected

47. (1) The Presiding Officer shall reject as invalid a ballot paper:

(a) which is not stamped with the official mark, or

(b) On which anything is written or marked by which a voter can be identified;

(c) When the voter has failed to express with certainty the candidate he has voted for.

(2) Before rejecting a ballot paper the Presiding Officer shall show it to each candidate or his or her agent if present and hear his or view.

(3) The decision of the Presiding Officer whether or not a ballot paper shall be rejected shall be final and may be questioned on an election petition.

Publication of results and allocation of special seats for women candidates

48 (1) The Returning Officer shall, forthwith, after the results have been declared by him or her, compile a statement of the poll

in the prescribed form and shall send it for publication in such a manner as the director of Elections may direct.

(2) The Returning Officer shall allocate the special seats for women candidates in accordance with the procedure set out in the Fifth Schedule.

Return as to election expenses

48A (1) Seven weeks after 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 moneys 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 Maloti 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."

Failure to comply with provisions of this Act

49. (1) No election shall be invalid by reason of failure to comply with a provision of this Act relating to elections if it appears that the election was conducted in accordance with the principles laid down

in such provision and that such failure did not affect the result of the election.

(2) Where in this Act an act or thing is required or authorised to be done in the presence of the candidates or their agents the non-attendance of a candidate or agent at the time and place appointed for the purpose shall not, if that act or thing is otherwise duly done, invalidate that act or thing.

Election Offences

50. (1) A person who -

- (a) forges or fraudulently defaces or fraudulently destroys a nomination paper, or delivers to the Returning Officer a nomination paper knowing it to be forged; or
- (b) forges or counterfeits or fraudulently defaces or fraudulently destroys a ballot paper or the official mark on a ballot paper; or
- (c) without due authority supplies a ballot paper to a person; or
- (d) sells or offers to sell a ballot paper to a person or purchase a ballot paper from a person; or
- (e) not being a person entitled under this Act to be in possession of a ballot paper which has been marked with the official mark in accordance with this Act has such ballot paper in his possession; or
- (f) puts into a ballot box anything other than the ballot paper which he is authorised by law to put in the ballot box; or
- (g) without due authority takes out of the polling station a ballot paper or found in possession of a ballot papers out side a polling station; or
- (h) without due authority destroys, takes, opens or otherwise interferes with a ballot box or packet of ballot papers in use or intended to be used for the purposes of an election; or

- (i) without due authority destroys or prints a ballot paper or what purports to be or is capable of being used as a ballot paper at an election; or
- (j) Manufactures, constructs, imports, has in his possession, supplies or uses for the purpose of an election, or causes to be manufactured, constructed, imported supplied or used for the purpose of an election, any appliance, device or mechanism by which a ballot paper may be extracted, affected or manipulated after having been deposited in a ballot box during the polling of an election, commits an offence and on conviction is liable to imprisonment for a term not exceeding two years and shall become incompetent for a period of seven years from the date of his conviction to be registered as a voter or to vote at an election under this Act or to be elected as a member of a council, and if at that date he has been elected as a member of a council his election shall be deemed void from the date of such conviction.

(2) A person who attempts to commit an offence specified in this section is liable on conviction to the punishment prescribed for that offence.

(3) In a prosecution for an offence in relation to a nomination paper, ballot box, ballot paper or marking instrument at an election at an election the property in such nomination paper, ballot box, ballot paper or marking instruments, as well as the property in the counterfoil of a ballot paper, may be stated to be in Returning Officer at that election.

(4) A prosecution for an offence under this section shall not be instituted without the authority of the Attorney General.

Part IV-

Corrupt Practices

Personation

51. (1) Except as provided in the section dealing with proxy voting, a person who at an election applies for a ballot paper in the name of some other person whether that name be that of a person living or dead or of a fictitious person, or who having voted once at such election applies to the same election for a ballot paper in his own name commits an offence of

personation and is liable on conviction to the penalty prescribed in section 54.

(2) A person who aids, abets, counsels or procures the commission of the offence of personation under subsection (1) commits an offence and is liable on conviction to the penalty prescribed in section 54.

Undue influence

52. A person who directly or indirectly by himself or by another person on his behalf, makes use of or threatens to make use of force, violence, or restraint or inflicts or threatens to inflict, by himself or by another person, temporal or spiritual injury, damage, harm or loss upon or against a person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at an election, or who by abduction, duress, or any fraudulent device or contrivance impedes or prevents the free exercise of the franchise of a voter, or thereby compels, induces, or prevails upon a voter either to give or refrain from giving his vote at an election, is guilty of the offence of undue influence and is liable on conviction to the penalty prescribed in section 54.

Bribery

53. The following persons are guilty of the offence of bribery and are liable on conviction to the penalties prescribed in section 54-

- (a) a person who directly or indirectly, by himself or by another person on his behalf, gives, lends, or agrees to give or lend or offers, promises, or promises to procure or to endeavour to procure, money or valuable consideration to or for a voter, or to or for a person on behalf of a voter or for any other person, in order to induce a voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at an election under this Act.;
- (b) a person who directly or indirectly, by himself or herself or by another person on his or her behalf, gives or produces or agrees to give or procure, or offers, promises, to procure or endeavours to procure an office, place or employment to or for a voter or for a person on behalf of a voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or corruptly does any such act as aforesaid on

account of a voter having voted or refrained from voting at an election under this Act;

