

Election Handbook

for Political Parties and
Candidates on Parliamentary
and Civic Elections

S. M. KIVUITU



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Foreword

While it is important that political parties and their candidates win elections, it is also critical for democracy that politicians conduct themselves in a professional and ethical manner and also maintain the highest legal standards. In order to do so, they need to know how. And this is why this handbook by Mr. S.M. Kivuitu, Chairman of the Electoral Commission of Kenya is compulsory reading for each and every political aspirant and party. Mr. Kivuitu's extensive knowledge of Kenya's electoral terrain also makes this book an authoritative resource for all those interested in promoting democracy and better electoral governance and practice in Kenya.

The Friedrich Ebert Stiftung (FES) hopes that by its publication, this handbook will provide a reliable tool for all political practitioners in Kenya. Hopefully, they will also immediately apply the many lessons that it has to offer as another step in establishing and enhancing a better electoral climate in Kenya.

Dr. Roland Schwartz
Resident Director, FES
Nairobi, November, 2001

Introduction

This booklet is about parliamentary and local government (civic) elections only. The presidential election is excluded. Usually presidential candidates are seasoned leaders with sound knowledge of the basic electoral formalities. At the same time presidential elections do not come about often. In any event, a presidential candidate is at the same time a parliamentary candidate meaning that such candidates will find this handbook useful.

The booklet is concerned with the laws and practices governing

- 1) party nominations;
- 2) the nomination of candidates;
- 3) election campaigns;
- 4) matters concerned with the election prior to the election day;
- 5) election day activities;
- 6) counting of votes; and
- 7) adjudication of election disputes after elections in respect of parliamentary elections and local government elections.

The author believes the information conveyed by this booklet should satisfy any issues for the campaigners, candidates and their political parties.

The information in the booklet is based on the law and practices as they are at the date of its publication. There are proposals to change many of these laws and practices with a view to improving on the rights of the political parties and candidates to create a fair playing ground for election political contestants. The changes will also make the election process more transparent and the Electoral Commission of Kenya (ECK) more accountable. These legal and electoral reforms were agreed between the political parties and the ECK and were submitted to the Attorney General of Kenya for Parliament to approve them as Rules and Electoral Regulations. When they become operative then certain sections of this booklet will cease to apply.

Many electoral reform proposals that were submitted to the Attorney General and it is not possible to mention all of them in this brief introduction. They concerned the Presidential and Parliamentary Elections Regulations and the Local Government Election Rules and they related to the following areas:-

- 1) Political parties be given a role during the registration of voters, such as the right to monitor registration of voters at the registration centres;
- 2) The media be entitled to attend registration of voters and nomination of candidates;
- 3) Every voter be allowed to put any mark on the ballot paper including thumb print;
- 4) Illiterate and incapacitated voters be allowed to be accompanied by one person of their own choice at the time they mark their ballot papers;
- 5) It shall not be permissible for same persons to escort more than one voter to cast his/her vote; and
- 6) Counting of votes be done at the polling stations instead of constituency counting centres.

At the same time, there may be other changes in the Constitution and the Acts of Parliament governing registration of voters, financing of political parties and candidates, matters concerning elections such as the electoral system, creation and review of parliamentary constituencies, qualifications by candidates and so on, as a result of the on going programme to review the Constitution of Kenya. However, the basic status of the election process will be retained and that a person who will already be versed with the situation as outlined in this booklet will understand any changes better.

It is hoped that party workers and candidates will read this booklet carefully to save the time they take consulting the Electoral Commission of Kenya (ECK) officials. Election campaigners need time to seek for votes and any time saved should be a blessing to them.

1. Start of the Election Process

According to Kenyan laws, a parliamentary or civic election is held when a vacancy occurs in a seat in the National Assembly or a local authority. When the purpose of the holding of general elections the National Assembly and the local authorities are dissolved thus creating vacancies in both institutions. However, for by-elections to be held, a vacancy or vacancies may be caused by any of the following reasons:

- a) death of the holder of seat,
- b) resignation of the holder of the seat
- c) a declaration by the Speaker (in the case of an MP) or of a local authority (in the case of a councillor) that the seat is vacant or, as applies to councillors only, that the councillor has defected, by conduct or by word, to another political party;
- d) a member vacating the seat on account of circumstances arising subsequent to his/her election so that he or she becomes affected by any of the disqualifications outlined under paragraphs 2.1.1 and 2.1.2 of this booklet or
- e) a member of parliament is elected subsequently the Speaker of the National Assembly.

The Speaker or a local authority should strictly follow the law in declaring the seat of a member of parliament or a councillor vacant. The law does not give them them absolute power. Indeed the Constitution of Kenya, the National Assembly and Presidential Elections Act and the Local Government Act provide ways to the affected member to seek relief in the law courts against such declarations by the Speaker or a local authority. Besides, any person who is aggrieved by such a declaration may seek the assistance of other laws including the principles of common law.

The laws lay out the timetable or programme of events up to the announcement of results. The Speaker and the local authorities

concerned must communicate the fact of the vacancy to the Electoral Commission of Kenya (ECK) within a specified duration. In its turn the ECK must deliver this notice to each Returning Officer of the vacant constituency or civic ward. It is the sole responsibility of the ECK to appoint Returning Officers (ROs). The ECK and the ROs are then required to announce:-

- a) the period within which the political parties must nominate their respective candidates;
- b) the two days when the nomination of candidates will be conducted before the Returning Officers; and
- c) the election date or election day.

That then becomes the election programme until the Returning Officer announces the election results, which is done after:-

- a) a candidate is returned unopposed; or
- b) an election is held.

The political parties hold the nomination of their candidates within the period set by the ECK and these candidates present their nomination papers seeking their nominations as candidates for their election on the days set by ECK for the purpose. Eventually the election is held on the day that the ECK determines. Counting takes place soon after the close of the poll.

The rest of this handbook will deal with each of these stages of the programme from the perspective of the political party and the candidate.

