

NOTICE OF AMENDMENTS

Electoral Bill, 2004 (H.B. 19, 2004)

CLAUSE 3

BY MR COLTART:

Between lines 27 and 28 on page 10 of the Bill, to insert the following paragraph after paragraph (c)—

- “(d) democratic elections cannot be held in the absence of related internationally-recognised human rights and freedoms, including—
 - (i) the right to life, liberty and security of the person; and
 - (ii) freedom of opinion and expression, including freedom to seek, receive and impart ideas and information; and
 - (iii) freedom of assembly and association; and
 - (iv) freedom of movement throughout Zimbabwe and freedom to enter and leave Zimbabwe; and
 - (v) the right to equal protection of the law and to due process of law.”.

CLAUSE 4

BY MR COLTART:

In line 39 on page 11 of the Bill, in the definition of “corrupt practice”, to repeal paragraph (a) and to substitute—

- “(a) intimidation, retaliatory intimidation, obstructive intimidation or voter obstruction;

Between lines 19 and 20 on page 12 of the Bill, to insert the following definition—

““election tribunal” means a tribunal established in terms of section *one hundred and fifty-eight*;”.

In lines 38 and 39 on page 12 of the Bill, in paragraph (a) of the definition of “nomination day”, to delete the words “any day” and to substitute “the day”.

Between lines 45 and 46 on page 12 of the Bill, to insert the following definition—

““Parliamentary Appointments Committee” means the committee appointed by Parliament in terms of subparagraph (1) of paragraph 2 of the First Schedule to the Zimbabwe Electoral Commission Act [*Chapter 2:12*];”.

In line 9 on page 13 of the Bill, in paragraph (a) of the definition of “polling day”, to delete “or days”.

In line 11 on page 13 of the Bill, in paragraph (b) of the definition of “polling day”, to delete “any day or days” and to substitute “the day”.

Between lines 23 and 24 on page 14 of the Bill, to insert the following definitions—

““ward” means a division of a local authority area fixed under the Rural District Councils Act [*Chapter 29:13*] or the Urban Councils Act [*Chapter 29:15*], as the case may be, for the purpose of the election of one or more members of the local authority;

“ward voters roll” means a voters roll for a ward, kept and maintained in terms of paragraph (b) of subsection (1) of section *twenty*.

Between lines 30 and 31 on page 14 of the Bill, to insert the following subclause after subclause (2)—

“(3) This Act shall be interpreted so as to give full effect to the principles and duties set out in sections *three, five and six*.”.

NEW CLAUSES

BY MR COLTART:

Between lines 30 and 31 on page 14 of the Bill, to insert the following clauses into Part I of the Bill, after clause 4, the remaining clauses being renumbered accordingly—

5 Government to ensure free and fair electoral environment

(1) The Government shall ensure that, in every election, political parties and candidates—

- (a) are able freely to convey their messages to the electorate and that they have a reasonably equal opportunity to do so; and
- (b) have equitable access to and fair treatment by the mass media; and
- (c) are able freely to organise peaceful meetings, assemblies and demonstrations of public support; and
- (c) are able to move freely throughout Zimbabwe to enlist support and seek votes;

and, generally, shall ensure compliance with the principles set out in section *three*.

(2) The Government shall take whatever measures are needed to ensure that, in every election, the electorate is able to receive adequate and accurate information upon which to make an informed choice and is free to exercise that choice without fear, intimidation or bribery.

(3) All public officers shall exercise their functions so as to ensure compliance with subsections (1) and (2).

(4) Subsections (1) and (2) shall not be construed as limiting the functions of the Commission or the Electoral Supervisory Commission.

6 Government to be neutral in elections

(1) Public officers shall exercise their official functions impartially in any election, so as not to show bias towards or against any person or political party contesting the election.

(2) Subject to this Act, persons who control the use of resources belonging to or vested in the State or in a statutory body or local authority shall ensure that those resources are not used for the purpose of benefiting any person or political party contesting an election.

(3) Public officers, other than persons who hold elective office, shall not make use of their position to further their own political interests.

(4) Persons who hold elective public office are accountable to their entire electorate, not just to the political party, if any, to which they belong, and they shall conduct themselves accordingly even when contesting an election.

7 Government to ensure that voters are able to vote

(1) The Government shall ensure that every person who is qualified to vote in an election has a reasonable opportunity to exercise that right.

(2) All public officers shall exercise their functions so as to ensure compliance with subsection (1).

8 Public officers to assist Commissions

All public officers shall assist the Commission and the Electoral Supervisory Commission when required to do so in terms of this Act, and shall exercise their functions so as to facilitate the Commission's activities in registering voters and in conducting elections.”.

CLAUSE 6

BY MR COLTART:

In lines 37 and 38 on page 14 of the Bill, to repeal subclause (1) and to substitute—

“(1) Subject to this Part, members shall be appointed for five-year terms and shall be eligible for re-appointment:

Provided that a person who has served as a member for two or more terms aggregating ten years shall not be eligible for re-appointment.”.

In lines 1 and 2 on page 15 of the Bill, to repeal subclause (3) and to substitute the following—

“(3) Subject to this Act, members shall hold office on such terms and conditions relating to remuneration, allowances and other benefits as may be fixed for members generally by the President acting on the advice of the Parliamentary Appointments Committee, which advice shall be given after consultation with the Minister responsible for finance.

In line 3 on page 15 of the Bill, to insert after “President” the words “, acting on the advice of the Parliamentary Appointments Committee,”.

CLAUSE 7

By Mr Coltart:

In lines 8 to 25 on page 15 of the Bill, to repeal the clause and to substitute the following clause—

7 Disqualification for appointment as member

“(1) Without derogation from subsection (2) of section 61 of the Constitution, the President shall not appoint a person as a member, and no person shall be qualified to hold office as a member, who—

- (a) is neither a citizen of Zimbabwe nor permanently resident in Zimbabwe; or
 - (b) holds or, in the five years immediately preceding the date of his or her proposed appointment, has held an elective public office or a political office; or
 - (c) has, in terms of a law in force in any country—
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) made an assignment to or arrangement or composition with his or her creditors which has not been rescinded or set aside;
- or
- (d) within five years immediately before his or her proposed appointment, he or she has been convicted—
 - (i) in Zimbabwe of a criminal offence; or
 - (ii) outside Zimbabwe of an offence, by whatever name called, which, if committed in Zimbabwe, would have been a criminal offence;

and sentenced to a term of imprisonment without the option of a fine, whether or not the sentence has been suspended, and has not received a free pardon.

(3) For the purposes of paragraph (c) of subsection (2), a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body.

(4) Any person who, knowing that he or she is disqualified in terms of this section to hold office as a member—

- (a) attends any meeting of the Electoral Supervisory Commission as a member; or
- (b) performs any other act as a member;

shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.”.

CLAUSE 9

BY MR COLTART:

In lines 31 to 38 on page 15 of the Bill, to repeal the clause and to substitute the following—

9 Removal of members from office

“(1) A member may be removed from office by the President in accordance with this section, but only on one or more of the following grounds—

- (a) inability to exercise the functions of his or her office, whether arising from physical or mental incapacity; or
- (b) misconduct; or
- (c) gross incompetence; or
- (d) if he or she becomes disqualified to hold office as a member.

(2) If, on the motion of the Parliamentary Appointments Committee, Parliament resolves by a majority of all its members that the question of removing a member from office on a ground specified in subsection (1) ought to be investigated, the President shall without delay appoint a tribunal to inquire into the matter.

(3) A tribunal appointed under subsection (2) shall consist of not fewer than three members selected by the President from the following—

- (a) persons who have held office as a judge of the Supreme Court or the High Court;
- (b) persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil or criminal matters in a country in which the common law is Roman-Dutch or English, and English is an official language;
- (c) registered legal practitioners of at least seven years’ standing who have been nominated under subsection (4).

(4) The Council of the Law Society of Zimbabwe shall nominate a panel containing the names of at least three qualified legal practitioners for the purposes of paragraph (c) of subsection (3) when required to do so by the President.

(5) A tribunal appointed under subsection (2) shall inquire into the matter with all due dispatch, and shall report to the President with a recommendation whether or not the member concerned should be removed from office.

(6) The President shall without delay act on the recommendation of a tribunal in terms of subsection (5).

(7) The Minister shall lay a copy of a tribunal's report and recommendation before Parliament on one of the eight days that Parliament sits after the report and recommendation were delivered to the President.”.