- (c) a person who directly or indirectly, by himself or by another person on his or her behalf, makes such gift, loan, offer promise, procurement, or agreement as aforesaid to or for a person in order to procure or endeavour to procure the return of a persons as a member of a Council, or the vote of a voter at an election under this Act;
- (d) a person who advances or pays or causes to be paid money to or to the use of another person with the intent that such money or part thereof shall be expended in bribery at an election under this Act or who knowingly pays or causes to be paid, money to a person in discharge or repayment of money wholly or in part expended in bribery at such election.
- (e) A voter who before or during an election under this Act, directly or indirectly, by himself or by another person on his behalf, receives, agrees, or contracts for any money, gift, loan or valuable consideration, office, place or employment, for or for another person, voting or agreeing to vote or for another person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at such election;
- (f) A person who after an election under this Act, directly or indirectly, by himself or another person on his behalf, receives money or valuable consideration on account of a person having voted or refrained from voting at such election;
- (g) A person who directly or indirectly, by himself or herself by another person on his behalf, on account of and as payment for voting or for having voted or for agreeing or having agreed to vote for a candidate at an election, or on account of and as payment for having assisted or agreed to assist a candidate at an election, for the gift or loan of money or valuable consideration or for any office place or employment or for the promise of any office place or employment;
- (h) A person who, directly or indirectly, by himself or herself or by another person on his behalf, in order to induce another person to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate gives or procures any office, place or employment or agrees to or to give or procure or offers or promises to procure or endeavour; to procure any office, place or employment to or

for such other person, or gives or lends, or agrees or lend, or offers, or promises to procure or endeavour to procure money or valuable consideration to or for a person on behalf such other person.

Penalties

(54) (1) A person who is found guilty of the offence of personation under subsection (1) of section 52, or of an offence under subsection (2) of section 52, is liable to a fine not exceeding two thousand Maloti or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

(2) A person who is found guilty of offence of undue influence under section 52, or bribery under section 53 is liable to a fine not exceeding two thousand Maloti or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

(3) A person who -

(a) prints, publishes, distributes or posts up or causes to be printed, published, distributed or posted up an advertisement had bill, placard or poster which refers to an election and which does not bear upon its face the names and addresses of its printer and publisher; or

(b) makes or publishes, before or during an election, for the purpose of affecting the return of a candidate, a false statement of fact in relation to the personal character of another candidate at such election, or

(c) makes or publishes, before or during an election for the purpose of promoting or procuring the election of a candidate, a false statement of the withdrawal of another candidate at such election, is guilty of an offence and is liable to a fine not exceeding two thousand Maloti or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

(4) A person who is convicted of an offence specified in the section shall be deemed to have been guilty of a corrupt practice and shall become incompetent for a period of seven years from date of his conviction to be registered as a voter or to vote at an election under this Act or to be elected a member of a Council, and if at that date he has been elected a member of a Council his election shall be deemed void from the date of such conviction. Every practice which is an offence under provisions

of this section and under any other provision specified in this section shall be a corrupt practice for the purposes of this Act.

- (5) A prosecution for an offence specified in this section except and offence as defined in paragraphs (b) and (c) of subsection (3) shall not be instituted without the authority of the Attorney General.

Part V

Election Agent, Election expenses and illegal practices

Certain expenditure to be illegal

55. (1) No payment or contract for payment shall for the purpose of promoting or procuring the election of a candidate at an election be made.

(a) on account of the conveyance of voters to or from the poll, whether for the hiring of vehicle or animals of transport of any kind whatsoever, or otherwise; or

(b) to or with a voter on account of the use of any house, land, building or premises for the exhibition of an address, bill or notice, or on account of the exhibition of an address, bill or notice.

(2) Subject to any exception as may be allowed in pursuance of this Act if a payment or contract for payment is knowingly made in contravention of this section either before, during or after an election, the person making the payment or contract commits an offence and a person receiving the payment or being a party to the contract shall also be guilty of an offence, and one or other or all of such person or persons are liable to the penalties prescribed in section 60.

(3) A person shall not let, lend or employ for the purpose of conveyance of voters to and from the poll a vehicle or animal of transport of any kind whatsoever which he keeps or uses for the purpose letting out for hire, and if he lets, lends, or employs the vehicle or animal or transport knowing that it is intended to be used for the conveyance of voters to and from the poll commits an offence and liable on conviction to the penalty prescribed in section 60 if the purpose is to procure election of a particular candidate.

- (4) A person shall not hire, borrow or use for the purpose of conveyance of voters to and from the poll a vehicle or animal or transport of any kind whatsoever which he knows the owner thereof is prohibited by subsection (3) to let, lend, or employ for that purpose, and if he or she does so commits an offence and is liable on conviction to the penalty prescribed in section 60 if the purpose is to procure election of a particular candidate.
- (5) Nothing in subsection (3) or (4) shall prevent a vehicle or animal of transport of any kind being let to, or hired, employed, or used by a voter or several voters at their joint cost for the purpose of being conveyed to or from the poll.
- (6) Notwithstanding anything in the preceding provisions of this section, where it is the ordinary business of a voter as an advertising agent to exhibit for payment bills and advertisement, a payment to or contract with such voter, if made in the ordinary course of business, shall not be deemed to be an offence within the meaning of this section.

Certain employment to be illegal

56. (1) No candidate shall for the purpose of promoting or procuring his election engage or employ for payment or promise of payment a person for any purpose or in any capacity whatever, except the following person-

- (a) one election agent and no more;
- (b) no more than one polling agent for each polling district:

Provided that where more than one polling station is provided in a polling district an additional polling agent may be employed;

(2) Subject to such exception as may be allowed in pursuance of this Act, if a person is engaged or employed in contravention of this section either before, during or after an election, the person engaging or employing him or she commits an offence and is liable on conviction to the penalty prescribed in section 60.

Saving for creditor

57. The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, shall not affect the right of any creditor to be paid who proves to the satisfaction of the court that when the contract was made he did not know that it was in contravention of this Act.

Employers to allow employees reasonable period for voting

58. (1) An employer shall, on polling day, allow every voter employed by him a reasonable period for voting, and no employer shall make any deduction from the pay or other remuneration of such voter or impose upon or extract from him or her a penalty by reason of his absence during such period.