2. Nomination of Candidates

2.1 Qualifications and Disqualifications of a Candidate

2.1.1. Local Government Elections or Elections of Councillors

i. Qualifications:

- a) Except in cases falling under (b) below the prospective candidate must be registered as a voter for the elections of the local authority within which the electoral area (that is, ward) falls. Thus he or she need not be registered as a voter in that particular electoral area where he or she intends to seek election.
- b) If the elections are to be for an urban council a potential candidate is qualified to seek the election if he or she is registered as a voter in the county council within which the urban council falls.
- c) The candidate must be a member of a registered political party that is taking part in the elections.
- d) The candidate must be duly nominated by that political party in accordance with that political party's constitution or rules relating to the nomination of candidates.
- e) The candidate must adhere to the electoral Code of Conduct before the nomination by the Returning Officer (RO).
- f) The political party must adhere to the electoral Code of Conduct before the candidate is nominated by the Returning Officer (RO).

ii. Disqualifications

A prospective candidate for the seat of a councilor may attain all the qualifications mentioned above but be unqualified if he or she:

- aa) a Member of Parliament;
- bb) a person convicted or reported to be guilty of an election offence for the term of the council to which he or she was seeking election that led to the conviction or the report;
- cc) a person who within 12 months before the election day had been convicted of a criminal offence wheresoever and was thereby sentenced to be jailed for more than three years and has never been pardoned, unless the Electoral Commission of Kenya (ECK) removes this disqualification;
- dd) A person who is employed by that local authority to which he or she is seeking to be elected.
- ee) a person who holds any office or other place of profit which is wholly or partly in gift or disposed of any local authority or of any committee;
- ff) a person who within the past 5 years before the election had been surcharged by an inspector under the Local Government Act for an amount exceeding Shs.1,000/=;
- gg) as a sitting councilor who, within the period of three years before the election, was convicted under section 86A (exceeding the authority of a councillor with regard to council matters) and Section 89 (failing to disclose interest in a contract or transaction when the law demands that be done) both sections of the Local government Act.

2.1 Parliamentary Elections

(i) Qualifications

A prospective parliamentary candidate must satisfy the following requirements;

- a) Be a Kenya citizen;

- b) Be at least 21 years old;
- c) Be a registered voter for parliamentary elections in any parliamentary constituency in Kenya;
- d) Be able to speak and read the Swahili and English languages well enough to take an active part in Parliamentary proceedings. Prospective candidates who are blind or are incapacitated by any other physical cause need not be able to read in any of these languages. The ECK sets up language boards before whom aspiring candidates appear for testing on English and Swahili languages. The law exempts certain categories of people from such language tests including former candidates or Members of Parliament or people who have attained certain education qualifications that included Swahili and/or English languages as examinable subjects. The ECK issues letters or certificates to candidates stating whether a candidate has passed the tests or is exempted. These letters or certificates provide the proof required by law.
- e) Be nominated by a registered political party in accordance with the political party's constitution or rules to contest the election as evidenced by a duly authenticated notice to the ECK in the manner prescribed by law.

ii. Disqualifications

A prospective candidate may fail to be nominated because he or she has one of the disqualifications set out below. A prospective candidate must not:-

- aa) Be under a sentence of death imposed on him or her by a Court of law in Kenya;
- bb) Be under a sentence of imprisonment exceeding 6 months imposed on him or her by a Court or substituted by a competent authority for some other sentence

imposed on him or her by the Court. This however does not apply to instances where the jail sentence is imposed or suffered as alternative to a fine that the person fails to pay. The jail term must be from a single sentence and not cumulative of several sentences;

- cc) Be holding an office in the public service including the Judiciary or in the armed forces or local authority. Public service includes persons in full employment of statutory bodies or in companies where the Government holds 50% shares or above;
- dd) Have been adjudged under Kenyan law to be of unsound mind;
- ee) Be still undischarged as a bankrupt, having been previously judged to be bankrupt under Kenyan law;
- ff) Be owing allegiance, obedience or adherence to any foreign state. The person concerned must show this himself or herself by his or her own act on his or her own acknowledgement;
- gg) Have been convicted or reported guilty of an election offence under laws governing elections to the period of the term of that parliament with regard to whose election he or she was convicted or reported guilty.

2.2. Nomination Procedures

The nomination procedures are intended to provide evidence that a candidate has all the qualifications. In all cases this is done before the Returning Officers (Ros) who are appointed of the ECK as proclaimed in the *Kenya Gazette*. Their offices must be within the parliamentary constituency. They must be conveniently situated and easily accessible to the candidates, leaders and the public.

2.1 Local Government Elections

(i) Documentation:

The prospective candidate **must**:-

- aa) present to the RO a duly completed nomination paper. That nomination paper must be subscribed to by:
- a proposer;
 - a seconder;
 - and 5 to 7 other persons all who must be registered voters in the electoral area and belong to the same political party that is sponsoring the prospective candidate;

(**Note:** Candidates must certify from the registers of voters at the RO's offices that the subscribers of their candidature are duly registered in the ward as voters. Candidates should also bring with them the voters' cards of these subscribers when they present their nomination papers).

- bb) present a statutory declaration duly sworn and attested by a Magistrate or a Commissioner for Oaths. It should not be more than a month old since it was attested otherwise it will be rejected by the RO;
- cc) produce proof that he or she has subscribed to the Electoral Code of Conduct. However, the subscription can actually be done simultaneously with the presentation of the nomination papers;
- dd) present a letter or certificate from a registered political party that has nominated the candidate affirming its nomination of the candidate. The letter must bear the signatures, names and title of officials who are duly authorized by the party to perform this responsibility. **The political party must give the ECK's head office with**

the names, official positions and specimen signatures of these authorized party officials before the nomination day;

- ee) pay Shs. 1000/= to the RO preferably in banker's draft; With the exception of the banker's draft (or cash) all the other documents are available at the office of the R.O. at all times when the office is open for business.

ii. Time

- a) Two days are set aside for the nomination of candidates.
- b) Each day the RO's office will be open between 8.00am. and 1.00p.m. and again between 2.00p.m. and 4.00p.m.;
- c) A prospective candidate is free to choose the day he or she will present his or her papers. A wise candidate will not delay till the last day or last hour. He or she will present the papers at the earliest opportunity so that if there are errors or deficiencies he or she will still have sufficient time to rectify them;
- d) The office of the RO is open from the day the elections are announced until after the announcement of the election results. An aspiring candidate has plenty of time before the nomination to seek any information or advice from the RO.

2.3 Nomination Day

- a) The prospective candidate is entitled to attend nomination proceedings whether these are for him or her or are in respect of rival candidates;
- b) The candidate's agents, proposer and seconder are also entitled to attend;
- c) Only two persons for each candidate (the candidate included) may attend at any one time;

- d) The RO has power to admit more people e.g,the press to the nomination venue.