NEW CLAUSE

BY MR COLTART:

Between lines 25 and 26 on page 16 of the Bill, to insert the following clause after clause 11, the remaining clauses of the Bill being renumbered accordingly—

12 Minutes of proceedings of Electoral Supervisory Commission

“(1) The Electoral Supervisory Commission shall cause minutes of all proceedings of and decisions taken at all its meetings to be entered in books kept for the purpose.

(2) Any minutes referred to in subsection (1) which purport to be signed, with the authority of the Electoral Supervisory Commission by the chairperson of the meeting to which the minutes relate or by the chairperson of the next following meeting, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

(3) The Electoral Supervisory Commission shall ensure that all minutes referred to in subsection (1) are kept at the head office of the Commission and are open to inspection at all reasonable times by members of the public, who may take extracts from or make copies of such minutes.”.

CLAUSES 13 AND 14

BY MR COLTART:

Between line 33 on page 16 of the Bill and line 4 on page 19, to repeal the clauses.

CLAUSE 17

BY MR COLTART:

In lines 34 and 35 on page 19 of the Bill, to delete “chairpersons of the Service Commissions shall second such persons in the employment of the State” and to substitute “chairperson of the Public Service Commission shall second such members of the Public Service”.

NEW PART

By Mr Coltart:

Between lines 41 on page 19 of the Bill and 1 on page 20, to insert the following new Parts after clause 17, the remaining clauses and Parts being renumbered accordingly—

“PART IV
ELECTION OBSERVERS

18 Right to observe elections

(1) Subject to this Act—

- (a) organisations that are engaged in the monitoring or protection of human rights; and
- (b) governments of foreign countries; and
- (c) news media;

whether they are based in Zimbabwe or elsewhere, have the right, through nominated observers accredited by the Commission, to observe all electoral processes, including the registration of voters, the preparation of voters rolls, the casting of votes and the counting of votes.

(2) Subject to this Act, any candidate who or political party which is contesting an election has the right, through nominated observers accredited by the Commission—

- (a) to observe all processes of the election, including the registration of voters, the preparation of voters rolls, the casting of votes and the counting of votes; and
- (b) to inspect all documents relating to the election.

19 Accreditation of observer organisations and observers

(1) Any organisation or other body referred to in subsection (1) of section *eighteen* may apply to the Commission for accreditation as an observer organisation, and the Commission, if satisfied that the organisation or body has the right under that subsection to observe electoral processes, shall without delay accredit the organisation or body as an observer organisation.

(2) An organisation or other body may, at its option, be accredited in terms of subsection (1) as an observer organisation for any particular election or for elections generally or for any class of elections.

(3) An accredited observer organisation may provide the Commission with the names of persons whom it wishes to be accredited as the organisation’s observers, and subject to this Act the Commission shall without delay accredit those persons as observers:

Provided that every such person shall be of or over the age of eighteen years.

(4) Any candidate who or political party which is contesting an election may provide the Commission with the names of persons whom the candidate or party wishes to be accredited as observers for that election, and subject to this Act the Commission shall without delay accredit those persons as observers:

Provided that every such person shall be of or over the age of eighteen years.

(5) The Commission shall determine every application for accreditation under subsection (1), (3) or (4) within five days of its being made, and in the event of its

being refused shall without delay provide the applicant with written reasons for the refusal.

20 Rights and duties of accredited observers

- (1) Subject to this Act, an accredited observer has the right—
 - (a) to observe without hindrance all aspects of the preparation and conduct of an election, including the printing, packaging, transfer, delivery, handling, counting, safe-keeping and destruction of ballot-papers;

and
 - (b) to submit comments and suggestions to the Commission and any polling station committee regarding the conduct of an election.

(2) An accredited observer may observe the electoral processes in more than one polling station.

(3) An accredited observer organisation, candidate or political party may have two or more accredited observers in a polling station if they can be accommodated in it and they do not hinder other accredited observers:

Provided that the Commission may by regulation limit the number of accredited observers that any one organisation, candidate or party may have in any one polling station or other place.

- (4) An accredited observer shall—
 - (a) comply with the requirements of this Act; and
 - (b) when exercising his or her functions, display prominently any identity badge issued to him or her by the Commission; and
 - (c) not wear or display any clothing or sign that might reasonably be regarded—
 - (i) as an indication of support for any party or candidate; or
 - (ii) as influencing the way in which any voter casts his or her vote;

and
 - (d) not do anything to violate the secrecy of the ballot; and
 - (e) not hinder or obstruct the lawful processes or administration of any election.

21 Regulations regarding accreditation and conduct of observers

(1) The Commission may, in terms of section *one hundred and eighty-eight*, make regulations prescribing—

- (a) procedures for the accreditation of observer organisations and observers; and
- (b) the identification of accredited observers; and
- (c) the conduct of accredited observers.

(2) Regulations referred to in subsection (1) may impose reasonable restrictions on—

- (a) the number of observers that may be accredited for any one accredited observer organisation or political party;
- (b) the number of accredited observers that may enter or be in any polling station or other place;
- (c) accredited observers' right of access to any documents:

Provided that—

- (i) such restrictions shall be no greater than are necessary to preserve the secrecy of the ballot or to permit the efficient functioning of any electoral process;
- (ii) no political party contesting an election shall be prevented from having at least one accredited observer in every polling station and other place where voting takes place or votes are counted.

PART V

CONFLICT MANAGEMENT

22 Appointment of liaison committees

(1) As soon as possible after the close of nominations in a general election, the Commission shall appoint—

- (a) a national liaison committee; and
- (b) a liaison committee for each constituency or other electoral division in which the election is contested.

(2) As soon as possible after the close of nominations in a by-election or local authority election, the Commission shall appoint a liaison committee for each constituency, ward or other electoral division in which the election is contested.

(3) A liaison committee shall consist of—

- (a) a representative of the Commission selected by the Commission; and
- (b) in the case of—
 - (i) the national liaison committee, a representative of each political party contesting the election, who shall be selected by the party concerned;
 - (ii) a liaison committee appointed for a constituency, ward or other electoral division, a representative of each political party and candidate contesting the election, who shall be selected by the party or candidate concerned;

and

- (c) such other persons, and such other representatives of organisations and authorities, as the Commission believes will assist in the performance of the committee's functions.

(4) Subsections (1) and (2) shall not be construed as preventing the Commission from appointing additional liaison committees for any election or for any period between elections.

23 Functions of liaison committees

The functions of a liaison committee shall be—

- (a) to be a forum for consultation between the political parties contesting an election, and between those parties and the Commission; and
- (b) to enable the Commission to transmit information to political parties; and
- (c) to allow political parties to bring electoral irregularities to the attention of the Commission, so that the irregularities may be dealt with expeditiously; and
- (d) to resolve disputes and conflicts between political parties through mediation and conciliation, and to prevent such disputes from escalating; and
- (e) to ensure that the code of conduct set out in the Fourth Schedule to the Zimbabwe Electoral Commission Act [*Chapter 2:12*] is observed by and fairly applied to all political parties and candidates and their supporters; and
- (f) to ensure that this Act is observed by all political parties and candidates and their supporters; and
- (g) to exercise such other functions as may be prescribed.

24 Mediation and conciliation of disputes

(1) The Commission may, by regulation under section *one hundred and eighty-eight*, require political parties and candidates to submit disputes to mediation or conciliation.

(2) The procedure for the mediation or conciliation of disputes between political parties and candidates shall be as prescribed.

25 Mediation or conciliation not to affect right to other remedies

A political party or candidate shall not be regarded as having waived any right or remedy available under this Act through having participated in mediation or conciliation under this Part.

PART VI

DELIMITATION OF ELECTORAL BOUNDARIES OF LOCAL AUTHORITIES

26 Commission to approve boundaries of local authorities and wards

(1) Notwithstanding any other enactment—

- (a) no boundary of a local authority area or ward shall be fixed or altered;
- (b) no local authority area shall be divided or redivided into wards;

except with the prior approval of the Commission.

(2) In deciding whether or not to approve a proposal under subsection (1), the Commission shall give due consideration to the following factors—

- (a) physical features in the area concerned; and

- (b) means of communication to, from and within the area concerned; and
- (c) the geographical distribution of voters; and
- (d) any community of interest between voters in the area concerned; and
- (e) any existing electoral boundaries.

(3) The Commission shall not approve a proposal under subsection (1) that would result in a ward falling within two or more constituencies.

