

Section 15: Election Offenses

General Commentary

In most post-conflict states, in particular those emerging from internal armed conflict, a peace agreement will normally contain provisions on the establishment of a transitional governance arrangement, as well as provisions on the timing and manner of conducting free and fair elections. Preparation for elections involves a plethora of activities, including drafting of legislation on elections. The election law or election code may contain details on the timing of the vote, eligibility of voters and candidates, acceptable campaign practices, and so forth. In some states, this law or code may itself contain criminal offenses. In other states, these offenses are contained in the criminal code. The MCC contains a number of election-related offenses that focus on interference with a citizen's right to vote (including the right to vote confidentially), abuse of the right to vote, interference with the integrity of the voting process, and interference with election candidates. Two offenses, those laid out in Article 177 ("Preventing the Exercise of the Right to Vote") and Article 182 ("Election Fraud"), specifically target election officials, while the remainder of the offenses target all citizens.

Article 177: Preventing the Exercise of the Right to Vote

Article 177.1: Definition of Offense

A person commits the criminal offense of preventing the exercise of the right to vote when he or she:

- (a) in the exercise of duties entrusted to him or her relating to elections;
- (b) with the intent to prevent another person from exercising his or her right to vote:
 - (i) fails to record such person in a voter registration list;

- (ii) removes such person from the voter registration list; or
- (iii) in another manner prevents a person from exercising his or her right to vote.

Article 177.2: Penalty

1. The applicable penalty range for the criminal offense of preventing the exercise of the right to vote is one to five years' imprisonment.
2. The court may impose a fine, as a principal penalty, upon a person convicted of preventing the exercise of the right to vote.

Article 178: Violating the Free Decision of Voters

Article 178.1: Definition of Offense

A person commits the criminal offense of violating the free decision of voters when he or she:

- (a) during elections, a recall vote, or a referendum;
- (b) compels another person:
 - (i) to vote;
 - (ii) not to vote;
 - (iii) to cast a void vote; or
 - (iv) to vote in favor of or against a particular proposal or person;
- (c) by means of force, serious threat, corruption, or deception, or in any other unlawful manner.

Commentary

A recall vote is a vote to remove an elected official for poor performance or malfeasance, an issue that will be dealt with in the relevant election law or election code.

The term *corruption* is referred to in Article 178.1(c). For a description of the elements of the criminal acts involved in corruption, reference should be made to Article 138 (“Corruption Involving a Public Official”).

Article 178.2: Penalty

1. The applicable penalty range for the criminal offense of violating the free decision of voters is one to five years’ imprisonment.
2. The court may impose a fine, as a principal penalty, upon a person convicted of violating the free decision of voters.

Article 179: Abuse of the Right to Vote

Article 179.1: Definition of Offense

A person commits the criminal offense of abuse of the right to vote when he or she, during an election, a recall vote, or a referendum:

- (a) votes under the name of another person; or
- (b) votes even though he or she has already voted.

Commentary

A recall vote is a vote to remove an elected official for poor performance or malfeasance, an issue that will be dealt with in the relevant election law or election code.

For a description of the elements of the criminal acts involved in corruption, reference should be made to Article 138 (“Corruption Involving a Public Official”).

Article 179.2: Penalty

1. The applicable penalty range for the criminal offense of abuse of the right to vote is one to five years’ imprisonment.
2. The court may impose a fine, as a principal penalty, upon a person convicted of abuse of the right to vote.

Article 180: Violating Confidentiality in Voting

Article 180.1: Definition of Offense

A person commits the criminal offense of violating confidentiality in voting when he or she:

- (a) by use of force, serious threat, corruption, or deception, or in any other unlawful manner;
- (b) demands a person to reveal how he or she voted.

Commentary

The term *corruption* is referred to in Article 180.1(a). For a description of the elements of the criminal acts involved in corruption, reference should be made to Article 138 (“Corruption Involving a Public Official”).

Article 180.2: Penalty

1. The applicable penalty range for the criminal offense of violating confidentiality in voting is one to five years’ imprisonment.
2. The court may impose a fine, as a principal penalty, upon a person convicted of violating confidentiality in voting.

Article 181: Buying and Selling Votes

Article 181.1: Definition of Offense

1. A person commits the criminal offense of buying votes when he or she:
 - (a) promises, offers, or gives to a person, directly or indirectly, an undue benefit, for the person or a third party or entity;

- (b) in order that the person:
 - (i) vote;
 - (ii) refrain from voting;
 - (iii) cast a void vote; or
 - (iv) cast his or her vote in favor of or against a particular person or proposal.
- 2. A person commits the criminal offense of selling votes when he or she:
 - (a) solicits or accepts, directly or indirectly, an undue benefit, for himself or herself or a third party or entity;
 - (b) in order that the person:
 - (i) vote;
 - (ii) refrain from voting;
 - (iii) cast a void vote; or
 - (iv) cast his or her vote in favor of or against a particular person or proposal.

Article 181.2: Penalty

1. The applicable penalty range for the criminal offense of buying or selling votes is one to five years' imprisonment.
2. The court may impose a fine, as a principal penalty, upon a person convicted of buying or selling votes.

Article 182: Election Fraud

Article 182.1: Definition of Offense

A person commits the criminal offense of election fraud when he or she:

- (a) adds, subtracts, or deletes votes;
- (b) publishes election results that do not correspond with the actual voting results; or
- (c) in any other manner falsifies the results of an election.

Article 182.2: Penalty

The applicable penalty range for the criminal offense of election fraud is two to ten years' imprisonment.

Article 183: Threat to an Election Candidate

Article 183.1: Definition of Offense

A person commits the criminal offense of threat to an election candidate when he or she:

- (a) threatens or commits any other unlawful act against an election candidate;
- (b) with the intention of forcing him or her to withdraw his or her candidacy or to prevent him or her from exercising any activity legally permitted during an election campaign.

Article 183.2: Penalty

The applicable penalty range for the criminal offense of threat to an election candidate is two to ten years' imprisonment.