2.4 Candidates' Rights at Nomination

- a) Candidates have a right to be attended by the RO, to deliver their nomination papers and other documents (and fees) without undue delay;
- b) A candidate is assumed to be validly nominated after presenting the right papers to the RO and paying the fees in full. However the RO has power to declare the nomination invalid if he later finds deficiencies or omissions in the papers presented. This should be done before the period for nomination expires. The candidate should be allowed reasonable opportunity to rectify such errors before the full results of the nomination for the civic ward are publicly announced;
- c) A candidate can challenge the proposed nomination of a rival.However, the RO has very limited scope to resolve such disputes. The RO can only deal with obvious cases supported by irrefutable documentary evidence;
- d) A candidate is entitled to be told by the RO about the validity of his or her nomination or the RO's decision to any objection without delay. This is a right that candidates should make use of firmly;
- f) A candidate can withdraw from the race. He or she does so by giving to the RO a written notice that must be duly signed withdrawing his/her candidature. Even then, the candidate must do so before the RO officially announces the results of the nomination proceedings. It means this must be done before 4.00 p.m. on the second day of nomination;

- (g) Where a candidate duly withdraws he/she becomes entitled to a refund of the fee of Shs. 1000/=

If a candidate who had presented nomination papers dies, the RO is bound to annul the entire nomination proceedings even if the proof of the death comes after the RO has officially announced the candidate who had been validly nominated.

2.5 Parliamentary elections

The nomination procedures applicable in these elections are the same as those for local government elections except with the following variations;

- a) The law does not provide the procedure to be followed and the consequences in the case of the death of a parliamentary candidate during nomination.
- b) A candidate pays a fee of five thousand shillings to the RO on presentation of nomination papers ;
- c) Other than the proposer and the seconder of a candidate, the other persons (supporters) who must subscribe to the nomination paper are between 7 and 18 in number;
- d) All the subscribers to the nomination paper must be registered voters in that parliamentary constituency for parliamentary elections and belong to the political party that is sponsoring the candidate;
- e) The candidate must produce a certificate from the Electoral Commission of Kenya that he or she has passed the English and Swahili language tests of requisite standard or produce a certificate exempting the candidate from taking the language tests .

3. Election Campaign Period

After ECK announces the period for party nomination, the days for formal nomination and the Election Day, some candidates campaign to be nominated by their parties. However, many candidates do not consider this as the campaign period. Candidates think that the campaign period is the duration between the formal nomination of candidates and the election day.

Different political parties have different rules governing the nomination of their respective candidates. Quite often these rules do not allow for a nomination process in which the general membership of the political party takes place. Even where that is allowed the actual exercise is carried out in such a manner that it amounts to gross abuse of the rules. In the end, the only sensible campaign that a candidate can mount in these instances is to be on the good side of the party leaders. Thus an election campaign as is commonly known is non-existent and irrelevant at this stage.

3.1.0 Unopposed Candidate

A candidate who is nominated without an opponent is entitled to be declared elected unopposed. This happens when no other person sought nomination or every other person who sought nomination was found to be unqualified or disqualified. In that case, the RO must declare that candidate elected as the Member of Parliament (MP) for the constituency or the councillor for the civic ward. Further, in the case of the MP, ECK must publish the fact of his or her election unopposed in the *Kenya Gazette*. The Councillor's election must be published in the approved manner. The manner now approved by the ECK is by notice in the *Kenya Gazette*.

A candidate who is dissatisfied with such nomination and election has a right to challenge the election in court within a specified period after the publication of the *Gazette* notice containing the results of the nomination and election

3.0.2 Opposed candidates

Where two or more candidates are nominated then an election must be held.

If a **civic** candidate dies after a nomination where an election was to be held, the Returning Officer must cancel that election and, in due time, issue a fresh notice of holding a fresh election starting with nomination in the usual manner. There is no corresponding provision in the case of a **parliamentary** election. However ECK in the past elections. Acted within the procedures provided for civic elections.

3.0.3 Rights and Privileges

Anyone who desires to have a deeper understanding of the rights, privileges and even obligations and responsibilities of political parties, their candidates and agents is advised to read the following pieces of legislation namely: -

- i) The Constitution of Kenya;
- ii) The National Assembly and Presidential Elections Act (Cap 7);
- iii) The Presidential and Parliamentary Elections Regulations;
- iv) The Elections Offences Act (Cap 66);
- v) The Local Government Act (Cap 265);
- vi) The Local Government Elections Rules;
- vii) The Public Order Act (Cap 56);
- viii) The Police Act (Cap 84); and
- ix) The Kenya Broadcasting Cooperation Act (Cap 221).

What is stated in this Handbook will be an outline of the relevant constitutional or legal provisions derived from these laws. Even then it is acknowledged that the Handbook are not necessarily beyond dispute in some areas.

(a) Party Colours and Party Symbols

Every registered political party is entitled to have a distinctive party colour and a distinctive party symbol for use at elections. These parties do not have to wait for an election before they seek to enjoy this right, and can a symbol or colour at any time.

ECK allots these distinctive party colours and distinctive party symbols on application by a registered political party. No special form of application is required. A letter will do. But the design of the proposed colour and the design of the proposed symbol must be sent to ECK for approval.

ECK is bound to reject any such distinctive party colour or distinctive party symbol if: -

a) It is likely to be confused with that of an existing political party;

or

b) It is obscene or likely to lead to public unrest.

If ECK rejects such a colour or symbol, the political party must submit a replacement. The same requirements will apply even to the replacement.

b) Public Meetings and Rallies

The candidate and the political party are entitled to hold public meetings, processions, and meet-the-people tours without obtaining a license for the purpose. They, however, must notify the police Officer Commanding Station (OCS) of the place, venue of the meeting or route for the procession, date and full names and physical address of the organizer, at least three days before the proposed date of the event.

The only ground upon which the OCS may turn down such a request is if another person had previously given notice to use the same venue or route on the same day. The OCS must convey this denial in writing and cause it to be delivered physically at the new organizer's physical

address. In that event the meeting or the procession would stand cancelled and if held can be lawfully stopped by police.

A meeting or procession which is duly held under the law, however, may be stopped by the police for reasons of security or disorderly conduct or threat to peace.

A meeting or procession held under these regulations must end by 6.00p.m. or the police may stop it.

At such meeting procession or meet-the-people tours, a candidate has a right to enjoy security, peace and order but he or she must assist the police to provide this security, peace and order.

A candidate has a right at such gathering to speak on all subjects of his or her own choice. He or she may criticize persons, policies and practices of his or her opponents. However, he or she should not advocate that which is treasonous or seditious. He or she is also bound to observe the restrictions that are in the Electoral Code of Conduct, discussed later in this Handbook.

A candidate may distribute and display leaflets, brochures and any other publications, as well as make any of these, placards, slogans. The law however requires that he or she must show on these documents their printers and publishers. Besides, the laws against treason, sedition, nuisance, intimidation and the limitations stated in the Electoral Code of Conduct must be observed.

c) Voter's card

A candidate who is registered as a voter and who has lost his or her voter's card or whose voter's card has been defaced, mutilated or badly damaged may apply to the registration officer for a duplicate card. He or she must, however, return the duplicate card in case he/she subsequently finds the original voter's card that he or she had lost. All the ECK'S District Election Coordinators stationed at its district headquarters are registration officers.

d) Right to vote

A candidate is entitled to vote if he or she is a registered voter. The possession of a voter's card however is not conclusive proof that the candidate is a registered voter.