27 Commission's decision on boundaries to be made openly and with consultation

Before deciding whether or not to approve a proposal under section *twenty-six*, the Commission shall—

- (a) cause notice of the proposal to be published in the *Gazette* and in any other way that the Commission thinks appropriate; and
- (b) so far as is practicable within the time available, entertain representations from voters, parties and other interested persons likely to be affected by the Commission's decision;

and generally the Commission shall ensure that its deliberations on the issue are conducted openly.

PART VII

SITING OF POLLING STATIONS

28 Siting of polling stations

(1) Without delay after every delimitation of constituencies, the Commission shall fix the location of polling stations within those constituencies, ensuring that there is at least one polling station in every ward within a constituency.

(2) Before fixing the locations of polling stations, the Commission shall cause notice of its intention to do so to be published in the *Gazette* and in any other way that the Commission thinks appropriate.

(3) When fixing the locations of polling stations, the Commission shall, so far as is practicable within the time available—

- (a) entertain representations from voters, political parties and other interested persons likely to be affected by any decision made by the Commission; and
- (b) ensure that the Commission's activities and deliberations are conducted openly.

(4) In fixing the location and areas of polling stations the Commission shall endeavour to ensure that—

- (a) every voter registered in a ward voters roll will be able to reach a polling station in the ward without undue difficulty and within a reasonable time and will be able to cast his or her vote there without undue delay; and

- (b) the electoral officers at every polling station will be able without undue difficulty to deal with the total number of voters who are likely to cast their votes there on any polling day; and
- (c) persons who are in prisons, hospitals and other such institutions will be able to cast their votes; and
- (d) wherever practicable, the same polling stations can be used for elections to the Parliament and the local authorities within whose areas the polling stations are situated;

and the Commission shall take into account the possibility of changes in the number of voters within the area concerned and the possibility of errors in any population statistics relied on by the Commission.

(5) Every polling station shall be located in a place that is readily accessible to the public, including persons with physical disabilities.

(6) No polling station shall be located—

- (a) in a church or other place of worship; or
- (b) in premises owned or occupied by a party or candidate; or
- (c) in a police station, barracks, cantonment area or other place where police officers or members of the Defence Forces are permanently stationed; or
- (d) in premises licensed under the Liquor Act [*Chapter 14:12*]; or
- (e) at or in any place which, for any reason, may give rise to reasonable apprehension on the part of voters as to the secrecy of their votes or the integrity of the electoral process.

29 Numbering of polling stations

The Commission shall assign a number to each polling station.

30 Report on location of polling stations

(1) Without delay after fixing the location of polling stations in terms of section *twenty-eight*, the Commission shall publish a report comprising—

- (a) a list of the polling stations, with the numbers assigned to each and a description of their locations; and
- (b) one or more maps showing the location of each polling station and the boundaries of the ward within which it is situated; and
- (c) any further information or particulars that the Commission considers necessary.

(2) The report referred to in subsection (1) shall be published in the *Gazette* and in such other way as the Commission considers appropriate.

(3) The location of and number assigned to any polling station in the report referred to in subsection (1) shall have effect for the purpose of the next and any subsequent general election.

31 Alteration of polling stations

(1) The Commission may at any time change—

- (a) the number of polling stations in any ward;
- (b) the location of any polling station:

Provided that no such change shall be made less than seven days before the polling day in any election held in the constituency concerned.

(2) Subsections (3) to (6) of section *twenty-eight* shall apply to the making of any change in terms of subsection (1).

(3) Whenever the Commission makes a change referred to in subsection (1) it shall give notice of the change in the *Gazette* and in any other way that the Commission considers will bring the change to the attention of voters who are affected by it.

32 Publication of list of polling stations

After the calling of any election in terms of this Act and not later than thirty days before polling day, the Commission shall publish in a newspaper a list of all the polling stations at which voters may vote in the election, indicating briefly the location of each such polling station.”.

CLAUSE 18

BY MR COLTART:

In line 12 on page 20 of the Bill, to insert after the word “may” the words “, with the consent of the Commission”.

In line 15 on page 20 of the Bill, to delete “with the consent of the Minister,”.

Between lines 23 and 24 on page 20 of the Bill, to insert the following after paragraph (d)—

“and shall do if directed to do so by the Commission.”.

CLAUSE 20

BY MR COLTART:

Between lines 38 on page 20 of the Bill and 3 on page 21, to repeal the clause and to substitute—

20 Voters rolls to be kept

“(1) The Commission shall ensure that the following voters rolls are kept and maintained—

- (a) a national voters roll, containing the names of all registered voters in Zimbabwe; and
- (b) a voters roll for each ward, containing the names of all registered voters who may vote at a polling station in that ward;

and, if it is necessary to do so for the proper conduct of any election, the Commission shall in addition cause a constituency voters rolls to be kept and maintained for any of the constituencies into which Zimbabwe is divided.

- (2) A voters roll shall specify, in relation to each registered voter—
- (a) the voter's first and last names, date of birth and national registration number; and
 - (b) the place where the voter ordinarily resides; and
 - (c) the number under which the voter is registered, where that number differs from the voter's national registration number; and
 - (d) except in the case of a ward voters roll, the ward in which the voter may vote; and
 - (e) such other information as may be prescribed or as the Commission considers appropriate.

(3) Subject to subsection (2), a voters roll shall be in such form as may be prescribed or as the Commission considers appropriate.

(4) The Commission shall ensure that each voters roll is kept constantly up to date and, for that purpose, the Commission may rely on information obtained from any government department or agency responsible for registering persons or from any other reliable source.

- (5) The Commission shall—
- (a) keep at least one copy of every voters roll at its head office; and
 - (b) ensure that at least one copy of each ward voters roll is kept at the office of the constituency registrar for the constituency within which the ward concerned is situated.”.

CLAUSE 21

BY MR COLTART:

Between lines 4 and 24 on page 21 of the Bill, to repeal the clause and to substitute—

21 Inspection of voters rolls and provision of copies

“(1) Every voters roll shall be a public document and open to inspection by the public, free of charge, during ordinary office hours at the office where it is kept.

(2) A person inspecting a voters roll may, free of charge, make extracts from it during office hours.

(3) The Commission shall without delay provide any person who requests it with a copy of a voters roll, upon payment of the prescribed fee:

Provided that—

- (i) the prescribed fee shall not exceed the reasonable cost of preparing the copy;
- (ii) the Commission may impose reasonable conditions upon the provision of a voters roll in terms of this subsection, to prevent the roll from

being used for commercial or other purposes unconnected with an election.

(4) Notwithstanding subsection (3), the Commission shall provide every political party and candidate contesting an election, and every accredited observer group, with one electronic copy of every voters roll to be used in the election.

(5) The copy referred to in subsection (4) shall be provided free of charge and not later than seven days after the calling of the election concerned in terms of this Act.”.

CLAUSE 23

BY MR COLTART:

Between lines 40 on page 21 of the Bill and 18 on page 22, to repeal the clause and to substitute—

23 Residence qualifications of voters

“(1) In order to be registered as a voter in a particular ward voters roll, a person must be resident in the ward concerned:

Provided that—

- (i) a person shall be deemed to be residing in that ward while he or she is absent from it for a temporary purpose;
- (ii) a person may be regarded as residing in any Communal Land if he or she is entitled in terms of the Communal Land Act [*Chapter 20:04*] to reside in that Communal Land or any part of it.

(2) A voter who is registered in a ward voters roll shall not be entitled to have his or her name retained in that roll if he or she has ceased to reside in the ward concerned for a continuous period of twelve months:

Provided that nothing in this subsection shall prevent a voter’s name from being removed from the voters roll if he or she—

- (a) is registered in the voters roll of another ward; or
- (b) becomes disqualified in terms of the Constitution for registration as a voter.

(3) Where a voter qualifies by virtue of residence to be registered in more than one ward voters roll, he or she shall be entitled to choose the roll in which he or she is registered.”.

CLAUSE 27

BY MR COLTART:

In lines 15 to 25 on page 25 of the Bill, to repeal subclause (7).

CLAUSE 33

BY MR COLTART:

In line 40 on page 29 of the Bill, to delete “(7)” and to substitute “(6)”.

CLAUSE 37

BY MR COLTART:

In lines 28 to 33 on page 31 of the Bill, to repeal subclause (3) and to substitute—

“(3) Any person who—

- (a) by intimidation, fraud or misrepresentation, causes or induces or attempts to cause or induce any person or persons generally to refrain from registering or taking steps to register as a voter or voters, as the case may be; or
- (b) takes, destroys or damages any document belonging or relating to another person in order to prevent the registration of that person as a voter;

shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.”.

