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Act

No. 31 of 1993

I assent

H. KAMUZU BANDA

PRESIDENT

13th December, 1993

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**An Act to make provision with respect to the conduct of elections for the election of members of Parliament and for the election of the President of the Republic and for matters ancillary thereto or connected therewith**

ENACTED by the Parliament of Malawi as follows—

- |             |   |
|-------------|---|
| Short title | 1. This Act may be cited as the Parliamentary and Presidential Elections Act, 1993.                               |
| Application | 2. This Act shall apply to the election of members of Parliament and the election to the office of the President. |

3. In this Act, unless the context otherwise requires—

Interpreta-  
tion

“ballot box” means the box into which a voter shall deposit the ballot paper or ballot papers corresponding to the candidate or candidates he has voted for in the election;

“ballot paper” means a rectangular sheet of paper for use by a voter in expressing his vote in an election;

“by-election” means the election of a member of the National Assembly to fill a seat in the National Assembly which has become vacant otherwise than by dissolution of Parliament;

“candidate” means any person who has been nominated under this Act as a candidate for election as a member of the National Assembly or for election to the office of President;

“Chief Elections Officer” means the Clerk of Parliament designated as Chief Elections Officer for the purposes of this Act under section 6;

“Commission” means the Electoral Commission established under section 30 of the Constitution and appointed in accordance with section 4 of this Act;

“constituency” means an area delimited as such under section 31 of the Constitution and section 5 (a) of this Act;

“Council” means the National Consultative Council established by the National Consultative Council Act, 1993;

“election” means a general election or a by-election;

“election officer” means the Chief Elections Officer and any officer subordinate to him and any other officer in the service of the Commission, including an officer appointed or designated as a registration officer, polling station officer, presiding officer and returning officer;

“election representative” means a person appointed by a candidate under section 35 to be the candidate’s representative for purposes of an election;

“general election” means an election consequent upon dissolution of Parliament for the election in accordance with this Act of members of the National Assembly and the President;

“independent candidate” means a candidate not sponsored by a political party;

“irregularity”, in relation to the conduct of an election, means non-compliance with the requirements of this Act;

“National Assembly” means the National Assembly constituted under section 19 of the Constitution;

“nomination day” means the day appointed by the Commission for the receipt of nominations of candidates for an election under this Act;

GN. 5/1993

“political party” means a political party registered under the Political Parties (Registration and Regulation) Act, 1993:

“polling day” means any day appointed by the Commission under section 36 (1) (c) and section 48 (1) (b), for the holding of a poll;

“polling station” means a place established as such under section 67;

“polling station officer” means a person appointed as such under section 68 (1);

“presiding officer” means a polling station officer designated as such under section 68 (2);

“Referendum” means the referendum held on 14th June, 1993, under the Constitution (Referendum on Malawi’s Political System) Regulations, 1993;

“registration” means the registration of voters in an election;

“the first general election” means the first general election contested by more than one political party following the Referendum;

“voter” means a person registered to vote in an election;

“voters register” means the register of voters established under section 22;

“voters registration certificate” means a certificate issued to a voter under section 24;

“voting booth” means a compartment at a polling station for screening a voter from view when he is making his choice or choices in the poll.

## PART II—THE ELECTORAL COMMISSION

Appointment  
of members  
of the  
Commission

4.—(1) The Electoral Commission (in this Act otherwise referred to as the “Commission”) shall be appointed with respect to every general election and shall consist of such number of persons as the President shall deem appropriate to appoint; and the President shall cause notice of the appointment of the Commission to be published in the *Gazette*:

Provided that for the first general elections members of the Commission shall be appointed by the President on the recommendation of the Council.

(2) The Commission shall have power to determine its own procedure.

(3) The Commission may appoint such number of its own committees as it considers necessary for the performance of its functions and may assign to any of such committees any of its functions, and every such committee shall—

(a) consist of a Chairman who shall be a member of the Commission and other persons who may or may not be members of the Commission;

(b) subject to the directions of the Commission, have power to determine its own procedure.