(2) An employer who directly or indirectly refuses or by intimidation, undue influence or in any other manner interferes with the granting to a voter employed by him of a reasonable period for voting as provided in this section, commits an offence and is liable on conviction to a fine not exceeding two thousand Maloti or to imprisonment for a period exceeding twelve months.

Loud speakers, ensigns, banners, flags, labels, etc., prohibited on polling day

59. (1) No person shall furnish or supply any loud speaker, bunting, ensign, standard, or set of colours, or any other flag, to a person with intent that it be carried, worn or used on a motor car, truck or other vehicle as political propaganda on polling day and no person shall with any such intent carry, wear or use on a motor car, truck or other vehicle any such loud speaker, bunting, ensign, banner, standard or set of colours, or any other flag, on polling day.

(2) No person shall furnish or supply any flag or label to or for a person with intent that it be worn or used by a person within an electoral division on polling day as a party badge to distinguish the wearer as the supporter of a candidate or a political party or other opinions entertained or supposed to be entertained by such candidate; and no person shall use or wear any flag or label or such badge within any electoral division on polling day:

Provided that a candidate may wear the colour or a symbol allotted to him under subsection (1) of section 33.

(3) A person who contravenes any of the provisions of this section commits an offence and is liable on conviction to a fine not exceeding two thousand Maloti or to imprisonment for a period not exceeding twelve months.

Punishment on conviction for illegal practice

60. (1) A person who is found guilty of an offence under subsection (3) of section 7, subsection (2), (3) and (4) of section 56 or subsection (2) of

section 57, is liable to a fine not exceeding two thousand Maloti or to imprisonment for a period not exceeding twelve months.

(2) A person who is convicted of an offence specified in this section shall be deemed to have been guilty of an illegal practice and shall become incompetent for a period of seven years from the date of his or her conviction to be registered as a voter or to vote at an election under this Act or to be elected a member of a Council, and if at that date he has been elected a member of a Council his or her election shall be deemed void from the date of such conviction. Every practice which is an offence under any provision specified in this section shall be an illegal practice for the purposes of this Act.

(3) A prosecution of an offence specified in this section shall not be instituted without the authority of the Attorney General.

Part VI

Excuse for corrupt or illegal practice

Report exonerating candidate in certain cases of corrupt and illegal practice by agents

61. If upon hearing an election petition in respect of an election under this Act, the Judge reports that a candidate at such election has been guilty by his or her agents of the offence of treating or undue influence or of illegal practice in reference to such election, and the Judge further reports after giving the Attorney-General an opportunity of being heard that the candidate has proved to the court -

- (a) that no corrupt or illegal practice was committed as such election by the candidate or his or her election agent and the offences mentioned in the said report were committed contrary to the orders and without the sanction or connivance of such candidate or his or her election agent;
- (b) that such candidate and his or her election agent took all reasonable steps to prevent the commission of corrupt and illegal practices at such election;
- (c) that the offences mentioned in the said report were of a trivial, unimportant and limited character; and
- (d) that in all other respects the election was free from corrupt or then the election of such candidate shall not

by reason of the offences mentioned in such report be void, nor shall the candidate be subject to any

Power of Judge to except innocent act from being illegal practice, etc.

62. If on application made it is shown to the Judge by such evidence as it seems to the Judge sufficient -

- (a) that an act or omission of a candidate at an election or of his election agent or of any other agent or person, would by reason of being a payment, engagement, employment, or contract in contravention of this Act or of otherwise being in contravention of the provisions of this Act be, but for the provisions of this section, an illegal practice; and
- (b) that such act or omission arose from inadvertence or from some other reasonable cause of a like nature and in any case did not arise from want of good faith; and in the circumstances it seems to the Judge after giving the candidates, the Returning Officer, and any elector within the electoral division an opportunity of being heard, to be just that the candidate in question and the said election and other agent and person, or any of them should not be subject to any of the consequences under this Act, of the said act or omission, the Judge may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent or person shall not be subject to any of the consequences under this Act, of the said act or omission.

Part VII

Grounds for voiding elections

Voidance by conviction of candidate

63. The election of a candidate as a member of Council is voided by his or her conviction for an offence deemed to be corrupt or illegal practice.

Voidance on election petition

64. The election of a candidate as a member of Council shall be declared void on an election petition on any of the following grounds, which are proved to the satisfaction of the Judge-

- (a) that by reason of general bribery, general treating or general intimidation, or other misconduct, or other circumstances, whither similar to those before enumerated or not, the majority of voters were or may have been prevented from electing the candidate whom they preferred;
- (b) non-compliance with the provisions of this Act relating to elections, if it appears that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance affected the result of the election;
- (c) that a corrupt practice was committed in connection with the election by the candidate or with his or her knowledge or consent or by an agent of the candidate;
- (d) that the candidate personally engaged a person as his election agent, or as a canvasser or agent, knowing that such person had within seven years previous to such engagement been found guilty of an offence deemed to be a corrupt practice, by a Court or by the report of the Judge; and
- (e) that the candidate was at the time of his or her election a person disqualified for election as a member of a Council.

Proceedings in respect of qualification

65. (1) Proceedings may be instituted in the High Court against a person acting or claiming to be entitled to act as an elected member of a council on the ground that he or she is disqualified within the meaning of this section for so acting but proceedings under this section on the ground aforesaid shall not be instituted after the expiration of six months from the date of the last occasion on which he so acted.

(2) If in proceedings instituted under this section it is proved that the defendant has acted as an elected member of a Council while disqualified for so acting the Court shall have power -

- (i) to make a declaration to that effect and to declare that the office in which the defendant has acted is vacant;
- (ii) to grant an interdict restraining the defendant from so acting; and
- (iii) to make any order which may seem fit as to the costs of the proceedings.

(3) Proceedings shall be instituted under this section only by the Attorney General or a voter for the electoral division in which the person against whom proceedings are to be instituted was elected.