CLAUSE 38

BY MR COLTART:

Between lines 42 on page 31 of the Bill and 5 on page 32, to repeal paragraphs (a) and (b) of subclause (2) and to substitute the following—

- “(a) the closing date for the lodging of nominations of candidates for election as members of Parliament, which date shall be at least fourteen and not more than twenty-one days after the publication of the proclamation; and
- (b) polling day in the election, which day shall be at least forty-two and not more than fifty-six days after the closing date for nominations fixed in terms of paragraph (a); and”.

Between lines 14 and 15 on page 32 of the Bill, to insert the following subclause, the existing subclause (4) being renumbered accordingly—

“(4) Wherever possible the Commission shall fix polling day so that it falls on a Sunday or a day that is already a public holiday, but if it is not possible to do so then the day fixed as polling day shall be a public holiday in all respects as if it had been declared one in terms of subsection (2) of section 2 of the Public Holidays and Prohibition of Business Act [*Chapter 10:21*].”.

CLAUSE 39

BY MR COLTART:

In line 22 on page 32 of the Bill, to insert after “Speaker” the words “as soon as possible after he or she became aware of the vacancy”.

Between lines 22 and 23 on page 32 of the Bill, to insert the following subclauses, the existing subclause (2) being renumbered accordingly—

“(2) Before notifying the President of a vacancy in the membership of Parliament that has arisen in terms of paragraph (j), (k) or (p) of subsection (1) of section 41 or section 42 of the Constitution, the Speaker shall publish a notice in the *Gazette* declaring that, in his opinion, the vacancy exists.

(3) A notice referred to in subsection (2) shall state the cause of the vacancy to which the notice relates.

(4) If, within fourteen days of the publication of a notice referred to in subsection (2), an application is not presented to the Electoral Court for an order declaring that the person to whom the notice relates has not ceased to be a member of Parliament, the registrar of the Electoral Court shall forthwith give notice of that fact to the Speaker, who shall notify the President as is provided in subsection (1).

(5) Subsection (4) shall apply, with the necessary changes, if—

- (a) after presenting an application referred to in that subsection, the petitioner does not prosecute his application within the period fixed by or under the rules of court relating to the Electoral Court; or
- (b) after hearing the application, the Electoral Court confirms the declaration of the Speaker.

(6) The Minister shall be the respondent on the trial of an application referred to in subsection (4).”.

(7) If, after hearing an application referred to in subsection (4), the Electoral Court makes an order declaring that the petitioner has not ceased to be a member of Parliament, the registrar of the Electoral Court shall forthwith give notice of that fact to the Speaker, who shall publish a notice in the *Gazette* stating the effect of the order of the Electoral Court.”.

PART XII (CLAUSES 46 TO 50)

BY MR COLTART:

Between lines 8 on page 35 of the Bill and 13 on page 40, to repeal Part XII and to substitute the following Part, the remaining clauses being renumbered accordingly—

“PART XII

NOMINATION OF CANDIDATES FOR ELECTION AS MEMBERS OF PARLIAMENT

46 General duties of Commission regarding nomination of candidates

In addition to its general function of implementing civic educational programmes relating to elections, the Commission shall—

- (a) ensure that parties and voters are informed of the requirements for nomination under this Part; and
- (b) provide assistance to parties and candidates at all stages in the nomination process, where such assistance can be provided without prejudicing the Commission’s fairness and impartiality.

47 Nomination papers for candidates

(1) A candidate for election as a member of Parliament shall be nominated by means of a nomination paper in the prescribed form which shall—

- (a) state the candidate’s name and address and such other particulars as may be prescribed; and
- (b) be signed by at least five persons who are registered in any ward voters roll in the constituency for which the candidate seeks election; and
- (c) be countersigned by the candidate, indicating his or her consent to being nominated.

(2) Nomination papers of candidates for election as members of Parliament may be lodged with the Commission, either at its head office or at its main office in the constituency concerned, at any time after the publication of the proclamation in terms of section *thirty-eight* or *thirty-nine*, as the case may be, but before close of business on the date specified in paragraph (a) of subsection (2) of section *thirty-eight*.

48 Deposit on nomination

(1) At the same time as a nomination paper is lodged in terms of section *forty-seven*, there shall be deposited with the Commission, by or on behalf of the candidate concerned, such sum as may be prescribed.

(2) The Commission may prescribe a sum for the purposes of subsection (1) that is sufficiently high to discourage frivolous nominations, but not so high as to preclude persons of moderate means from standing for election or parties of moderate means from sponsoring them.

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

49 Consideration of nominations

(1) Without delay after a nomination paper is lodged with it in terms of section *forty-seven*, the Commission shall examine it in order to ascertain whether it is in order and shall give any candidate a reasonable opportunity to rectify any defect in it.

(2) The opportunity provided for in subsection (1) shall include, where appropriate, an opportunity to obtain further signatures of registered voters for a nomination paper.

(3) If, on examining a nomination paper, the Commission has reason to doubt the truth of a statement in it that the candidate concerned is to stand for or be sponsored by a party, the Commission shall take whatever steps are necessary to verify the statement.

(4) As soon as it has completed its examination of nomination papers lodged with it, the Commission shall notify, in writing, the candidates who lodged the papers—

- (a) whether or not, in the Commission's opinion, their nominations are in order; and
- (b) if the Commission believes any nomination not to be in order, the precise grounds for that belief.

50 Decision on nominations and announcement of candidates

(1) If, after examining nomination papers lodged with it, the Commission finds that—

- (a) no person has been duly nominated for election for the constituency concerned, the Commission shall immediately call a fresh election in the constituency, and section *thirty-eight* or *thirty-nine*, as the case may be, shall apply with whatever changes may be necessary;
- (b) only one person has been duly nominated for election for the constituency concerned, the Commission shall immediately declare, by notice in the *Gazette* and a newspaper, that person to have been elected to Parliament with effect from polling day in the election concerned:

Provided that, if by virtue of an appeal to the Electoral Court an additional candidate is to be regarded as duly nominated, the Commission shall, by notice in the *Gazette* and in a newspaper, revoke its declaration in terms of this paragraph, and paragraph (c) shall apply;

- (c) more than one person has been duly nominated for election for the constituency concerned, a poll shall take place in accordance with Part XIII.

(2) If a poll is to be held in terms of paragraph (c) of subsection (1), the Commission shall publish a notice in the *Gazette* and in a newspaper setting out the names of the candidates and, where appropriate, their parties.

51 Withdrawal of nominated candidate

(1) Subject to this section, a duly nominated candidate for election as a member of Parliament may withdraw his or her nomination at any time before polling day in the election concerned, by sending the Commission a written notice of withdrawal signed by the candidate personally.

(2) Where a candidate for election as a member of Parliament has withdrawn his or her nomination in terms of this section, the sum deposited by or on behalf of the candidate in terms of section *forty-eight* shall be forfeited and the money paid into the Consolidated Revenue Fund.

(3) If, after a candidate's withdrawal, only one duly nominated candidate remains, the Commission shall immediately declare, by notice in the *Gazette* and a newspaper, that candidate to have been elected to Parliament with effect from polling day in the election concerned:

Provided that, if by virtue of an appeal to the Electoral Court an additional candidate is to be regarded as duly nominated, the Commission shall, by notice in the *Gazette* and in a newspaper, revoke its declaration in terms of this subsection, and subsection (4) shall apply.

(4) If, after a candidate's withdrawal, two or more duly nominated candidates remain, the Commission shall take all reasonably practicable steps to ensure that—

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

52 Death of nominated candidate

If the Commission is satisfied that a duly nominated candidate for election as a member of Parliament died before the poll commenced or, if the poll has commenced, before the close of the poll, the Commission shall, so far as concerns that constituency, declare that all proceedings relating to that election are void, and the proceedings shall be commenced afresh as if a vacancy had occurred:

Provided that no fresh nomination shall be necessary in the case of a candidate who was duly nominated at the time when the proceedings were declared void, if the candidate notifies the constituency registrar in writing of his or her intention to remain a candidate.”.

CLAUSE 51

BY MR COLTART:

In lines 17 to 31 on page 40 of the Bill, to repeal the clause.

CLAUSE 52

BY MR COLTART:

In lines 32 to 45 on page 40 of the Bill, to repeal the clause and to substitute the following—

52 Provision of requisites and appointment of officers for purpose of poll

(1) For every election the Commission shall provide ballot boxes, ballot papers, voting compartments, instruments, seals and whatever else is needed, and shall make whatever other arrangements are necessary to conduct the election effectively.