5. In addition to the broad functions conferred on the Commission by the Constitution, the Commission shall exercise general direction and supervision over the conduct of the general election in respect of which it is appointed and, without prejudice to the generality of such power, it shall have the following further functions—

Functions of  
the Com-  
mission

(a) subject to the Constitution, to determine the number of constituencies for the purposes of the general election in respect of which the Commission is appointed and to undertake or supervise the demarcation of boundaries of constituencies;

(b) to organize and direct the registration of voters;

(c) to devise and establish voters registers and ballot papers;

(d) to print, distribute and take charge of ballot papers;

(e) to approve and procure ballot boxes;

(f) to establish and operate polling stations;

(g) to take measures for ensuring that the election is conducted under conditions of complete freedom and fairness;

(h) to establish security conditions necessary for the conduct of the election in accordance with this Act;

(i) to promote through the media and other appropriate and effective means the civic education of the citizens concerning the election;

(j) to ensure compliance with this Act and generally to adopt measures necessary to guarantee that the election is free and fair.

6.—(1) The Clerk of Parliament and officers subordinate to him shall serve as election officers and shall be attached to the Commission and act in its service for the conduct of an election.

Election  
officers



(2) There may be seconded to the service of the Commission such number of other public officers as the Commission may request by writing to the Secretary to the President and Cabinet and a public officer so seconded shall perform his duties in relation to the conduct of the election solely under the directions of the Commission.

(3) The Clerk of Parliament shall while in the service of the Commission be designated as the Chief Elections Officer and, as such, he shall be the chief executive officer of the Commission and shall supervise the affairs thereof subject only to the general or special directions of the Commission.

Term of  
office of  
members  
of the  
Commission

7. A member of the Commission shall hold office from the date of his appointment to a date occurring thirty days after the publication in the *Gazette* of the national result of the general election but may sooner resign his office by notice in writing to the President:

Provided that all members of the Commission appointed with respect to one general election shall be called upon from time to time to exercise the authority of the Commission with respect to the conduct of a by-election to fill a vacancy that may arise before the next general election.

Independence  
of the  
Commission

8.—(1) In discharging the functions of the Commission, the Commission and every individual member thereof shall act, and strive to be seen to act independently of—

- (a) any public officer;
- (b) any organ of the Government;
- (c) any political party;
- (d) any candidate; or
- (e) any person whosoever or organization whatsoever,

but for the purpose only of accountability the Commission and every individual member thereof shall be answerable, and shall report directly, to the President on the overall fulfilment of the functions of the Commission.

(2) Upon assuming his office or immediately thereafter, every member of the Commission shall take oath before the Chief Justice in the prescribed form.

Funds

9.—(1) The funds of the Commission shall consist of such sums as Parliament shall appropriate for the purposes of the Commission and such other sums as may otherwise be received and accounted for by the Commission.

(2) The funds of the Commission shall be under the control of the Commission and all expenditure of the funds shall be in accordance with the directions of the Commission.

(3) The books of account of the Commission may be audited at any time as the Commission may direct by a professional auditor appointed by the Commission.

10. Members of the Commission, whether appointed by virtue of office or in a personal or other capacity, shall be paid and guaranteed such allowance as the Minister shall determine at the commencement of their tenure of office. Allowances

11. The Attorney General shall provide legal representation to the Commission in any court proceedings concerning appeals against its decisions on complaints about any aspect of the electoral process and shall also be competent to provide general legal advice to the Commission. Legal representation

12. The Commission shall publish a notice specifying—  
(a) the location of its principal office; and  
(b) its address or addresses, telephone numbers and other means of communication or contact with the Commission. Principal office, etc. of the Commission

13. The Commission shall establish its own publicity machinery and shall be free to communicate openly and equally with each political party or any candidate, person or organization. Publicity

14.—(1) It shall be the duty of every relevant or competent public officer and public or private entity to co-operate with the Commission in its activities and to contribute towards the success of an election and not to do anything that might hinder such process. Duty to co-operate

(2) It shall be the special duty of—

(a) all District Commissioners, in their respective districts, to give the Commission and its officers the support and collaboration deemed by the Commission or its officers to be necessary for the execution of the activities connected with the conduct of an election;

(b) officers-in-charge of police, in their respective areas of operation, to take all necessary measures for the maintenance of law and order and stability necessary for the conduct of an election and to protect and uphold the rights of all persons under this Act.