(4) For the purposes of this section a person shall be deemed to be disqualified from acting as an elected member of a council

(a) if he is not qualified to be, or is disqualified from being an elected member of the Council or from holding such office; or

(b) if by reason of resignation for any other reason his seat has become vacant and he has ceased to be an elected member of the Council or to hold that office.

Part VIII

Election petitions

Powers of Judge

66. (1) an election petition shall be heard by a Judge.

(2) Witnesses shall be subpoenaed 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 be subject to the same penalties for the giving of false evidence.

(3) On the hearing of an election petition under this Act the Judge may by order under his hand compel the attendance of a person as a witness who appears to him to have been concerned in the election to which the petition refers. A person failing or refusing to obey such order is guilty of contempt of Court. The Judge may examine a witness so compelled to attend or a person in Court although such witness is not

called and examined by a party to the petition. After such examination a witness may be cross-examined by or on behalf of the petitioner and respondent or either of them.

Who may present petition

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

- (a) a person who 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 returned or elected at such election;
- (c) a person alleging himself or herself to have been a candidate at such election.

Relief for petition

68. All or any of the following reliefs to which the petitioner may be entitled, may be claimed in an election petition-

- (a) a declaration that the election is void;
- (b) a declaration that the return of the person elected ought not to have been returned; and
- (c) a declaration that a candidate was duly elected and ought to have been returned; and
- (d) a scrutiny if the seat is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes.

Certificate of Judge as to validity of election

69. At the conclusion of the hearing of an election petition, the Judge shall determine whether the member whose return or elected or whether the member whose return or election is complained of, or any other person, was duly returned or elected or whether the election was void and shall cause such determination to be certified to the Electoral commission. Upon such certificate being given the determination shall be final and the return shall be confirmed or altered or a writ issued in the manner prescribed in section 24 for the holding of an election in the electoral division concerned, as the case may require in accordance with such certificate.

Report of Judge as to corrupt illegal practice

70. (1) At the conclusion of the hearing of an election petition the Judge shall cause a report to be made in writing to the Electoral Commission -

- (a) whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of a candidate at the election or by his or her agent, and nature of such corrupt or illegal practice; and
- (b) the names and descriptions of persons who have been proved at the trial to have been guilty of a corrupt or illegal practice.

(2) Before a person who is not a party to an election petition or a candidate on behalf of whom the seat is claimed by an election petition is reported by the Judge under this section, the Judge shall give such person an opportunity of being heard and of giving and calling evidence to show why he should not be so reported.

(3) When the Judge reports that a corrupt or illegal practice has been committed by a person that person shall be subject to the same incompetence as if at the date of the said report he has been convicted of that practice, and a person shall be subject to the same incompetence as if he or she was a candidate at the election and the Judge reports that such corrupt or illegal practice was committed with his or her knowledge and consent or by his or her agent.

(4) The Electoral Commission shall cause a copy of such report to be transmitted to the Registration Officer, who shall forthwith peruse the report and delete from the register of voters the name of every person appearing from the report to be incompetent to vote at an election.

(5) The Registration Officer shall publish at a conspicuous place at his or her office and in such other manner as he or she thinks fit the names of every person so deleted from the register of voters.

Time for presentation

71. (1) An election petition shall be presented within thirty days of the date of publication of the result of the poll under section 48:-

Provided that -

- (a) an election petition questioning the return or the election upon the ground of a corrupt practice and specifically alleging a payment of money or other act to have been made or done since such date by the member whose election is questioned or by an agent of the member or with the privacy of the member or of the member or of his or her election agent in pursuance or in furtherance of such corrupt practice, be presented at any time within twenty-eight days after such payment or act;
 - (b) an election petition questioning the return or the election upon an allegation of an illegal practice may, so far as respects such illegal practice, be presented within twenty-eight days after the date of payment of money or other act alleged in
- (2) An election petition presented in due time may for the purpose of questioning the return of the election upon an allegation of a corrupt or illegal practice, be amended with the leave of the Judge within the time in which an election petition questioning the return or the election upon that ground may be presented.

Prohibition of disclosure of vote

72. No voter who has voted at an election shall in proceedings to question the election, be required to state for whom he or she has voted.

Votes to be struck off at a scrutiny

73. (1) On a scrutiny at the hearing of an election petition the following votes only shall be struck off -
- (a) the vote of a person whose name was not on the register of voters assigned to the polling station at which the vote was recorded;
 - (b) the vote of a person whose vote was procured by bribery, treating, or undue influence;
 - (c) the vote of a person who committed or procured the commission of personation at the election;
 - (d) if the election was an ordinary election, the vote of a person proved to have voted at such ordinary election in more than one electoral division;

- (e) the vote of a person who by reason of a conviction of a corrupt or illegal practice or by reason of the report of the Judge or by reason of his or her conviction of an offence under section 50, was incompetent to vote at the election;
- (f) a vote given for a disqualified candidate by a voter knowing that the candidate was disqualified or the facts causing the disqualification, or after sufficient public notice of the disqualification or the facts causing it were notorious.

(2) The vote of a registered voter shall not, except in the case specified in paragraph (e) of subsection (1) be struck off at a scrutiny by reason only that the voter was not or is not qualified to have his name entered on the register of voters.

(3) On a scrutiny a tendered vote proved to be a valid vote shall on the application of a party to the petition be added to the poll.

Procedure and practice on election petitions

74. The Chief Justice may make Rules of Court regulating the procedure and practice in election petitions and prescribing fees to be paid and security to be deposited.

Rejection of ballot paper by Returning Officer to be final

75. On an election petition the decision of a Returning Officer whether or not a ballot paper shall be rejected under section 47 shall not be questioned.

Part IX

General

Regulations

76. The Electoral Commission may by Notice in the Gazette make regulations prescribing anything that is to be prescribed under the provisions of this Act and for any matter which it deems necessary for the purposes of giving effect to the principles and provisions of this Act.