(2) For each polling station, the Commission shall appoint—

- (a) an electoral officer to be the presiding officer; and
- (b) such other electoral officers as may be needed for the purposes of the election;

and those officers shall constitute the polling station committee.

(3) The Commission shall arrange for ballot boxes, ballot papers and other election materials to be delivered to polling stations in an open manner that can be observed by accredited observers and by political parties and candidates contesting the election, and for the election materials to be properly safeguarded before, during and after their delivery.

(4) The expenditure incurred in complying with this section shall be charged upon and paid out of the funds of the Commission or, if those funds are insufficient, out of the Consolidated Revenue Fund.”.

NEW CLAUSE

BY MR COLTART:

Between lines 45 on page 40 of the Bill and line 1 on page 41, to insert the following new clause after clause 52, the remaining clauses being renumbered accordingly—

53 Number of ballot papers to be printed

“For any election, the number of ballot papers printed shall not exceed by more than ten *per centum* the number of registered voters who are eligible to vote in the election.”.

CLAUSE 53

BY MR COLTART:

In lines 1 to 19 on page 41 of the Bill, to repeal the clause and to substitute the following—

53 Hours that polling stations may be open

(1) Subject to this Act, polling stations shall be open at such times on polling day as the Commission may prescribe:

Provided that—

- (i) polling stations shall remain open continuously for at least twelve hours;
- (ii) unless the Commission prescribes different times, polling stations shall remain open from seven o'clock in the morning until seven o'clock in the evening.

(2) If for any reason—

- (a) a polling station did not open at the prescribed time; or
- (b) voting at a polling station was interrupted;

the polling station shall remain open beyond the prescribed time—

- (i) for the same period as the delay in opening or the interruption, as the case may be, where that period is three hours or less;
- (ii) for such period as the Commission may determine, where the period was longer than three hours.

(3) A presiding officer shall permit every voter who, at the time prescribed for closing the polling station—

- (a) is inside the polling station; or
- (b) in the presiding officer's opinion, was in the immediate precincts of the polling station and was prevented from entering the polling station because of congestion in it;

to record his or her vote before the polling station is closed.”.

CLAUSE 54

BY MR COLTART:

Between lines 20 on page 41 of the Bill and 6 on page 42, to repeal the clause and to substitute the following—

54 Ballot boxes

“(1) The Commission shall ensure that the ballot boxes provided for any election are—

- (a) made of a translucent material; and
- (b) capable of being securely closed; and
- (c) constructed as nearly as possible from a single piece of material, with any joints or seams secured so that access cannot be gained to the interior except by breaking the seals; and
- (d) each marked with an indelible identifying mark.

(2) Before any polling station opens on polling day in an election, the presiding officer, in the presence of the other members of the polling station committee, accredited observers and any candidates that are present, shall—

- (a) display the empty ballot boxes and seal them; and
- (b) count and record the total number of ballot papers received at the polling station.

(3) If for any reason it becomes necessary to use an additional ballot box during polling at any polling station, the procedure set out in subsection (2) shall be carried out before that ballot box is used.

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

(5) As soon as a ballot box is filled, the presiding officer, in the presence of any accredited observers and candidates present, shall seal the ballot box in the prescribed manner and allow those observers and candidates to affix their seals to it.

(6) Immediately after the last vote has been cast on polling day, every remaining used ballot box shall be dealt with in a similar way as is set out in subsection (5).

(7) A sealed ballot box shall—

- (a) remain sealed until opened for the counting of votes; and
- (b) be kept in the polling station until the votes are counted there or, if the votes are not to be counted at that polling station, until the box is delivered to the place where they are to be counted.”.

CLAUSE 55

BY MR COLTART:

In lines 31 to 34 on page 42 of the Bill, to repeal subclause (5) and to substitute the following subclauses—

“(5) For the purpose of keeping order at a polling station and the area surrounding it, every electoral officer at the polling station shall have the powers of a peace officer under the Criminal Procedure and Evidence Act [*Chapter 9:07*].

(6) A presiding officer may call upon a police officer for assistance in keeping order at the polling station and the area surrounding it, and every police officer so called upon shall provide whatever assistance is needed.

(7) The Commissioner of Police shall ensure that sufficient numbers of police officers are available to provide assistance if called upon in terms of subsection (6).

(8) Voting in a polling station shall be suspended while any police officer is in the station pursuant to a request from the presiding officer in terms of subsection (6).

(9) The presiding officer shall record in detail every incident in which order at a polling station or the area surrounding it was disrupted and, in particular, every

occasion in which a person was expelled or required to leave the polling station or its surrounding area in terms of this section.”.

CLAUSE 56

BY MR COLTART:

In lines 36 to 44 on page 42 of the Bill, to repeal subclause (1) and to substitute—

“(1) Except as otherwise provided by or under this Act—

- (a) every voter who is registered in a ward voters roll shall be entitled to vote at a polling station in that ward;
- (b) a registered voter shall not be entitled to vote anywhere other than at a polling station referred to in paragraph (a).”.

Between lines 20 and 21 on page 43 of the Bill, to insert the following subclause after subclause (4)—

“(5) The mark referred to in paragraph(b) of subsection (4) shall be made with indelible ink of a type approved by the Commission, and in such a way that the mark is readily visible in daylight to the naked eye.”.

CLAUSE 59

BY MR COLTART:

In lines 17 to 26 on page 44 of the Bill, to repeal the clause and to substitute the following clause—

59 Voting by illiterate or disabled voters

“(1) Upon the request of a voter who is illiterate or physically disabled and cannot vote in the way set out in section *fifty-seven*, a presiding officer shall permit another person, selected by the voter, to assist the voter in exercising his or her vote:

(2) A person permitted to assist a voter in terms of subsection (1)—

- (a) need not be a registered voter but shall not be a member of the polling station committee or an accredited observer or a candidate in the election; and
- (b) shall identify himself or herself to the presiding officer and shall print his or her name on the ward voters roll and sign it next to the name of the voter who is being assisted.

(3) A person may be permitted to assist no more than one voter in any election.”.

CLAUSE 60

BY MR COLTART:

In lines 27 to 38 on page 44 of the Bill, to repeal the clause and to substitute the following clause—

60 Objections concerning voting

“(1) At any time before a person has been handed a ballot paper at a polling station, an accredited observer may object that the person is not entitled to vote at all or is not entitled to vote at that polling station.

(2) An accredited observer, or the person concerned, may object if a person is refused a ballot paper at a polling station.

(3) An accredited observer or a voter may object to any conduct, other than that mentioned in subsection (1) or (2), on the part of any other person present at a polling station or in the area surrounding it.

(4) An objection referred to in subsection (1), (2) or (3) shall be made to the presiding officer of the polling station concerned, and the presiding officer shall decide the objection without delay and notify the objector and any other party involved of his or her decision in the matter.

(5) A presiding officer shall keep a written record of each objection and of his or her decision on it.”.

NEW CLAUSE

BY MR COLTART:

Between lines 38 and 39 on page 44 of the Bill, to insert the following clause, the remaining clauses being renumbered accordingly—

61 Extension of polling

“If the Commission is satisfied that, because of disorder, violence, administrative misconduct, error or any other reason, a substantial number of voters have been unable to vote on polling day in any election, the Commission may direct that—

- (a) one or more polling stations should remain open beyond the hours fixed in terms of section *fifty-three*; or
- (b) all or any polling stations should open on an additional day to enable the voters concerned to vote;

and shall take whatever steps are necessary to give effect to any such direction and to bring it to the attention of everyone concerned.”.

CLAUSE 61

BY MR COLTART:

Between lines 39 and 40 on page 44 of the Bill, to insert the following subclause, the existing clause becoming subclause (2)—

“(1) After the last person has voted on polling day, no one may remain in a polling station except—

- (a) members of the polling station committee;
- (b) accredited observers;
- (c) members and officials of the Commission.”.

CLAUSE 62

BY MR COLTART:

In lines 13 and 14 on page 45 of the Bill, to delete “not later than three hours” and to substitute “as soon as possible”.

CLAUSE 66

BY MR COLTART:

In line 30 on page 47 of the Bill, to delete the words “with effect from the day of such declaration”.

Between lines 43 and 44 on page 47 of the Bill, to insert the following paragraph in subclause (3)—

“and

- (c) such accredited observers and monitors as may be prescribed.”.