In the case of a local authority election, the candidate must be registered in any of the electoral areas (civic wards) within the local authority to which the candidate seeks to be elected.

For a parliamentary election the candidate must be registered in some parliamentary constituency. It need not be the constituency where he/she seeks electors

e) Finance

Subject to the laws prohibiting the commission of election offences, corrupt practices and illegal practices, a candidate may spend any amount of money in an election campaign. No source of such funding is banned, be it foreign or local.

Political parties can secure airtime on radio and television, free of charge, to expound on their policies during election campaign time. That is certainly a form of state funding of the political parties' election campaign effort. But that is in the form of state-funding of political parties and candidates at all times.

f) On Government

i) Public Officers

Public officers including chiefs are prohibited by law to show public support or to campaign for a political view-point, party or candidate in any election. A political party and its candidate have a right to seek action to be taken against any chief or public officer who breaks that lawsuch action should be sought from office of the Attorney General and the police. This is so because the prohibited breach is declared by law to be a criminal offence and these are the offices which deal with crimes. A

political party or candidate may also draw the attention of the Electoral Commission to the breach of the law.

ii) Order and Security

Candidates are entitled to security and protection from the Government. The nature of that security and protection may differ from region to region. The Government should be able to fairly determine appropriate measures. The attitude generally maintained by Government officials when breach of the law occurs at election time saying that that is politics or it is a political affair is unacceptable in a modern democracy like Kenya. The Government should use its machinery and resources to facilitate political parties, candidates and campaigners to travel about safely and freely and have access to the voters without fear of intimidation, threats and or actual battery and assault. No free and fair elections are possible where these rights are violated.

iii) Kenya Broadcasting Corporation (KBC)

Kenya Broadcasting Corporation (KBC) should:-

- a) Allocate broadcasting hours fairly between different political viewpoints; and
- b) Allocate airtime, free of charge, to all the registered political parties participating in an election during the campaign period.

These responsibilities lie on KBC alone and how it will meet them in the course of each year should be a matter for KBC's management. KBC is expected to should seek funds from the Government in order to perform this.

Freedom of information is a right to the parties concerned. The way KBC handles them can lead to the distortion of the outcome of the election. They thus must be observed. Failure to render this right may also lead to litigation and it is highly possible that the aggrieved party

in such litigation will be successful. That could lead to KBC incurring large and inexcusable litigation expenses.

g) Electoral Commission of Kenya

i) General

The Electoral Commission should facilitate and defend political parties and the candidates whenever this is legally possible to enable them to have free access to the voters and address them freely. The Commission is required by the Constitution and the National Assembly and Presidential Elections Act (Cap 7) to promote free, fair and transparent elections. The ECK has thus a duty to all participants in an election to facilitate them in their lawful efforts.

The political parties and candidates have a right to demand action by the ECK where there is proven transgression of the provisions of the Electoral Code of Conduct by any other political party or candidate or election canvasser of the provisions of the Electoral Code of Conduct. Such aggrieved persons have a right to be informed of the action taken and the results of the action.

The ECK must never support or oppose or be seen to oppose or support any political viewpoint, any political party or any candidate. It must be impartial, independent and non-partisan. It must be fair in equal measure to all these persons. The ECK should never permit itself to be manipulated or misused by any person or any authority in a manner that destroys that independence. The parties and candidates are entitled to see that position maintained perfectly. The Code of Conduct for its Members and Staff of the Electoral Commission reinforces this.

Political parties are entitled to demand the formation of the Parties Liaison Committee and to participate in its meetings. This is a committee that consists of designated political party

leaders and designated members of the Electoral Commission. It provides a consultative forum for these groups on election matters during election time. It is a vital organ in the management of fair, free and transparent elections. It is also crucial in the management of political conflict at any sensible phase of elections.

ii) Polling Areas And Polling Stations

The ECK must duly inform the candidates along with the electorate and others, by way of a **Gazette Notice**, the polling areas in each constituency or electoral area, their serial numbers, all the polling stations with their respective distinctive serial numbers and locations.

iii) Ballot Papers

ECK arranges for the printing and distribution of ballot papers. The political parties and candidates have a right to have accurately printed and properly distributed ballot papers. The ballot papers should contain the correct party symbols, the correct candidates' names, the correct details about the constituency or civic ward and polling station. The ballot papers should be delivered to the correct constituencies, civic wards and polling stations where they will be used. Above all, the number printed ballot papers should not exceed the number of registered voters by an excessive margin.

Because of the way the law is framed, political parties and candidates cannot check ECK's observance of these matters until after the ballot papers are received at the polling station on the polling day. However, candidates have a right to witness the distribution of ballot papers to polling stations and to accompany election staff that transport these ballot papers to polling stations. After the election a candidate who feels has a right to seek the intervention of the courts through an election petition as regards parliamentary candidates

or an appropriate application before a magistrate's court in the case of local government elections.

iv) Polling and Counting Agents

Each candidate is entitled to appoint a maximum of two polling agents and two counting agents. Polling agents represent the candidates at the polling stations. Counting agents represent or act with the candidates during the counting of votes. The calibre of persons a candidate appoints as agents is crucial. Many old-fashioned politicians think that the "toughies" are ideal. *Informed* candidates look for educated persons and indeed take them through some briefing on their work.

An educated agent can become a "toughie" where that is crucial but an illiterate agent cannot be expected to follow the basic regulations on these matters. Presiding officers, who are in-charge of polling stations, act on written regulations.

All agents must be appointed in writing. Counting agents must be appointed and their appointments communicated to the Returning Officer at least 36 hours before close of the poll.

4. Obligations, Responsibilities and Duties

a) General

Before outlining these duties it should be stated that the foremost of all these duties is allegiance to Kenya. The duty to bear allegiance to Kenya binds all Kenyans. For the political parties and candidates the observance of this duty can come into sharp focus during election time. The laws against treason and sedition were all enacted to serve and protect this duty.

b) Election Offences Act

In 1958 the Legislative Council of the Kenya Colony passed **The Election Offences Ordinance** which after independence became **The Election Offences Act, (Cap 66)**. The Act that was been allowed to stay on the Statute Book intact (until of course, in 1997 when “treating” as an election offence was removed) and without use. Its provisions and prohibitions were not obeyed by many candidates during elections but no one was ever prosecuted. Since it is still in the Statute Book and it contains very significant obligations on the part of political parties, candidates and others touching on election it is necessary that these obligations be made known.

Under the Act, bribery of voters in order to induce them to vote one way or other or to desist from voting is forbidden.

No voter should be intimidated with threats of violence or cheated by any form of fraud to vote or desist from voting for any candidate.