Inaccurate description of places and persons

77. No misnomer or inaccurate description of a person or place named or described in a register, notice or other document whatsoever 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 such register, notice or documents as to be identifiable.

Publications of notices, etc.

78. (1) If a notice is required in this Act to be published and in the opinion of the authority who is required to publish such notice the prescribed mode of publication does not give sufficient publicity to the notice, he may in addition to publishing the notice as required in this Act exhibit copies of the notice in conspicuous places within the electoral division to which the notice relates or take such steps as he may deem necessary for giving publicity thereto.

(2) A person who without lawful authority destroys, mutilates, defaces or removes a notice which is exhibited by an authority under subsection (1) or any document which is made available for inspection in accordance with this Act commits an offence and is liable to conviction to a fine not exceeding two hundred Maloti or to imprisonment for a period not exceeding two months.

Forms

79. The forms in Schedule 1 in English or translated into Sesotho, or forms, substantially to the like effect, are sufficient in law and may be varied or other forms prescribed by the Electoral Commission by notice published in the Gazette.

Parliamentary Registers etc. to be used for local authority elections

80. Notwithstanding the provisions of section 10, and until such time as the Register of voters is compiled under Part II of this Act, for the purpose of the election of members to a Community, Urban or Municipal Council, the Director of Elections shall prepare and certify an electoral list or a register and such list or register, shall comprise the current Parliamentary voters list, register or registers, or part of a list or register, or parts of list or registers or any combination of them, as correspond to the electoral divisions of such Community, Urban or Municipal Council, as the case may be.

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.

Repeals and savings

81. Legal Notice No. 153 of 21st December 1987 is revoked.

NOTE

1. Act No.6 of 1997
2. Legal Notice No. 153 of 1987

First Schedule

Form 1

The Local Government Elections Act, 1998

Form of application for registration (section 10(3))

Instructions for the Completion this Form

1. Part A and B of this form should be completed
2. When completed this form should be handed to the Registration Officer of the electoral division in which you qualify for registration, or sent by post to your Town Clerk/Council Secretary.

Part A

To the Registration Officer,

I apply to have my name inserted in the register of voters.

Dated theday of19.....

.....
.....Signature or thumb mark of
applicant.

Signed or marked by the above named applicant in my presence this
.....day

of.....19.....at.....

.....

Signature of Witness

Address of Witness

.....

.....

.....

Part B

1. Full name (Block Letters).....
2. Nationality.....
3. Principal or Ward Chief.....
4. Chief.....
5. Headman.....
6. Present address.....
7. Occupation.....
8. Are you over the age of eighteen years?
9. State length of residence in Lesotho in previous six months

.....

.....

.....

.....
10. State periods of absence if any, from Lesotho during previous six months and nature and length of such absences.
.....

11. If you have not been resident in Lesotho for the previous six months state nature of qualification for registration and home address
.....
.....
.....

For Official use only

Registered in..... Electoral Division under number
.....

Form 2

The Local Government

Writ of Election (section 23 (2))

The Returning Officer,
.....

WHEREAS by sub-section (1) of section 23 of the Local Government Elections Act, 1998 it is provided that for the purposes of every general election of members of Councils, and for the purposes of the election of members to fill vacancies caused by death, resignation, or otherwise, the Electoral Commission shall issue writs addressed to the returning Officer:

AND WHEREAS it is expedient that writs should be issued for the ordinary election of members to serve on.....

Council:

AND WHEREAS the seat of the elected member for local authority area or electoral division of.....of.....

Council has become vacant in consequence of.....

NOW, THEREFORE, I.....

Electoral Commission, do hereby require that notice of the time and place fixed for the nomination of candidates having been first duly given as required by law, you do on the.....days of.....(members to serve on the.....

Council of Lesotho) (a member for the local authority area or the said electoral division) and that, if necessary, you do cause a poll to be taken on theday of.....19.....

Dated this.....day of19.....

To be included in a writ for ordinary election.

To be included in a writ for a by-election.

Form 3

The Local Government Elections Act, 1998

Municipal Council/Community/Urban ofelectoral
division of (Section 9(1))

Polling Districts

Take Notice that the polling districts and distinguishing numbers thereof are as follows: -

POLLING DISTRICTS

| POLLING DISTRICTS | Distinguishing Number |
|-------------------|-----------------------|
|-------------------|-----------------------|

| NAME | DESCRIPTION | |
|------|-------------|--|
|------|-------------|--|

Registration Officer

Date.....19.....

FORM 4

The Local government Electoral Act 1998

Form of claim by person whose name has been omitted or expunged from the Register

(Section 11(2) and (6))

Part A

Electoral division of

To the Registration Officer,

I,.....

(Give name, Christian or other names in full: surname first) hereby claim to have my name inserted/retained in the register of voters relating to the aforesaid electoral division on the following grounds (state grounds of claim)

.....

2. My personal particulars are as stated overleaf (applicant to complete Part B overleaf)

Dated thisday of19.....

.....

Signature or thumb mark of claimant

Signed or marked by the above-mentioned claimant in my presence this day of.....19.....at.....

.....

.....

.....

Signature of Witness

Address of Witness

.....

.....

.....

Part B

1. Full name (Block Letters).....
2. Nationality.....
3. Principal or Ward Chief.....
4. Chief.....
5. Headman.....
6. Present address.....
.....
7. Occupation.....
8. Are you over the age of eighteen years?.....
9. State length of residence in Lesotho in previous six months
.....
10. State period of absence if any, from Lesotho during previous six months and nature and length of such absences
.....
(State nature of qualification for registration and home address)

11. If you have not been resident in Lesotho for the previous six months state nature of qualification for registration and home address

.....

.....

.....

For Official use only

Registered inElectoral Division under number

.....

Form 5

The Local Government Elections Act, 1998

Form of Objection

(section 11(5))

Electoral Division of

To the Registration Officer,

I,.....

