Electoral offences

Electoral offences are subdivided into intimidatory practices, corrupt practices and illegal practices.

The first group has been renamed intimidatory practices. Intimidation is defined to include not only physical violence but also psychological pressure and threats to withhold humanitarian assistance. The offence of committing an intimidatory practice has been widened to include such things as—

- > compelling a person to vote for a particular political party or candidate;
- compelling a person to disclose how he or she has voted;
- using intimidation as a reprisal for having voted for a particular political party;
- using intimidation to prevent or obstruct a political party or a candidate from campaigning in an area prior to an election.

Corrupt practices include a wide variety of forms of bribery and corruption, including using promises of food or humanitarian aid to influence voters.

An election petition can be brought before the Electoral Court after an election. The Court can declare the election of a candidate in a particular constituency if

- the candidate was not qualified or was disqualified; or
- the candidate or agent were involved in intimidatory, corrupt or illegal practices and it is likely that the outcome of the election in question would have been different had these offences not been committed or the offences are considered to be sufficiently serious to justify the setting aside of an election, the Electoral Court may declare the election to be void and order the holding of a fresh election.

The Electoral Court may only set aside the entire election (in respect of all seats) on the basis of the Commission of electoral offences committed by party officials or members if the petitioner establishes beyond reasonable doubt that the outcome of the election result would have been different had these offences not been committed.

Intimidatory practices

This offence is committed when a person uses intimidation in connection with elections. The penalty for this offence is a fine up to level 10 or to imprisonment up to 5 years or both.

Methods for intimidation

Intimidation can take any of these forms—

- > inflicting or threatening to inflict bodily injury or cause unlawful damage to property;
- abducting or threatening to abduct or detain a person against his or her will;
- withholding or threatening to withhold from someone assistance or a benefit to which he or she is legally entitled;
- illegally doing or threatening to do anything to the disadvantage of a person.

Illegal intimidatory practices in relation to nomination of candidates Using these intimidatory methods—

- to compel or attempt a person a person to sign or refrain from signing a nomination paper;
- > to prevent or attempt to prevent a candidate from lodging a nomination paper with a constituency elections officer.

Illegal intimidatory practices in relation to voters and other illegal practices

Using these intimidatory methods to compel or attempt to compel a person or persons generally—

- a person or persons generally to vote for a political party or candidate;
- not to vote;
- to attend, or participate in any political meeting, march, demonstration or other political event.

Obstruction of voters

It is an offence for a person wilfully to obstruct a voter, either at the polling station or on his or her way to or from the polling station.

The penalty for this offence is a fine up to level 6 or imprisonment for up to 1 year or both

Illegal intimidatory practices in relation to political events

Using these intimidatory methods to prevent or obstruct or attempt to prevent or obstruct a political party or candidate from campaigning in any election.

Where the High Court convicts a person of this offence, the court may, in addition to any other punishment, declare the person to be incapable, for up to 5 years from the date of his or her conviction—

- of being registered as a voter or voting at an election or filling a public office, other than a public office the tenure of which is regulated exclusively by or in terms of the Constitution; and
- if the person holds such a public office, the High Court may declare the office to be vacant as from the date of the conviction.

Undue influence

This offence is committed when a person applies undue influence against another in connection with an election or uses another to apply such pressure. This offence overlaps with the offence of intimidation.

The acts that form the basis of this offence are—

- using or threatening to use force, violence or restraint upon or against any person;
- inflicting or threatening to inflict any injury, damage, harm or loss upon or against any person:
- doing or threatening to do anything to the disadvantage of another.

These acts must be aimed at —

- > another to sign a nomination paper or refrain from signing a nomination paper; or
- inducing or compelling to vote or refrain from voting; or
- exacting reprisals against a person for having signed or refrained from signing a nomination paper;
- > exacting reprisals against a person for having voted or refrained from voting in an election.

The penalty for this offence is a fine up to level 14 or imprisonment for up to 2 years or both.