If a candidate publishes, before or during election, false statement that another candidate has withdrawn from the election race then he or she commits an illegal practice.

To transport voters to or from the polling stations for the purpose of electing a candidate is forbidden under the Act.

No campaign in the form of music or by loud speakers is permitted

on the Election Day.

There are also special provisions for the protection of the sanctity of the voters' register. Breach of the prohibitions lead to jail, for a considerable period – a maximum of 5 years.

Secrecy of the vote is protected with stringent penal consequences for those who do not maintain it. Thus the candidates' polling and counting agents – just like election officials and observers - must swear the prescribed Oath of Secrecy. If they fail to take this Oath they would not be allowed into polling stations or counting halls.

A candidate and his/her polling agent must maintain and aid in maintaining the secrecy of the voting in all the polling stations he or she attends.

A candidate and his or her polling agents are forbidden from disclosing to any one certain information about the voting pattern in a polling station.

A candidate and his/her polling agent are prohibited from obtaining information from the polling station as for whom a voter cast his/her vote or is about to vote for, and in case the candidate or the polling agent come to have that information, they are forbidden from passing this information.

At the counting hall, the candidate and his/her counting agent must maintain secrecy of the vote. None of them should attempt to ascertain at such counting the number of any ballot paper or disclose any information he or she obtained at the counting as to the candidate for whom any vote was given by any particular ballot paper.

No candidate or polling agent is allowed to communicate or attempt to communicate with any voter after such voter has received a ballot paper and before the voter places the ballot paper in the ballot box without the Presiding Officer's written authority.

Any candidate or agent who contravenes these provisions is like to go to jail for a maximum of 5 years.

The list of prohibitions mentioned here are just some of those in the Act.. They have not been enforced in past. That is not as to say they will not be enforced.. It certainly is time the law was enforced strictly, and time politicians obeyed the law, which they make.

A candidate who is convicted on an election offence will not be allowed by the Election Court to be an Honourable Member of Parliament – at least till the next General Election. Thhe same applies to a councillor elected under such a cloud. The fate of such offenders makes a very happy reading to those who uphold democratic practices.

c) Other Offences Connected with Elections

At election time many Kenyans tend to conduct their election affairs as if the other laws of the country that govern criminality are suspended. The attitude of the Kenya police at such time tends to support this misconception. Political parties and their candidates should at all times bear in mind that the provisions of the Penal Code remain in full force even at such times. Affray, arson, riots, assault and unlawful confinement and arrest remain illegal. The Kenya police should stop regarding politics as a no-go area and enforce the law as their duty demands.

d) Electoral Code of Conduct

In 1997, parliament amended the law governing election by, among other things, enacting the Electoral Code of Conduct. It is indeed a code of all the obligations, responsibilities and duties of political parties, their leaders, the candidates and others. On account of its importance in this regard it will be reproduced in full at the end of this booklet. Indeed it is not possible even to summarize what it says. Serious candidates will be advised to go through it regularly.

There are two paragraphs of the Code that indicate its import very clearly. These are as follows, quote:-

Paragraph “3. *The object of this code is to promote conditions conducive to the conduct of free and fair elections and a climate of tolerance, in which political activity may take place without fear of coercion, intimidation or reprisals”*

Paragraph “4. *All registered political parties and other persons bound by this code shall endeavour to promote the object of the code to enable free political campaigning and open public debate to take place in all parts of Kenya during any election period”.*

The Electoral Code of Conduct consists of only 13 paragraphs. The most important of those are the two already cited and paragraphs 5, 6, 7, 8, and 9.

Paragraph 5 lays down the commitments of those who subscribe to the Code. Paragraph 6 lays out the specific duties for all these persons and groups. These provisions state how political parties and candidates should relate to their opponents so as to guarantee a peaceful environment for democratic elections. They frown at voter bribery, violence, intimidation, thuggery, animosity, hatred and bigotry. They encourage respect for other candidates, parties, views, followers and campaign equipment and materials such as posters.

The same paragraphs (5-6) similarly state how political parties and candidates should relate to the Electoral Commission of Kenya (ECK). They require that these:

- a) Accept the authority of ECK;
- b) Implement orders and directions of the ECK;
- c) Attend Parties Liaison Committee meetings;
- d) Facilitate ECK’s observers at political meetings; and
- e) Accept the final outcome of an election and the Commission’s declaration and certification of the results. They may nevertheless petition against the results if they are dissatisfied with them.

5. Polling Day

a) At Polling Stations

The candidate has a right to enter and go freely or stay in all the polling stations in the civic ward or constituency. The candidates' polling agents have the same rights but only at the polling station an agent is assigned to in the letter of appointment.

A candidate or a polling agent has a more active role to play in the polling station than an election observer. Any of them has a right to seek the Presiding Officer (PO) to address matters that appear to affect or to be likely to affect the polling process; He or she can therefore lodge a complaint with or seek the intervention of the PO on matters that are legitimate. However, in all these, the candidates must conduct themselves in an orderly manner so as not to interfere with the election process and must also accept the decision of the presiding officer on the matter.

The PO is the final authority at the polling station. Nevertheless the candidate can seek the intercession of the RO if he or she is dissatisfied by the PO's action or decision.

No person, including candidates and their polling agents, with the exception of an election officer, is allowed to talk or gesture in any manner, to any voter who is in or near the polling station for the purpose of voting unless a PO so permits. This is intended to prevent election canvassing at or near polling stations.

The time when the polling stations will open for polling announced in advance. Before polling starts there are certain procedures which must be observed. A candidate or a polling agent has a right to attend and be satisfied that these procedures are performed correctly. The PO must demonstrate that the ballot box is empty and the candidate or the polling agent has a right to ascertain this is the case. The PO seals the ballot box and the candidate or the polling agent is entitled to ascertain this is properly done candidate's own seal added thereon.

The PO must keep the ballot box in the room at a place where the PO, the candidates, polling agents and voters can see it well during polling.

A presiding officer has power to adjourn or postpone election proceedings at his/her polling station for reasons specified in the election Regulations and Rules. He or she may also transfer the election proceedings to another place for the same reasons. Where the PO takes any of these actions, he or she must explain the action sufficiently for voters. Obviously the candidate and the polling agent have a right to be informed of these decisions in sufficiently ample time.

When the polling is postponed or adjourned or transferred the PO must seal the hole of the ballot box through which ballot papers are placed. The candidates or their polling agents have a right to be present when this is done and add their own seals. During the period of the postponement or adjournment or transfer, the candidate or the polling agents have a right to keep watch over the ballot boxes. When voting starts again, the seals will be broken and the hole of the ballot box reopened by the PO. The candidates or polling agents have a right to be present when all these processes take place.