(Give name, Christian or other names in full: surname first) of

.....

(Give exact address or residence)

hereby declare that my name appears in the register of voters of the abovementioned electoral division and bears

No.....

I object to the name of the person mentioned and described below being included in the register of voters for the above-named electoral division. The grounds of my objection are specified below:

| Number of Person Objected to | Name of person Objected to | Place of Abode | Grounds of Objection |
|---|-------------------------------|----------------|-------------------------|
| | | | |
| Signature or thumb mark of Objector | | | |

Dated this day of 19.....

Signed or marked by the above-named Objector in my presence

This.....day of..... 19.....at.....

.....

Signature of Witness

Address of Witness

.....

.....

.....

Form 6

The Local Government Elections Act 1998

(Section 11(6))

Form of objection against claimant

Electoral division of

To the Registration Officer,

I,

(Give name, Christian or other names in full, surname first)

of

(Give exact address of residence)

hereby declare that my name appears in the register of voters of the above-named electoral division and bears No..... I object to the name of the claimant mentioned and described below inserted/retained in the register of voters of the above-named electoral division.

The grounds of my objection are specified below.

| Name of Claimant Objected to | Place of abode as described in the Claim | Grounds of Objection |
|---------------------------------|---|----------------------|
| | | |

.....

Signature or thumb mark of objector

Dated this..... day of 19

Signed or marked by the above-named objector in my presence

Thisday of19 at

.....

Signature of Witness

Address of Witness

.....

.....

.....

(Five Maloti Lesotho Stamp to be fixed)

Form 7

The Local Government Elections Act, 1998

(Section 11(8))

Notice to persons objected to

Take notice that I have received objections to the inclusion of your name in the proposed list of voters for the electoral division of

And that adjudication will take place on the day of19

Between the hours of and at And further take notice that unless you appear before me and show cause why your name (should not be deleted from) (should be included in) the list of voters, your name (may be deleted there from) (may not be included therein).

The grounds of objection are

.....

Registration Officer

Date.....

Name and address

.....

.....

.....

Form 8

The Local Government Elections Act 1998

(Section 17 (1))

Certificate of Register of Voters

I,Registration Officer certify this is a true and correct register of voters for the electoral division of.....of theCouncil. Dated this.....day of19.....

Registration Officer

Form 9

The Local Government Elections Act 1998

(Section 24)

Notice of Election of a member of the Electoral Division of.....

The Electoral Commission, having issued a writ for the election of a member of theCouncil for the electoral division of.....the Returning Officer will on the.....day of19.....now next ensuing between the hours of nine o'clock in the forenoon to one o'clock and two o'clock to five o'clock in the afternoon at.....proceed to the nomination and if there is no opposition, to the election of a member for the local authority area of the electoral division of.....Form of nomination papers may be obtained at.....between the hours of.....and.....daily except Saturdays afternoon and Sundays and public holidays. Every nomination paper must be signed by the proposer and seconder qualified to vote and be handed to the Returning Officer between the said hours.

No nomination paper shall be valid or acted upon by the Returning Officer unless it is accompanied by:

- (a) the consent in writing of the person therein nominated; and
- (b) the statutory declaration under section 24 and 27 as in Form 11.

The office of the Returning Officer is situated at.....

.....
Director of Election

Date.....19.....

Form 10

The Local Government Election Act 1998

(Section 26(3))

Nominator Paper

We, the undersigned, voters for the electoral division ofdo hereby nominate the following person as a proper person to serve as a member of theCouncil for the local authority area or for the

said electoral division ofand we certify that to the best of our belief he or she is qualified for election as a member of the Council.

| Surname | Other Names | No. on Register of Voters | Address | Occupation |
|--|-------------|---|---------|------------|
| | | | | |
| Signature of: Proposer Seconders | | Number on Registers of Voters | | |

I,nominated in the foregoing nomination paper hereby consent to such nomination as a candidate for election as a member of the Council for the local authority area or for the electoral division of.....and name as my address for serving of process and papers under the Local Government Elections Act 1998-

AddressSigned by the said nominee
this.....day of19.....

Signature of
candidate.....

Form 11

The Local Government Elections Act 1998

(Section 26 (4))

Statutory Declaration of a person nominated as a candidate

For election as a member of the

.....Council

I, (name).....

Of (address).....

In the electoral division ofnominated as a candidate for election as a member of theCouncil for the electoral division of..... Do solemnly and sincerely declare that I am duly qualified to be elected a member of the Council for this electoral division.

.....

Signature of the candidate

Declare before me at.....this.....day of
.....19.....

.....

Designation

(This declaration should be signed before any Justice of the Peace or Commissioner of Oaths or the Returning Officer).

Form 13

The Local Government Elections Act 1998

[Section 41 (1)]

Declaration

Electoral division of

I,

.....

hereby declare that I am the person whose name appear as.....

.....on the register of voters in this division. I

further declare that I have not already voted at the election in this or any other electoral division.

.....

Signature or thumb of voter

Declared before me this.....day of.....19.....

.....

Signature of Polling Officer

Form 14

The Local Government Elections Act 1998

Tendered Votes lists

(Section 43)

Electoral division of

Number and name of voter as appearing on register of voters

NUMBER

NAME

.....

.....

.....

.....

.....

.....

.....
Date this.....day of.....19.....

.....
Signature of Polling Officer

Form 15

The Local Government Elections Act 1998

Notice of Election [section 33 (1)]

.....Council of.....local authority
area or electoral division of.....

It is hereby notified for general information that a poll for the election of
a member to represent the local authority area or electoral division
of.....in the Council of.....will be
held on.....between the hours of.....and

.....and that polling stations have been established
at..... The names of the persons who have accepted
nomination are recorded below and the identifying colour or symbol
allotted to each is stated opposite his name.

| NAME | ALLOTTED COLOUR/SYMBOL |
|---------|---------------------------|
| 1. | |
| 2. | |
| 3. | |
| 4. | |
| 5. | |

.....
Returning Officer

Date:.....