CLAUSE 67

BY MR COLTART:

In lines 12 and 13 on page 48 of the Bill, to repeal subclause (3).

CLAUSE 68

BY MR COLTART:

Between lines 14 and 20 on page 48 of the Bill, to repeal the clause and to substitute the following new clauses, the remaining clauses being renumbered accordingly—

68 Recounting of votes

“(1) Within forty-eight hours after a candidate was declared elected in terms of subsection (1) of section *sixty-six*, any candidate who contested the election may

request the Commission to conduct a recount of votes in one or more of the polling stations.

(2) A request in terms of subsection (1) shall—

- (a) be in writing, signed by an appropriate representative of the candidate making the request; and
- (b) state specifically the number of votes believed to have been miscounted and, if possible, how the miscount may have occurred; and
- (c) state how the results of the election have been affected by the alleged miscount.

(3) On receipt of a request in terms of subsection (1) the Commission shall order a recount of votes in the polling stations concerned if the Commission considers there are reasonable grounds for believing that the alleged miscount of votes occurred and that, if it did occur, it would have affected the result of the election.

(4) The Commission may on its own initiative order a recount of votes in any polling stations if it considers there are reasonable grounds for believing that the votes were miscounted and that, if they were, the miscount would have affected the result of the election.

(5) Where the Commission orders a recount of votes in terms of this section, the Commission shall specify—

- (a) the polling stations whose votes are to be recounted and, where appropriate, the votes that are to be recounted; and
- (b) the date on which and the place and time at which the recount is to take place; and
- (c) the procedure to be adopted for the recount;

and shall take all necessary steps to inform accredited observers and all candidates who contested the election of its decision and of the date, time and place of the recount.

(6) Accredited observers and representatives of candidates who contested the election shall be entitled to be present at any recount ordered in terms of this section.

(7) The Commission's decision on whether or not to order a recount and, if it orders one, the extent of the recount, shall not be subject to appeal.

69 Declaration of invalidity of voting

(1) Within forty-eight hours after a candidate was declared elected in terms of subsection (1) of section sixty-six, any candidate who contested the election may request the Commission to declare that voting in one or more wards was invalid.

(2) A request in terms of subsection (1) shall—

- (a) be in writing, signed by an appropriate representative of the candidate making the request; and

- (b) state the facts justifying a declaration of invalidity, specifying where appropriate the provisions of this Act that were allegedly contravened.

(3) On receipt of a request in terms of subsection (1) the Commission shall declare the voting in one or more of the wards concerned to be invalid if the Commission considers that—

- (a) there was a contravention of this Act in regard to voting in those wards; or
- (b) whether through violence, intimidation or some other cause, a substantial number of the votes cast in those wards were not cast freely; or
- (c) a substantial number of the votes cast in those wards were not cast by voters registered in the ward voters rolls;

and that the result of the election was probably affected thereby.

(4) The Commission shall on its own initiative declare the voting in one or more wards to be invalid if the Commission considers that a contravention of the Act or other circumstance referred to in paragraph (a), (b) or (c) of subsection (3) occurred in regard to voting in those wards and that the result of the election was probably affected thereby.

(5) Where the Commission declares voting in one or more wards to be invalid, it shall arrange for fresh polling in those wards to take place not later than seven days after the declaration, and the provisions of this Act, with such changes as may be necessary or as the Commission may direct, shall apply to that polling.

(6) The Commission shall without delay take all necessary steps to inform accredited observers and all candidates who contested the election of any decision it makes in terms of this section and, where appropriate, of the date on which fresh polling will take place and any directions the Commission has given in regard to that polling.

(7) The Commission's decision on whether or not to declare any voting to be invalid shall not be subject to appeal.

70 Declaration of final election results

(1) Not later than twenty-four hours after the completion of any recounts or fresh polling in an election, the Commission shall declare the final results of the election, naming the candidates whom it declares to be elected, and as soon as it has done so the Commission shall—

- (a) transmit the results to the Clerk of Parliament; and
- (b) post a copy of the results in a prominent place at the Commission's offices so that they can be seen by members of the public at all times; and
- (c) make copies of the results available to all accredited observers and to all candidates who contested the election.

(2) Without delay after declaring the final results of an election, the Commission shall prepare a consolidated summary of the results for every polling station concerned in the election, and shall—

- (a) cause the summary to be published in the *Gazette* and in a newspaper; and
 - (b) make copies of the summary available to members of the public, free of charge.
- (3) Candidates declared elected by the Commission under subsection (1) shall be deemed to have become members of Parliament with effect from the day immediately after polling day in the election concerned.”.

CLAUSE 69

BY MR COLTART:

Between lines 6 and 49 on page 49 of the Bill, to insert the following subclause after subclause (3)—

- “(4) The Commission may prescribe the way in which ballot boxes and packets are to be safeguarded and delivered in terms of this section, and in doing so the Commission shall ensure that—
- (a) accredited observers are able to monitor the ballot boxes and packets at all stages in their progress from the polling station to their destination; and
 - (b) the ballot boxes and packets are in the custody of the constituency elections officer within seven days after polling day in the election.”.

NEW CLAUSES

BY MR COLTART:

Between lines 18 and 19 on page 58 of the Bill, to insert the following clauses after clause 88, the remaining clauses being renumbered accordingly—

89 Disorderly conduct in polling station

- “(1) Any person who, without lawful excuse—
- (a) on polling day in any election, enters a polling station without permission from an electoral officer; or
 - (b) wilfully disrupts peaceful voting at a polling station; or
 - (c) wilfully interferes with a voter who is marking his or her ballot paper;
- shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.
- (2) Any person who on polling day in any election, is drunk, violent or disorderly in a polling station or in the immediate vicinity of a polling station, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

90 Refusal to leave polling station

Any person who, without lawful excuse, refuses or fails to leave a polling station when lawfully required to do so by the presiding officer shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.”.

NEW PART

BY MR COLTART:

Between lines 47 on page 62 of the Bill and line 1 on page 63, to insert the following Part after Part XVI, the remaining Parts and clauses being renumbered accordingly—

PART XVII

MEDIA COVERAGE OF ELECTIONS

100 Interpretation in Part XVII

“In this Part—

“broadcaster” means a person who operates a broadcasting service for the transmission of television or radio programmes to the public or any substantial section of the public, whether the transmission is effected by wireless or other means;

“election period” means the period from the date on which an election is called in terms of this Act until polling stations close on polling day in that election;

“news media” means—

- (a) a broadcasting service which transmits news or broadcasts on current events; or
- (b) a newspaper or a magazine that contains news or articles on current events;

“print publisher” means person who publishes a newspaper, magazine or other printed document at regular intervals for sale or distribution to the public generally;

“public broadcaster” means a broadcaster that is owned or controlled by the State.

101 Access to public broadcasting media

(1) Public broadcasters shall afford all political parties and independent candidates contesting an election such free access to their broadcasting services as may be prescribed in regulations made by the Commission in terms of section *one hundred and eighty-eight*.

(2) Regulations referred to in subsection (1) shall provide for—

- (a) the total time to be allocated to each political party and candidate and the duration of each broadcast that may be made by or on behalf of a party or candidate; and
- (b) the times at which broadcasts made by political parties and candidates are to be transmitted; and
- (c) the areas to which broadcasts made by political parties and candidates are to be transmitted;

and the regulations shall ensure—

- (i) a fair and balanced allocation of time as between each political party and independent candidate; and
- (ii) that each political party and independent candidate is allowed a reasonable opportunity to present a case through the broadcasting service concerned.

(3) At least once a year the Commission shall review all regulations referred to in subsection (1) to ensure that they take into consideration any changes in the geographical coverage and technical capabilities of public broadcasters in Zimbabwe.

102 Political advertising in broadcasting and print media¹

(1) A broadcaster or print publisher shall not be obliged, subject to section *one hundred and one*, to publish any advertisement by or on behalf of a political party or candidate contesting an election, but if the broadcaster or publisher is prepared to publish any such advertisement—

- (a) it shall offer the same terms and conditions of publication, without discrimination, to all the parties and candidates contesting the election; and
- (b) the price it charges for publication shall be at the lowest rate it offers to publishers of commercial advertisements; and
- (c) every such advertisement shall be identified clearly as an advertisement.

(2) Subsection (1) shall not be construed as obliging a broadcaster or print publisher to publish an advertisement which would render the broadcaster or publisher liable to any criminal or delictual penalty.