It is thus clear that the candidates have a right to have their own seal and to use them at the various stages during the polling. These seals may or may not bear distinctive serial numbers. ECK seals have serial numbers and the candidate or the polling agent has a right to take note of all the serial numbers of all the ECK seals used.

b) Ballot boxes

Each ballot box must bear clearly legible serial numbers which are distinctly peculiar to the ballot box. Candidates and polling agents have a right to take note of these serial numbers.

c) Ballot Papers

Voters cast their votes by use of ballot papers. Ballot papers must have serial numbers. The candidates and the polling agents present

before polling commences have a right to inspect all the ballot papers provided for use at a polling station and take note of the serial numbers. It is essential to ensure that the ballot papers are stamped with the ECK stamp. Unstamped ballot papers are invalid and are excluded from the count during the counting of the votes after polling.

Sometimes a voter may damage the ballot paper given to a point that he or she thinks it is not sensible to vote with it. Damage can be a tear on the ballot paper. It could also be the voter has put the voting mark at the wrong place or has put more than one voting mark. These are just examples of damages. A voter in that situation is entitled to seek from the PO another ballot paper. He must prove to the PO that the damage occurred without his or her intentions. The damaged ballot paper must be returned to the PO and is called spoiled ballot paper. It is never placed in the ballot box used for the polling. The PO keeps it elsewhere. It never forms part of the count of valid ballot paper. It is therefore important that the voter, after returning the spoilt ballot paper to the PO should obtain another ballot paper and proved to vote using that ballot paper. It is a candidate's right to have these procedures observed.

d) Aided Voters

Voters who are blind or are incapacitated by any other physical cause or voters who declare to the PO that they are unable to read or voters who request the PO for assistance may be aided by the PO to cast their votes. The PO does so on their behalf in the presence of the voter and polling agents.

These voters however must first give their permission for the PO to assist them to cast their vote. The PO must cast the vote as directed by the voter. The PO must record in the copy register by means of some symbol the fact that he/she assisted this voter.

The candidate or one polling agent for each candidate has a right to be present and witness the entire process. For that purpose the candidate or one of his/her polling agents can enter the polling booth.

e) Close of the Poll

There are compulsory procedures for closing a polling station at the end of the polling. All voters waiting in the queue to vote must be allowed to vote even if the time set for voting is over. The period by which voting may have been delayed at the opening of the station must be compensated by closing late by the same period.

After close of the poll the PO makes some statutory statements. He or she then puts these statements in separate envelopes, seals each of them and labels these to indicate its contents. The candidate or polling agent who is present at the time is entitled to watch this packaging and sealing being done. He or she has a right to add his or her candidate's seal to the packages.

The PO must then seal each ballot box that was used during the polling. He or she must seal these ballot boxes so as to prevent the introduction of any matter into the ballot box or its opening. The seal is actually put on the hole used for insertion of ballot papers when voters cast their votes. The candidate or the polling agent present at that time has a right to put his or her own seal in addition to that of the PO

Thereafter the ballot boxes and the sealed packets are transported to the counting hall. Counting is carried out at one place in the constituency or civic ward. The candidate or the polling agents have a right to travel with the transporting vehicle in order to keep an eye on these. However, there may be too many polling agents at the polling station in which case the polling agents should agree amongst themselves who among them will travel with these precious commodities. There should be enough room in the vehicle for the election officials and the public officers escorting them.

A candidate or a polling agent who had been alert all along will, at the counting hall, be able to give the candidate or the counting agents such information as the serial numbers of the ballot boxes used, the number of ballot boxes used, the serial numbers of ballot papers used

and unused and therefore their actual number to be expected in each ballot box and their true serial numbers. That kind of operation ensures no other ballot boxes or ballot papers are introduced in transit or at the counting hall.

6. Counting of votes and Declatation of Election Results

a) Counting Arrangements

The RO is solely responsible for determining the place where the counting of the votes will take place. Similarly he or she decides entirely on his or her own the time this process will start. He or she must, however, inform the candidates and the counting agents, in advance, of these arrangements. The established practice is for ECK to publish the description of these counting centres in the *Kenya Gazette* and for the RO to determine the time the counting will start and communicate this fact to the candidates and counting agents. Indeed it is not possible for the RO to fix the time the counting will actually start until all the ballot boxes used in the polling are delivered to the counting hall. He or she is not allowed to start counting till this has happened. Once the RO is ready to start counting he or she must inform the candidates and the counting agents, giving them sufficient period for them to arrange them to attend.

Clearly that does not grant them or any of them the right to outrightly oppose or resist the RO's decisions. They may nevertheless give suggestions or objections in an orderly manner. The candidates and the counting agents must abide by those decisions.

Ballot boxes with used ballot papers, among some other election materials, are delivered by the Pos to the RO. The polling agents who accompany such delivery and the candidates and counting agents have a right to consult each other. They are entitled to hand over notes and records they made at the polling stations to the counting agents. If they decide to do so in the counting hall or room itself, then they must do so having regard to the rights of the other persons who have a right to be at the place at that time.

Wise candidates and wise counting agents will seek to have records/

notes showing the serial numbers of the ballot boxes used, the serial numbers of the ballot papers used, the number of ballot papers issued to voters and serial numbers of seals used by RO. Their most important source of such information are the polling agents. They may even inspect the seals on the ballot boxes as the ballot boxes arrive. They are entitled to know from the RO where and how the ballot boxes will be kept awaiting the counting.

The candidates and the counting agents are entitled to know how the RO will carry out the counting. Of particular interest to these people is where they will be so that they can witness the counting of the votes clearly. These candidates and the counting agents have a right to that kind of arrangement. They also have a right to know from the RO the security arrangements for all those lawfully present and for the ballot papers. In short, the RO must inform the candidates and the counting agents about all the arrangements he or she has made about the counting.

Candidates and counting agents must note that it is only the RO who has authority to make counting arrangements. They may make suggestions, they may object to the arrangements, but the RO's decisions will be final and binding on all of them. Even the RO is bound by his/her decision and can only alter or vary the arrangements he or she starts with after informing the candidates and counting agents.

b) The Count

During the counting, the candidates and the counting agents have a right to challenge the validity of a ballot paper on the following grounds:

- a) It does not have the ECK's rubber stamp (official mark);
- b) It contains more than one mark thus amounting to more than one vote;
- c) The voter's mark on it is so placed or done that it is not possible to decide for whom the voter voted;

- d) It bears a serial number which differs with those for ballot papers used in that polling station and the relevant counterfoil;
- e) The voter placed the mark outside the place provided for it;
- f) The voter put a mark which is not a cross;
- g) The voter put more than one mark.