Place:.....

Form 16

The Local Government Elections Act 1998

(Section 43)

Oath or Affirmation of Identity

I swear/affirm that I am the same person whose name appears
as.....No.....in the register of voters
for the electoral division of.....

.....
Signature or thumb mark

Sworn/affirmed before me at.....this.....day of

.....
Polling Officer

Form 17

The Local Government Elections Act 1988

(Section 48)

Statement of the poll after counting the Ballots

Electoral division of.....

Number of ballot papers issued.....

Number of ballot papers cast for.....

Number of rejected ballot papers.....

Total number of ballot papers found in boxes.....

Number of unused ballot papers undetached from the books.....

.....

Number of * Spoiled papers.....

TOTAL.....

Number of names on official list of voters used at the poll.....

I hereby certify that the above statement is correct.

Date at.....thisday of19.....

.....

Returning Officer

*A rejected ballot paper means a ballot paper which has been handed by the Polling Officer to a voter to cast his vote which, at the close of the poll, has been found in the ballot box without the official mark or written on or marked (except with the official number) in such a way to identify the voter.

* A spoiled paper means a ballot paper which, on polling day has not been deposited in the ballot box, but has been found by the Polling Officer to be spoiled or improperly printed or which has been handed by the Polling Officer to a voter to cast his vote, and has been handed back to the Polling Officer and exchange for another.

Second Schedule
Local Government Elections Act 1998

(Section 40)

Directions for the guidance of a voter in voting, which shall be exhibited outside every polling station

1. The voter may not vote for two candidates. One vote shall be for the election of Gazetted chiefs and the other for the elections of members other than Gazetted Chiefs.

2. On arrival at the polling station the voter will identify himself or herself to the polling officer once the polling officer is satisfied with the identity he will issue two ballot papers one for Gazetted chiefs and the other for the election of members other than Gazetted chiefs.

3. The voter will go into the place reserved for voting and place his mark against the name of the candidate of his choice on the appropriate ballot paper and put each ballot paper into the appropriate ballot box and forthwith quit the polling station.

4. If the voter inadvertently spoils a ballot paper, he can return it to the polling officer who will, if satisfied of such inadvertence, give him another paper. If the voter places any mark on the ballot paper by which he may afterwards be identified his ballot paper will be void and will not be counted.

Third Schedule

The Local Government Elections Act 1998

(Section 26(1))

Qualifications and Disqualifications of candidates for election to councils.

1. No person shall be qualified to be elected as a member of Council unless he -

- (i) is a citizen of Lesotho; and
- (ii) possesses the qualifications of a voter under this Act; and
- (iii) is a literate in Sesotho.

2. No person shall be qualified to be elected as a member of Council who

(i) has taken any oath or made declaration or Acknowledgement of allegiance, obedience or adherence to any power or state other than Lesotho, or does, concurs in or adopts any act done with the intention that he shall become a subject or citizen of any such power or state, or is the holder of a passport issued by any such power or state; or

(ii) is an undischarged bankrupt, having been Adjudged or otherwise declared a bankrupt under any law in force in Lesotho; or

(iii) is a person detained under any law for the being in force in Lesotho; or

(iv) is not qualified to be registered as a voter under this act; or

(v) has his normal place of residence outside Lesotho or who, although his normal place of residence in Lesotho, has resided there for less than two months during the twelve months immediately preceding the date of nomination.

1998

**Local Government Bill, 1998
Explanatory Memorandum**

**(Circulated by authority of the
Minister of Home Affairs and Local Government)**

OUTLINE

As a follow up to the Local Government Act that was passed by the Parliament in 1996, and bearing in mind the primary purpose in Creating a system of Local Authorities in Lesotho, it is proposed by this Bill to enact a law that will regulate the elections of Local Authorities.

In the main the provisions of the Bill are as follows:

Notes on clauses:

Part 1: Preliminary (Clauses 1-9)

- (a) **(Clause 1 and 2)** deal with the citation of the Act and the interpretation of various words that appear in the Act;
- (b) **(Clause 3 and 4)** deal with appointment of officers who will be responsible for the conduct of elections. The Overall responsibility is left with the Independent Electoral Commission. Other officers that are to be appointed under these clauses include the Director of Elections, Electoral Division Registration Officers and their Assistants as well as Returning Officers and their Assistants. Clause 5 up to 9 deals with the franchise, disqualification of voters, electoral divisions as well as Polling districts and polling stations.

Part II – Registration of voters and revision of registers (Clause 10-20)

- (a) **(Clause 10-11)** Clause 10 deals with registration of voters while Clause 11 deals with claims and objections to the registers;
- (b) **(Clause 12-16)** These clauses deal with matters such as certification of registers, preparation of registers on alteration of electoral division, revision of registers and method of revising them as well as claims and objections at revision or registers;
- (c) **(Clause 17 – 20)** Provides for the certification of revised registers, notices and adjournments relating to registers, notice of certification of registers; their commencement and duration, Lastly this part deals with penalties for false statements and wrongful claims.

Part III – Elections (Clause 21-50)

- (a) **(Clauses 21-50)** The part deals with number of members to be returned for local authority areas and electoral divisions, issues of writ of elections, notice of time and place of nomination;
- (b) **(Clauses 26 – 33)** Provides for eligibility to be nominated as a candidate, nomination period as well as proceedings on nomination. Matter such as objections to nomination, persons entitled to be present at nomination and withdrawal of candidature. The last two sections of this part deal with contested and uncontested elections;
- (c) **(Clauses 34-45)** The first section of this part deals with matters such as polling officers, their appointment and how they should conduct their business. It further provides for facilities to be provided at the polling stations and that register of voters is to be conclusive evidence of right to vote. Another important aspect of elections that is provided for under this part is admittance to a polling station as well as hours of office at polling stations. This part further provides for type of ballot paper that will be used on the elections, the type of ballot boxes, manner or voting, spoilt ballot papers, tendered votes, closing of the poll and procedure on closing of the poll.
- (d) **(Clauses 46-50)** This part deals with the method of counting votes, ballot papers that are to be rejected, publication of the result and statement of poll. It further deals with the effect of

failure to comply with the Act on the election results and lastly it provides for election offences.