103 Publication of electoral information in public interest

(1) If required to do so by the Commission, during an election period broadcasters and print publishers shall publish statements issued by the Commission for the purpose of informing voters about aspects of the electoral process.

(2) The Commission shall pay for the publication of any statement referred to in subsection (1) such reasonable amount as may be agreed between it and the broadcaster or print publisher concerned or, failing agreement, as may be determined by arbitration.

¹ Note that this will apply not only to private media but also to public media that accept advertisements.

104 Conduct of news media during election period

(1) During an election period, broadcasters and print publishers shall ensure that—

- (a) all political parties and candidates are treated equitably in their news media, in regard to the extent, timing and prominence of the coverage accorded to them;
- (b) reports on the election in their news media are factually accurate, complete and fair;
- (c) a clear distinction is made in their news media between factual reporting on the election and editorial comment on it;
- (d) inaccuracies in reports on the election in their news media are rectified without delay and with due prominence;
- (e) political parties and candidates are afforded a reasonable right of reply to any disparaging allegations made in their news media;
- (f) their news media do not promote political parties or candidates that encourage violence or hatred against any class of persons in Zimbabwe;
- (g) their news media avoid language that—
 - (i) encourages racial, ethnic or religious prejudice or hatred; or
 - (ii) encourages or incites violence; or
 - (iii) is likely to lead to undue public contempt towards any political party, candidate or class of person in Zimbabwe.

(2) Subsection (1) shall apply to the conduct of broadcasters and print publishers in relation to any electoral process, in particular—

- (a) the registration of voters; and
- (b) the delimitation of constituencies;

that takes place outside an election period.

105 Rights of journalists during election period

During an election period, every—

- (a) political party; and
- (b) candidate; and
- (c) public officer in the exercise of his or her official functions;

shall, subject to this Act, permit journalists freedom of movement and equal access to information in the lawful pursuit of their profession.

106 Monitoring of news media by Commission

(1) The Commission shall monitor the Zimbabwean news media during any election period to ensure that political parties, candidates, broadcasters, print publishers and journalists observe the provisions of this Part.

(2) Not later than ten days after polling day in any election, the Commission shall publish a report on the coverage of the election by the news media and the effect, if any, of that coverage on the result of the election.

(3) The report referred to in subsection (1) shall be published in whatever way the Commission considers appropriate, and—

- (a) at least one copy of the report shall be kept available for public inspection at all the offices of the Commission; and
- (b) one copy of the report shall be delivered to the Speaker; and
- (c) one copy of the report shall be delivered to the Media and Information Commission.

(4) This section shall not be construed as preventing anyone other than the Commission from monitoring news media and reporting on their conduct during an election period.

107 Campaign silence periods

(1) Broadcasters and print publishers shall ensure that, from twenty-four hours before polling stations open on polling day in an election until the polling stations close on that day, there is no coverage in their news media of any meeting, speech or other political activity whatsoever in connection with the election.

(2) During the period from seventy-two hours before polling stations on polling day in an election until the polling stations close on that day, no person shall publish the result of any opinion poll relating to the voting in that election

108 Government responsibility for implementation of this Part

The Government shall take all necessary action, including the enactment of appropriate legislation, to facilitate implementation of this Part.”.

CLAUSE 101

BY MR COLTART:

In lines 16 to 23 on page 63 of the Bill, to repeal paragraphs (a) and (b) of subclause (1) and to substitute—

- (a) the closing date for the submission of nominations of candidates for election as President, which date shall be at least fourteen and not more than twenty-eight days after the publication of the notice; and
- (b) polling day, if a poll becomes necessary, which day shall be at least thirty-five and not more than fifty-six days after the closing date for nominations fixed in terms of paragraph (a); and

CLAUSE 103

BY MR COLTART:

Between lines 11 and 12 on page 64 of the Bill, to insert the following subclause after subclause (1), the existing subclause (2) being renumbered accordingly—

“(2) The Commission may prescribe a sum for the purposes of subsection (1) that is sufficiently high to discourage frivolous nominations, but not so high as to preclude persons of moderate means from standing for election as President.”.

CLAUSE 104

BY MR COLTART:

In line 17 on page 64 of the Bill, to delete “day fixed for the sitting of a nomination court” and to substitute “closing date for the submission of nominations fixed”.

CLAUSE 106

BY MR COLTART:

In line 7 on page 65 of the Bill, to delete “the sitting of a new nomination court” and to substitute “a closing date for fresh nominations”.

CLAUSE 108

BY MR COLTART:

In line 27 on page 65 of the Bill, to delete the word “If” from subclause (3) and to substitute “Subject to section *one hundred and nine*, if”.

NEW CLAUSE

BY MR COLTART:

Between lines 39 and 40 on page 65 of the Bill, to insert the following clause after clause 108, the remaining clauses being renumbered accordingly—

109 Procedure where candidate does not get plurality of votes

“(1) If after a poll has been taken in a Presidential election, no candidate receives a majority of the total number of valid votes cast, a second poll shall be held within twenty-one days after the close of the previous poll.

(2) In a second poll held in terms of subsection (1), only the two candidates who received the highest and next highest numbers of valid votes cast in the previous poll shall be eligible to contest the election.

(3) If, in a second poll held in terms of subsection (1), the two candidates receive an equal number of votes, Parliament shall, as soon as practicable after the declaration of the result of that election, meet as an electoral college and elect one of the two candidates as President by secret ballot and without prior debate.

(4) The result of an election in terms of subsection (3) shall be declared by the Chief Elections Officer, who shall forthwith publish the result in the *Gazette* and in such other manner as he or she considers necessary to give sufficient publicity to the result.

(5) The procedure for an election in terms of subsection (3) shall be as prescribed.”

CLAUSE 132

BY MR COLTART:

Between lines 27 on page 77 of the Bill and line 19 on page 78, to repeal the clause and to substitute the following clauses, the remaining clauses being renumbered accordingly—

132 Meaning of “intimidation” in Part XIX

“For the purposes of this Part, a person shall be regarded as having done or attempted to do something through intimidation if he or she achieves or attempts to achieve an object through any of the following methods—

- (a) inflicting or threatening to inflict bodily injury upon a person; or
- (b) causing or threatening to cause harm, through spiritual or supernatural means, to a person or a person’s property; or
- (c) abducting a person or detaining a person against his or her will; or
- (d) imposing illegal restraints or restrictions upon a person; or
- (e) causing or threatening to cause unlawful damage to a person’s property; or
- (f) withholding or threatening to withhold from a person any assistance or benefit to which that person is entitled; or
- (g) illegally doing or threatening to do anything to the disadvantage of a person;

133 Intimidation

Any person who, through intimidation—

- (a) compels or attempts to compel a person to sign or refrain from signing a nomination paper; or
- (b) prevents or attempts to prevent a party or candidate from lodging a nomination paper with the Commission; or
- (c) compels or attempts to compel a person or persons generally—
 - (i) to vote against their will; or
 - (ii) to vote for a particular party or candidate ; or
 - (iii) not to vote;

or

- (d) compels or attempts to compel a person or persons generally to attend or participate in, or not to attend or participate in, any political meeting, march, demonstration or other political event;

shall be guilty of the offence of intimidation and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

134 Retaliatory intimidation

Any person who employs any of the methods listed in the definition of “intimidation” in section *one hundred and thirty-two* against a person in reprisal for that person having—

- (a) signed or refrained from signing a nomination paper; or
- (b) voted or not voted in any election; or
- (c) voted or not voted for a particular party or candidate in any election;

shall be guilty of the offence of retaliatory intimidation and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

135 Preventing party or candidate from campaigning

Any person who through intimidation prevents or obstructs or attempts to prevent or obstruct a party or candidate from campaigning in any area before an election shall be guilty of the offence of obstructive intimidation and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

136 Theft or destruction of voter identification

Any person who, in order to prevent or discourage another person from voting in an election, takes, destroys or damages any identity card or other document by which that other person may be identified as a voter, shall be guilty of the offence of voter obstruction and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.”.

NEW CLAUSE

BY MR COLTART:

Between lines 25 and 26 on page 84 of the Bill, to insert the following clause in Part XX, after clause 151, the remaining clauses being renumbered accordingly—

152 Contravention of code of conduct

“Any person who contravenes any provision of the code of conduct set out in the Fourth Schedule to the Zimbabwe Electoral Commission Act [*Chapter 2:12*] shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”.