- (Note:** i) The RO has a discretion to decide for whom the voter intended to vote if that is clear to him;
- ii) Here the RO has a discretion to accept an other mark as valid)

The candidate and a counting agent can also object to the conduct of a counting clerk or other election official involved in the counting. The RO must decide on such objections immediately these are raised. The RO's decisions are final and binding on the candidates and the counting agents.

c) Recount

At the end of the count, the RO has to announce the results of the count. Candidates and counting agents are entitled to have the votes rechecked or recounted. Thus the RO should never announce the results of the count until he or she has given sufficient opportunity to the candidates and counting agents to exercise this right. If one of them demands that the votes be rechecked or recounted then the RO must do so.

After the first request to rechecking or recount of the votes the RO will again be ready to announce the results of the recount. As regards local government (civic) elections, the RO will have a right to go ahead and announce the results. However in the case of parliamentary elections the candidates and the counting agents have still a further right to request for recount (**note: not rechecking**) of the votes. The RO must concede to that request and thus carry out the recount **for a second time** as requested. Once in the parliamentary election the RO

has carried out the second recount as required by law he/she must prepare to announce the results of the recount.

The RO must first write a statement concerning the counting and certain ballot papers. The candidates and the counting agents have a right to be given a copy or to make a copy of this statement. The statement will contain the number of ballot papers rejected for lack of official mark, for voting for more than one candidate, for voting in a manner that might identify the voter and for lack of voter's mark or bearing a voter's mark that is uncertain.

d) Announcement of Election Results

Announcement of the count or recount, as the case may be, in effect means the announcement of the results of the election. The RO thus announces the score of the respective candidates, the successful candidate, and the number of ballot papers rejected in the course of the counting. The candidates and counting agents have a right to hear or receive the RO's announcement of the results of the election from him or her.

The RO must communicate the results of the election to the ECK. The ECK is then required to publish the names of the successful candidates in the ***Kenya Gazette***. Upon that publication in the ***Kenya Gazette*** the losing candidates, their counting agents (and other qualified Kenyans) have a right to challenge the results in a court of law. This right comes after publication of the election results. It must be exercised within a limited period after that publication of the results and by specified proceedings and procedures. That however is outside the jurisdiction of ECK. The litigation that follows is complex and laborious. The services of lawyers in the matters become inevitable.

Important Note

The rights and privileges outlined in these notes are only available to the candidates, polling agent and counting agent who is present when the relevant event takes place. The PO and the RO do not have to wait or look for the candidate or the polling or counting agent. The officers have the right to perform their functions even in the absence of the candidates or polling or counting agents.

The decisions of the Presiding Officer and Returning Officer have been said to be final and binding. However that does not thereby authorize them to be oppressive, unjust or fail to apply rules fairly to all. They must exercise their authority responsibly, fairly and intelligently. Their failure to act thus may later on be regrettable before the courts of law. In any case, the court of the ordinary, honest and intelligent Kenyan will always be there to judge them. They therefore must be guided by their conscience and sense of respect.

Annexure

THE NATIONAL ASSEMBLY AND PRESIDENTIAL ELECTIONS

ACT (CAP 7)

SECTION 34A (1)

- 34A (1) The Electoral Code of Conduct set out in the Fourth Schedule shall be subscribed to in such manner as the Electoral Commission may, subject to paragraph 6 of the schedule, from time to time determine, and shall be subscribed to and observed by every political party and every person that participates in any election under the Constitution and this Act.
- (2) No political party shall be eligible to nominate candidate under this section shall be eligible to contest any election unless such party and the candidate have, under subsection (1), subscribed to the Electoral Code of Conduct.
 - (3) Every Officer of a political party which, and every person nominated as a candidate who, attempts to participate in or participates in any election without subscribing to the Electoral Code of Conduct shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three years or both.
 - (4) For the avoidance of doubt, the trial of an offence under this section shall be without prejudice to any proceedings in or consequent upon a petition.
 - (5) Subject to the provision of the Criminal Procedure Code, the Electoral Commission may designate any of its Officers to conduct any prosecution for an offence under this section and the Electoral Code of Conduct, and such Officer shall

for that purpose have all the powers conferred upon a public prosecutor by the Criminal Procedure Code.

FOURTH SCHEDULE (S.34)

ELECTORAL CODE OF CONDUCT

1. (1) Subject to paragraph 6, this code shall be subscribed to by:—
 - a) every political party participating in the election of a President, a member of the National Assembly, and a member of a local authority; and
 - b) every candidate nominated, as a condition of the candidate's respective rights to be so nominated.
- (2) This code shall, in so far as it is applicable, bind the Government and every political party, its leader and every office-bearer, member, supporter and every candidate nominated under the electoral laws for any election.
2. In this code unless the context otherwise requires -
 - **“electoral area”** means a constituency under this Act or an electoral area under the Local Government Act and defined in the Local Government Election Rules;
 - **“electoral court”** means the High Court under this Act or, as the case may be, the Resident Magistrate's Court under the Local Government Act;
 - **“electoral laws”** means the Constitution, the National Assembly and Presidential Elections Act and the Local Government Act and subsidiary legislation thereunder as they relate to the presidential, parliamentary and local government elections.
3. The object of this code is to promote conditions conducive to the conduct of free and fair elections and a climate to tolerance,

in which political activity may take place without fear of coercion, intimidation or reprisals.

4. All registered political parties and other persons bound by this code shall endeavour to promote the object of the code to enable free political campaigning and open public debate to take place in all parts of Kenya during any election period.
5. Registered political parties and candidates do, by subscribing to this code, further commit themselves -
 - a) to give wide publicity to this code;
 - b) to promote voter education campaigns which may be conducted in concert with the Electoral Commission;
 - c) to condemn, avoid and take steps to prevent violence and intimidation;
 - d) to instruct their candidates, office-bearers, members and supporters of their obligations under this code; and
 - e) generally, to affirm the rights of all participants in an election:-
 - i) to express divergent political opinions;
 - ii) to debate and contest the policies and programmes of other parties;
 - iii) to canvass freely for membership and support from voters;
 - iv) subject to the Public Order Act, to hold public meetings;
 - v) to distribute non-offensive electoral literature and campaign materials;
 - vi) to publish and distribute non-offensive notices and advertisements;
 - vii) to erect non-offensive banners, placards and posters;
 - viii) to promote free electoral campaigns by all lawful means; and

ix) to co-operate with the Electoral Commission and the relevant Government and other authorities in the investigation of issues and allegations arising during the election period.