A person also commits an offence who by abduction, duress or threats or by fraudulent device or contrivance—

impedes or prevents the exercise of his or her vote by a voter; or

compels, induces or prevails upon a voter either to vote or to refrain from voting at an election;

The penalty for this offence is a fine up to level 7 or imprisonment for up to 2 years or both.

Where the High Court convicts a person of this offence, the court may, in addition to any other punishment, declare the person to be incapable, for up to 5 years from the date of his or

her conviction of being registered as a voter or voting at an election or filling a public office, other than a public office the tenure of which is regulated exclusively by or in terms of the Constitution: and

if the person holds such a public office, the High Court may declare the office to be vacant as from the date of the conviction.

Bribery

This offence is committed both by the person offering a bribe and the person receiving a bribe in connection with an election.

A bribe can consist of giving money or a gift to another or lending money to another or promising to give or lend money to another.

The bribe can be to—

- to induce a voter to vote or refrain from voting (the person taking the bribe is also guilty of this offence);
- to reward a voter for voting or refraining from voting in an election (the person taking the bribe is also guilty of this offence);
- > to procure or to endeavour to procure the return of a candidate at an election or the vote of a voter at an election;
- to induce a person to take part in any procession or demonstration before, during or after an election;
- conveys or gives the voter any money or property for the purpose of enabling him or her to be registered as a voter, thereby to influence his or her vote at a future election, or pays any money on behalf of a voter for the purpose of inducing him or her to vote or refrain from voting.

The penalty for this offence is a fine up to level 7 or imprisonment for up to 2 years or both.

It is not bribery, however, to pay money or agree to pay money for or on account of any expenditure *bona fide* and lawfully incurred in respect of the conduct or management of an election.

Personation

This offence is committed when a person—

- applies for a ballot paper in the name of someone else. This can be a living or dead person or a fictitious person;
- > after voting in an election, applies again at the same election for another ballot paper.

The penalty for this offence is a fine up to level 7 or imprisonment for up to 2 years or both.

Where the High Court convicts a person of this offence, the court may, in addition to any

other punishment, declare the person to be incapable, for up to 5 years from the date of his or

her conviction—

- of being registered as a voter or voting at an election or filling a public office, other than a public office the tenure of which is regulated exclusively by or in terms of the Constitution; and
- if the person holds such a public office, the High Court may declare the office to be vacant as from the date of the conviction.

Illegal practices and other offences

It is an offence for a person for the purpose of promoting or procuring the election of a candidate at an election —

- incurs illegal election expenses; or
- receives any payment, whether before, during or after an election, in respect of illegal election expenses:
- ➤ is a party to a contract to make payment to a voter on account of the use of any premises for the exhibition of any address, bill, poster or notice or on account of the exhibition of any address, bill, poster or notice, but this does not apply to any payment or contract made in the ordinary course of business to or with a voter whose ordinary business it is as an advertising agent to exhibit bills and advertisements for payment.

The penalty for this offence is a fine up to level 5 or imprisonment for up to 6 months or both.

It is an offence for a person, without the express or implied authority of a candidate or his or her chief election agent, to incur election expenses in relation to that candidate.

The penalty for this offence is a fine up to level 5 or imprisonment for up to 6 months or both.

It is an offence for a person knowingly to provides money—

- for any payment which is contrary to this Act; or
- for any election expenses in excess of the maximum amount allowed by this Act; or
- for replacing any money expended in any such payment or expenses, except where the same is allowed under this Act to be an exception;

The penalty for this offence is a fine up to level 6 or imprisonment for up to 1 year or both.

It is an offence for a person, for the purpose of promoting or procuring the election of a candidate at an election, to engage or employ any other person for payment or promise of payment for any purpose or in any capacity whatever for which election expenses may not be incurred. The person employed is also guilty of this offence if he or she knew that he or she was employed is violation of this provision.

The penalty for this offence is a fine up to level 5 or imprisonment for up to 6 months or both.