CLAUSE 153

BY MR COLTART:

Between lines 27 and 28 on page 85 of the Bill, to insert the following subclause, the existing clause becoming subclause (1)—

“(2) This section shall not be construed as preventing the Electoral Court from declaring an election to be void on the grounds set out in section *one hundred and seventy-four*.”.

NEW PART

BY MR COLTART:

Between lines 27 and 28 on page 86 of the Bill, to insert the following Part after clause 157, the remaining Parts and clauses being renumbered accordingly—

PART XXII

ELECTION TRIBUNALS

158 Establishment of election tribunals

“(1) For the purpose of determining—

- (a) disputes and complaints that have not been resolved by a liaison committee; and
- (b) such other disputes and complaints as may be prescribed;

the Commission shall establish election tribunals at such places as it may determine.

(2) The Commission shall ensure that a sufficient number of election tribunals are established under subsection (1), with sufficient facilities and resources, to provide anyone who is aggrieved by—

- (a) any decision reached or action taken by an electoral officer; or
- (b) any decision reached by a liaison committee in the resolution or attempted resolution of a dispute or conflict;

with access to a tribunal where he or she may conveniently seek an expeditious and effective remedy.

159 Composition of election tribunals

(1) An election tribunal shall consist of at least two members appointed by the Commission for their independence, their knowledge of election law and their skills in mediation and conciliation.

(2) With the approval of the Judicial Service Commission and the Minister responsible for the administration of the Magistrates Court Act [*Chapter 7:10*], the Commission may appoint magistrates as members of election tribunals.

160 Conditions of service of members of election tribunals

(1) The conditions of service of members of election tribunals shall be as prescribed or fixed by the Commission.

(2) The remuneration and allowances of members of election tribunals shall be paid by the Commission from its funds.

161 Staff and facilities for election tribunals

At the request of the Commission, the Minister responsible for the administration of the Magistrates Court Act [*Chapter 7:10*] shall provide any election tribunal with such staff and the use of such facilities as may be necessary to enable the tribunal to carry out its functions under this Act.

162 Procedure to be followed by election tribunals

(1) Subject to this Part, the procedure to be followed by an election tribunal shall be as prescribed in rules made by the Commission:

Provided that—

- (i) the procedure so prescribed shall be simple and informal to ensure that disputes and complaints brought before tribunals are dealt with fairly and as expeditiously as possible;
- (ii) in any case not provided for in the rules, a tribunal shall act in whatever way it considers will ensure that the dispute or complaint before it is dealt with fairly and expeditiously in accordance with the principles of this Act.

(2) After making any rules in terms of subsection (1), the Commission shall transmit them to the Minister, who shall cause them to be published in the *Gazette* without delay and to be laid before Parliament as soon as possible after their publication in the *Gazette*.

(3) For the avoidance of doubt it is declared that rules made in terms of subsection (1) are not subject to approval by the Minister.

163 Proceedings of election tribunals to be public

Subject to the Courts and Adjudicating Authorities (Publicity Restriction) Act [*Chapter 7:04*], the proceedings of every election tribunal shall be conducted in public.

164 Representation of parties before election tribunals

At any hearing before an election tribunal, any person who is a party to the proceedings may—

- (a) appear in person; or
- (b) be represented by—
 - (i) a legal practitioner; or
 - (ii) any person appointed in writing by the party;
- or
- (c) make written representations to the tribunal.

165 Appeals from decisions of election tribunals

(1) An appeal from a decision of an election tribunal shall lie to the Electoral Court.

(2) The procedure for filing an appeal under subsection (1), and the time within which it is to be filed, shall be as prescribed in rules of court referred to in section *one hundred and sixty-two*.”.

NEW CLAUSE

BY MR COLTART:

Between lines 35 and 36 on page 86 of the Bill, to insert the following clause after clause 158, the remaining clauses being renumbered accordingly—

159 Right to approach Electoral Court on appeal or review

(1) Subject to this section and to rules of court referred to in section *one hundred and sixty-two*, any political party or person whose rights or legitimate interests in an election are affected or likely to be affected by—

- (a) any decision made or action taken by the Commission; or
- (b) any decision of an election tribunal;

may—

- (i) appeal to the Electoral Court against the decision or action; or
- (ii) apply to the Electoral Court for a review of the decision or action on the ground of procedural irregularity or any other ground of review recognised in law.

(2) For the purposes of subsection (1), and without limiting the scope of that subsection—

- (a) a political party which is contesting or proposes to contest an election, or whose candidates are contesting an election; and
- (b) an office-bearer or member of a political party referred to in paragraph (a); and
- (c) any candidate or person who intends to be a candidate in an election;

shall be regarded as having a right or legitimate interest in the election.

(3) A political party or person referred to in subsection (1) may be represented in an appeal or review by a representative appointed by the Electoral Court in terms of the Class Actions Act [*Chapter 8:17*] and, for the purpose, the Electoral Court shall have the same powers as the High Court to appoint a representative under that Act.

(4) This section shall not be construed as derogating from the provisions of this Act relating to election petitions.”.

CLAUSE 159

BY MR COLTART:

In lines 37 and 39 on page 86 of the Bill, to repeal subclause (1) and to substitute the following subclauses, the existing subclause (2) being renumbered accordingly—

“(1) The Chief Justice, acting on the advice of the Judicial Service Commission, shall appoint one or more judges or former judges of the High Court to be a judge or judges, as the case may be, of the Electoral Court.

(2) Before advising the Chief Justice on the appointment of a judge or former judge to the Electoral Court, the Judicial Service Commission shall consult the Commission and shall pay due regard to any views the Commission may express regarding the proposed appointment.

(3) A person may be appointed to the Electoral Court—

- (a) from time to time to deal with any particular matter coming before the Court; or
- (b) for a particular period;

as the Chief Justice, acting on the advice of the Judicial Service Commission, may determine at the time of the person’s appointment.”.

CLAUSE 165

BY MR COLTART:

In lines 24 to 34 on page 88 of the Bill, to repeal subclauses (3) and (4) and to substitute—

“(3) Every election petition before the Electoral Court in terms of this Act shall be conducted on an urgent basis and shall be heard and disposed of as expeditiously as possible.

(2) Without derogation from subsection (1)—

- (a) every election petition shall be heard by the Electoral Court within seven days after it has been filed with the Court; and
- (b) the Electoral Court shall deliver its judgment in every election petition within seven days after the conclusion of the hearing;

Provided that rules of court may prescribe longer time-limits in exceptional cases or where all the parties to the matter consent.”.

CLAUSE 167

BY MR COLTART:

In lines 1 to 19 on page 89 of the Bill, to repeal the clause.

CLAUSE 174

BY MR COLTART:

In lines 10 to 16 on page 92 of the Bill, to delete the clause and to substitute the following—

174 When non-compliance with this Act invalidates election

“The Electoral Court shall not set aside an election or declare the voting in a ward or constituency to be invalid, or confirm such a declaration made by the Commission, unless the Court considers that—

- (a) there was a contravention of this Act in regard to voting in that ward or constituency; or
- (b) whether through violence, intimidation or some other cause, a substantial number of the votes cast in that ward or constituency were not cast freely; or
- (c) a substantial number of the votes recorded or cast in that ward or constituency were not cast by voters registered in the ward voters roll;

and that the result of the election concerned was probably affected thereby.”.

CLAUSE 188

BY MR COLTART:

Between lines 43 on page 95 of the Bill and line 11 on page 96, to repeal subclauses (4), (5) and (6) and to substitute the following subclauses—

“(4) Where it is practicable to do so, the Commission shall consult parties and other interested persons before making regulations in terms of subsection (1).

(5) Fees payable under regulations made in terms of subsection (1) shall not be so high as to prevent or discourage anyone from exercising his or her rights under this Act.

(6) After making regulations in terms of subsection (1), the Commission shall transmit them to the Minister, who shall cause them to be published in the *Gazette* without delay and to be laid before Parliament as soon as possible after their publication in the *Gazette*.

(7) For the avoidance of doubt it is declared that regulations made in terms of subsection (1) are not subject to approval by the Minister.

(8) Regulations made in terms of subsection (1) shall not have effect until they have been published in the *Gazette*.”.

NEW CLAUSE

BY MR COLTART:

Between lines 11 and 12 on page 96 of the Bill, to insert the following clause, the remaining clause being renumbered accordingly—

189 Restriction on amendment of this Act

“Notwithstanding anything to the contrary in the Presidential Powers (Temporary Measures) Act [*Chapter 10:20*] or any other enactment, this Act may be amended only by an Act of Parliament.”.