6. All those bound by this code shall, throughout any election period, have the duty -
- a) to publicly and repeatedly condemn violence and intimidation, and to avoid the use of language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain any kind of advantage or for any other reason;
 - b) to refrain from any action involving violence or intimidation.
 - c) to ensure that no arms or weapons of any kind are carried or displayed at political meetings or in the course of any march, demonstration or other event of a political nature;
 - d) to refrain from publishing or repeating false, defamatory or inflammatory allegations concerning any person or party connected with the election;
 - e) subject to the Public Order Act, to co-operate and liaise in good faith with other parties to avoid, in so far as possible, arrangements involving public meetings, demonstrations, rallies or marches taking place at the same time and venue as similar political events organized by other parties;
 - f) to do nothing to impede the right of any party, through its candidates, canvassers and representatives, to have reasonable access to voters for the purposes of conducting voter education, fund raising, canvassing membership and soliciting support;
 - g) to avoid plagiarizing the symbols, colours or acronyms of other parties; and to discourage and prevent the removal, disfigurement or destruction of political campaign materials of any party;

- h) to refrain from offering any inducement or reward to any person in consideration of such person either joining or not joining any party; attending or not attending any political event; voting or not voting (either at all, or in any particular manner); or accepting, refusing or withdrawing such person's nomination as a candidate in the election;**
- i) to refrain from any attempt to abuse a position of power, privilege or influence, including parental, patriarchal or traditional authority, for political purposes, including any offer of reward or threat of penalty;**
- j) to avoid any discrimination based on age, race, tribe, place of origin or residence or other local connexion, political opinions, colour, creed or sex in connection with the election and political activity;**
- k) in relation to the Electoral Commission –**
 - i) to acknowledge the Commission's authority in the conduct of the election;**
 - ii) to ensure the attendance and participation of representatives at meetings of any parties' liaison committee and other forums convened by or on behalf of the Electoral Commission;**
 - iii) to implement the orders and direction of the Electoral Commission;**
 - iv) to facilitate the Commission's right of access through official observers and other representatives to all public political meetings or other electoral activities;**
 - v) to co-operate in the official investigation of issues and allegations arising during any election period;**
 - vi) to take all reasonable steps to ensure the safety of observers and officers of the Electoral Commission from exposure to insult, hazard or threat in the course of their official duties; and**

- vii) to establish and maintain effective lines of communication with the Electoral Commission.
 - l) to reassure voters with regard to the secrecy and integrity of the ballot, and furthermore to reaffirm the provisions of section 25 of this Act to the effect that no one should know how any other person has voted;
 - m) to take reasonable steps to discipline and restrain their party office-bearers, employees, candidates, members and supporters who-
 - i) infringe this code;
 - ii) engage in activities of commission or omission which amount to offences under the electoral laws or otherwise fail to observe this code;
 - iii) contravene or fail to comply with any provision of the electoral laws.
 - n) without prejudice to the right to present a petition to an election court, to accept the final outcome of the election and the Commission's declaration and certification of the results thereof.
7. The registered political parties shall execute this Code of Conduct through the hand of their respective authorized leaders to signify their acceptance to be bound by the provision of this code and as their committal to strive to ensure that their members and supporters abide by the code at all stages of the elections for President, the National Assembly and local authorities.
8. Where, in the opinion of the Commission, any political party participating in any election or any office-bearer, member or supporter of such political party or any candidate at any election, in any way infringes any provision of this code, the Commission may:-

- a) in the case of any political party and, subject to subparagraph (b), also in the case of the leader or any office-bearer, member or supporter of such political party or candidate, impose upon that party one or more of the following penalties or sanctions of which any or all may be suspended on specific conditions:—
- i) a formal warning;
 - ii) a fine determined by the Commission;
 - iii) notwithstanding the provisions of any other law, an order prohibiting such political party, whether permanently or for a specified period, from utilizing any public media time, through the television or radio broadcasting services of such media as have been or may be allocated to the political party for electoral purposes;
 - iv) an order prohibiting the political party:—
 - aa) from holding particular public meetings, demonstrations or marches, of any kind of such meetings, demonstrations or marches;
 - bb) from entering any specified electoral area for purposes of canvassing for membership, or for any other electoral purpose;
 - cc) from erecting placards or banners, or from publishing and distributing campaign literature;
 - dd) from publishing or distributing campaign literature and electoral advertising; or limiting the rights of the political party to do so, and such prohibition or limitation shall be notified to the relevant regulating officers under the Public Order Act in the affected places or electoral areas for purposes of that Act.

- (b) in the case of the leader or candidate or any office-bearer, member or supporter of such political party impose any one or more of the penalties or sanctions referred to in sub-paragraph (a) (i) or (ii) of this paragraph.
9. Without prejudice to the provision of paragraph 8, the Commission may either of its own motion or in consequence of any report made to it, institute proceedings in the High Court in its unlimited original civil jurisdiction as may be appropriate in the case of any alleged infringement of the code by a political party or by the leader or any office-bearer, member or supporter of the political party or any candidate and where such court finds the infringement of the provisions of this code:-
- (a) in the case of a political party, any act or omission involving violence or intimidation or a gross or systematic violation of the rights of any political party, candidate or voter, such court may in addition to or in substitution for any other penalty or sanction specified in sub-paragraph (a) of paragraph 8 make an order cancelling the right of such party to participate in the election concerned; or
- (b) in the case of the leader or any office – bearer, member or supporter of such political party or of any candidate, that any act or omission involving violence or intimidation or gross or systematic violation of the rights of any political party candidate or voter, such Court may in addition to or in substitution for any other penalty or sanction specified in paragraph 8 (a) (i) and (ii) make an order disqualifying, in the case of a person who is a candidate, such person from being a candidate or deleting the name of such candidate from the list or lists of candidates concerned.
10. There shall be no appeal from an order of the Commission imposing a penalty or sanction under paragraph 8 (a) but a party aggrieved by the decision of the Commission shall have direct

access to the High Court under Order 53 of the Civil Procedure Rules.

11. In making its decision regarding appropriate penalties or sanctions, the Commission or, as the case may be, the High Court shall have regard to any other legal consequences that may result from civil or criminal proceedings instituted by reason of the same occurrence.
12. The High Court shall ensure that any proceedings initiated under paragraph 9 are dealt with in priority to all other matters brought before it, and that the decision of that court is given before the date of the election concerned.
13. The procedure of the High Court in cases falling within the provisions of this code shall, without prejudice to paragraph 10, be in accordance with such Rules of Procedure as shall from time to time be promulgated by the Chief Justice in consultation with the Commission.

This booklet is about parliamentary and local government (civic) elections only. The presidential election is excluded. Usually presidential candidates are seasoned leaders with sound knowledge of the basic electoral formalities. In any event, a presidential candidate is at the same time a parliamentary candidate meaning that such candidates will find this handbook useful.

Topics covered in the booklet focus on the laws and practices governing: party nomination of candidates, election campaigns, matters concerned with the election prior to the election day, election day activities and counting of votes. It also covers adjudication of election disputes e.g. petitions, in respect of both parliamentary and local government elections.