Part IV – Corrupt practices (Clause 51-54)

- (a) **Clause 51** deals with personation. **Clause 52** deals with undue influence in all its forms and its consequences on the elections. **Clause 53** deals with bribery in all its forms.

- (b) **Clause 54** provides for the penalties that may befall a person who commits the offences of personation, undue influence or bribery.

Part V– Election agent, election expenses and illegal practices (Clauses 55 – 60)

- (a) **Clause 55 and 56** deals with particular expenditure and employment that are prohibited in the elections;
- (b) **Clause 57** deals with unjust enrichment and provides that a creditor who entered into a contract prohibited by this it was illegal still has a right to claim payment. **Clause 58** compels all employers to all their employees a reasonable time for voting;
- (c) **Clause 59** prohibits use of loud speakers, ensigns, banners flags, and labels on polling day. Lastly section 60 deals with punishment on conviction for illegal practice.
- (d) **Part VI – Excuse for corrupt or illegal practice (Clauses 61 – 62)**
- (e) **Clause 61** provides for circumstances under which a candidate may commit a corrupt or illegal practice but his election still be held to be valid and all incapacities that would otherwise befall him be lifted;
- (f) **Clause 62** gives the judge a power to except innocent acts from being illegal practices of which acts would otherwise or corrupt practices.

Part VII – Grounds for voiding elections (Clauses 63 – 65)

- (a) **Clauses 63 and 64** provide for circumstances under which the election of a candidate may be voided.
- (b) **(Clause 65** provides that proceedings may be instituted in the High Court of Lesotho against a candidate on the ground that he is disqualified to act as a candidate under Act.

Part VIII – Election petitions (Clauses 66 – 75)

- (a) **Clause 66** deals with powers of the Judge in an election petition. Clause 67 provides for persons who have a right to bring an election petition and clause 68 provides for the relief that may be claimed in an election petition;
- (b) **Clause 69** compels the Judge to issue a certificate as to the validity of elections clause 70 compels the Judge to make a report to the Electoral Commission about an election petition;
- (c) **Clause 71** provides for the limitation of time for presentation of election petition. Clause 72 protects a voter from being questioned as to whom he has voted for in an election petition. Clause 73 provides for votes that are to be struck off at scrutiny;
- (d) **Clause 74** gives the Chief Justice power to make rules of court to regulate election petitions and section 75 provides that rejection of a ballot paper by returning officer under Clause 47 shall not be questioned by an election petition.

Part IX – General (Clauses 76 – 81)

- (a) **Clause 76** empowers the Electoral Commission to make regulations that may be necessary to give effect to the provisions of this Act;
- (b) **Clause 77** provides that inaccurate description of a person or a place under this Act cannot affect the operation of this Act in as far as that person or place is identifiable according to the description;
- (c) **Clause 78** provides that it, in the opinion of an authority who is required to publish notices the prescribed mode of publicity, does not give enough publicity, such authority may take such steps as he may deem necessary for giving publicity. It further provides for penalties that may befall anybody who destroys, mutilates, defaces or removes notices prescribed under this Act.
- (d) **Clause 79** provides that forms and schedules under this Act may be translated into Sesotho and shall be valid as

translated. This will be the same case with other forms that may be prescribed by the Electoral Commission;

- (e) **Clause 80** provides that Parliamentary registers may be used for Local Authority Elections;
- (f) **Clause 81** deals with repeals and savings.

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;
 - (b) publicise this Code widely in any election campaign;
 - (c) promote and support efforts in terms of this Code to educate vote

- (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 canvas freely 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, DEFAMTION 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 the 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;
 - (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 right 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 has voted;

- (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
 - (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.

Fifth Schedule – Allocation of Special Seats for Women Candidates

(Section 48 (2))

1. The Returning Officer shall determine one third (1/3) of the total number of electoral divisions in a Council by –

- (a) dividing the total number of electoral divisions by three (3);
 - (b) if the resulting figure is a decimal fraction then it is rounded off to the nearest whole number.
- 2. The Returning Officer shall determine the total votes cast for –
 - (a) each political party in an electoral division;
 - (b) each political party in a council, being the votes determined under sub-item (a) which shall be referred to in this Schedule as the “total votes for party candidates”; and
 - (c) all political parties participating in the election according to section 26 (1A) by adding together the total votes for party candidate which shall be referred to in this Schedule as the “total votes”.
- (3) The Returning Officer shall then determine the number of votes required for the allocation of a seat by –
 - (a) dividing the total votes by one third ($1/3$) of the total number of electoral divisions in a council;
 - (b) rounding off any decimal fraction to the nearest whole number; and
 - (c) the resulting figure shall be referred to in this Schedule as the “quota”.
- (4) The Returning Officer shall divide total votes for each party candidate by the quota and the resulting number shall be referred to as the party’s share of the votes.
- (5) The Returning Officer shall allocate seats to each party in accordance with party’s share of votes without taking any decimal fraction into account.

(6) If there are fewer seats allocated than one third ($1/3$) of the total number of electoral divisions in a council, the remaining seats shall be allocated in the following manner:

- (a) The first remaining seat shall be allocated in to the party with the highest decimal fraction;
- (b) The next remaining seat shall be allocated to each party with the next highest decimal fraction; and
- (c) Each further remaining seat shall be allocated to each political party with the next highest decimal fraction.