Corrupt procurement of candidate

It is an offence for a person corruptly to induce or procure another to become a candidate or to withdraw from being a candidate at an election by payment or promise of any nature, but this section does not apply to any payment or promise of payment of election expenses.

The penalty for this offence is a fine up to level 7 or imprisonment for up to two years or both.

Prohibition of betting

It is an offence for any person to stake money on any contingency relating to the nomination of a candidate for election or the result of a poll.

The penalty for this offence is a fine up to level 4 or imprisonment for up to 3 months or both.

Prohibited symbols

The Commission may, by statutory instrument, declare that any symbol or representation of an animal, bird or thing shall be a prohibited symbol for the purposes of this section.

It is an offence for a person to use, possess, display, publish or wear any object or thing which consists of, incorporates or bears a prohibited symbol if the use, possession, display, publishing or wearing of that object or thing furthers or is calculated or likely to further the objects or activities of a candidate or a political party for the purpose of an election. The prohibition extends to the use, possession, display, publishing or wearing, as the case may be, of—

- banners, flags or badges;
- uniforms, T-shirts, dresses or other articles of clothing of whatever kind;
- letterheads, pamphlets, circulars, manifestos, notices or advertisements; consisting of, incorporating or bearing a prohibited symbol.

The penalty for this offence is a fine up to level 4 or imprisonment for up to 3 months or both.

In any proceedings for this offence if it is proved that the person who is alleged to have committed this offence was, at the time of the contravention, a member, official or supporter of a political party or an agent or supporter of a candidate, he or she will be deemed to have contravened the prohibition in order to further the objects or activities of the political party or candidate, as the case may be, unless the contrary is proved.

In any proceedings for this offence if it is proved that, at any time before an election, the prohibited symbol was displayed to a person who at the time was qualified to be registered as a voter, it will be deemed to have been displayed for the purpose of that election unless the contrary is proved.

Prohibition of certain activities in vicinity of polling stations

It is an offence for a person, within three hundred metres of any polling station on any polling day—

- > to assemble or take part in any gathering of more than twelve persons; or
- > to canvass for votes; or
- > to utter slogans; or
- > to distribute leaflets or pamphlets for or on behalf of any candidate or political party; or
- to organise or engage in public singing or dancing; or
- to use bands or music or loudspeaker vans or apparatus.

The penalty for this offence is a fine up to level 6 or imprisonment for up to 1 year or both.

Procuring prohibited persons to vote; false statements re withdrawal of candidates

It is an offence for a person to vote or procure another to vote at an election, knowing that he or she or that person is prohibited by law from voting at that election.

The penalty for this offence is a fine up to level 10 or to imprisonment up to 2 years or to both.

It is an offence for a person, before or during an election, to publish a false statement of the illness, death or withdrawal of a candidate at that election for the purpose of promoting or procuring the election of another candidate, knowing that statement to be false or not knowing or believing it to be true.

The penalty for this offence is a fine up to level 5 or imprisonment for up to 6 months or both.

A candidate is not be liable nor shall his or her election be rendered void for any illegal practice under this section committed by the candidate's agent other than his or her chief election agent.

Additional penalties for illegal practices

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

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

Preventing holding of lawful political events

It is an offence for a person to prevent the holding of any lawful political meeting, march, procession or demonstration or other lawful political event that was to have been held for the purpose of an election

The penalty for this offence is a fine up to level 12 or imprisonment for up to 2 years or both.

It is an aggravating circumstance if the person convicted of this offence committed it while falsely claiming or representing himself or herself to be acting on behalf of any institution of the State or a political party, with the intention of discrediting such institution or political party.

Destruction of political posters

From the date on which an election is called until its result is declared, it is an offence for a person to deface or remove any billboard, placard or poster published, posted or displayed by a political party or candidate contesting the election. But this does not apply to the removal or defacement of a billboard, placard or poster by or at the direction of who published, posted or displayed it or by the owner of occupier of the land or premises when the material has been posted or displayed in contravention of section 153.

The penalty for this offence is a fine up to level 10 or imprisonment for up to 2 years or both.

It is an aggravating circumstance if the person convicted of this offence committed it while falsely claiming or representing himself or herself to be acting on behalf of any institution of the State or a political party, with the intention of discrediting such institution or political party.

Defacing property for political purposes

It is an offence for a person with the object of supporting or opposing any political party, political cause or candidate, whether or not in reference to any election, to place any bill, placard, poster, pamphlet, circular or other document, writing or painting on, or otherwise defaces, any house, building, wall, fence, lamp-post, gate or elevator without the consent of the owner or occupier thereof,

The penalty for this offence is a fine up to level 14 or imprisonment for up to 2 years or both.

It is an aggravating circumstance if the person convicted of this offence committed it while falsely claiming or representing himself or herself to be acting on behalf of any institution of the State or a political party, with the intention of discrediting such institution or political party.

When election is void owing to corrupt or illegal practices

Subject to sections 148, 156 and 157, if upon the trial of an election petition the Electoral Court declares that any electoral malpractice has been committed with reference to the election the subject of the petition, by or with the knowledge and consent or approval of the candidate returned at that election, or by or with the knowledge and consent or approval of any of his or her agents, and the effect of such practice was, in the opinion of the Electoral Court, such as to have materially affected the outcome of that election, the election of that candidate will void, and a fresh election shall thereupon be held;

Subject to sections 148, 156 and 157, if a candidate or his or her chief election agent is found at the trial of the election petition to have committed any electoral malpractice that candidate or agent may be declared by the Electoral Court to be incapable, for a period not exceeding five years from the date of the finding, of—

- being registered as a voter or of voting at an election; or
- filling a public office, other than a public office the tenure of which is regulated exclusively by or in terms of the Constitution, and, if he or she holds any such office, the Electoral Court may declare that that office will be vacated by him or her as from the date of the finding.

When an election is not void

When upon the trial of an election petition the Electoral Court finds that a candidate at the election the subject of the petition has been guilty by his or her agent of an electoral malpractice with reference to that election, and the candidate has proved to the satisfaction of the Electoral Court that—

- no electoral malpractice was committed at that election by the candidate himself or herself or by his or her chief election agent and that the offences mentioned in the finding were committed without the sanction or connivance of the candidate or his or her chief election agent; and
- the candidate and his or her chief election agent took all reasonable precautions for preventing the commission of electoral malpractices, corrupt practices and illegal practices at that election; and
- the offences mentioned in the finding were of a trivial, unimportant and limited character;

then the election of that candidate will not, by reason of the offences mentioned in the finding, be void, nor will the candidate or the chief election agent be subjected to any incapacity under this Act.

When Electoral Court may hold certain acts or omissions to be exempt from provisions of this Act

When it appears to the Electoral Court, either on application or upon an election petition, that—

- any act or omission of a candidate at an election or of his or her chief election agent or of another agent or person, which but for this section would be an illegal practice, has been done or made in good faith through inadvertence or accidental miscalculation or some other reasonable cause of a like nature; and
- by reason of the circumstances it would be just that the candidate or his or her chief election agent or other agent or person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission;

the Electoral Court may make an order allowing the act or omission to be an exception from the provisions of this Act which would otherwise make the act or omission an illegal practice, and thereupon the candidate, agent or person will not be subject to any of the consequences of the act or omission under this Act.

Where application is made for this relief, the Electoral Court, before hearing the application, must be satisfied that reasonable notice of the application has been given in the constituency or area in which the election was held.

Hearing of person accused of corrupt practice or illegal practice

Before any person, not being a party to an election petition or a candidate on behalf of whom the seat is claimed by an election petition, is found by the Electoral Court to have been guilty of any electoral malpractice, the Electoral Court must cause notice to be given to such person and, if he or she appears in pursuance of the notice, must give him or her an opportunity of being heard and of calling evidence to show why no such finding should be recorded against him or her.