## PART III—REGISTRATION OF VOTERS

- Eligibility**      15. Every citizen of Malaŵi residing in Malaŵi and who, on or before the polling day, shall have attained the age of eighteen years shall be eligible to register as a voter in an election.
- Right and duty to register**      16. It shall be the right and the civic duty of every eligible citizen to present himself for registration as a voter and further he shall have the right to verify with the Commission or its officers that he has been registered and to request that any error or omission with respect to his registration be corrected.
- Duty to promote registration**      17. The Commission shall, in accordance with this Act, create the necessary conditions and take all necessary actions for promoting awareness among the citizens of Malaŵi of the need to register as a voter for the purpose of an election and of the need for their full participation in the election.
- Single registration**      18. A citizen eligible to register as a voter shall be registered only once.
- Place of registration**      19. A person shall be registered as a voter in the area where he ordinarily resides or in an area where he intends to vote.
- Temporary registration Officers**      20.—(1) The Commission may employ temporary staff, on such terms and conditions as it shall determine, as registration officers who shall register voters throughout Malaŵi.
- (2) No person shall be employed as a registration officer with respect to any local area of Malaŵi, unless—
- (a) he is a citizen of Malaŵi and has attained the age of eighteen years;
- (b) he has attained the minimum educational qualification of Junior Certificate of Education or its equivalent; and
- (c) he has knowledge of the language commonly spoken in the area.
- (3) Every registration officer shall, before commencing his duties, receive vocational training in the identification and registration of voters and generally in the requirements of this Act with respect to the registration of voters.
- (4) In the performance of their duties, registration officers shall be under the supervision of the Chief Elections Officer and such of the other election officers as he or the Commission shall designate for the purpose.

**21.—**(1) The Commission shall establish centres throughout every constituency in Malaŵi as places where voters are to be registered and for this purpose the Commission shall endeavour to adopt the centres established for the registration of voters in the last previously held poll in addition to establishing new centres.

Registration centres

(2) No form of propaganda campaign material or advertisement shall be exhibited at a registration centre or within a radius of one hundred metres of a registration centre.

**22.** Voters registers shall be in the prescribed form and the Commission shall procure sufficient copies thereof for the registration of voters throughout Malaŵi and for distribution to registration officers at every registration centre and for that purpose may adopt existing voters registers which shall, as necessary, be updated by registration officers with new registrations.

Voters registers

**23.** An eligible person wishing to be registered as a voter in an election shall in person state that he is not registered at any other registration centre and shall present to a registration officer sufficient and cogent proof of his eligibility and may do so by producing—

Evidence of a person's eligibility to vote

(a) a passport, driver's licence, even if expired, tax certificate or marriage certificate, an employment identity card or employment discharge certificate or a birth certificate or similarly authentic document of identity;

(b) written, verbal or visual testimony of—

(i) the chief, a village headman or a registered voter of the area; or

(ii) the registration officer.

**24.—**(1) Upon a registration officer being satisfied with proof of eligibility of a person to vote, he shall—

Registration and issue of voters registration certificate

(a) issue to that person a voters registration certificate in the prescribed form;

(b) register that person in the voters register by entering the particulars of that person as prescribed therein.

(2) If a voters registration certificate issued to a voter is lost, destroyed, defaced, torn or otherwise damaged, the voter shall notify the registration officer or other officer duly authorized in that behalf in writing giving proof thereof, and upon such officer being satisfied with such proof he shall issue to the voter a duplicate copy of that voter's original voters registration certificate with the words "DUPLICATE" clearly marked or printed thereon.

Updating  
of voters  
registers

25.—(1) In updating a voters register the registration officer shall do so by—

(a) adding the names and other prescribed particulars of the voters resulting from new registrations;

(b) drawing a line, without affecting legibility, over the particulars of the persons who are known to be deceased or who have lost eligibility to vote and indicating in the margin the reasons therefor.

(2) The registration officer making new entries in a voters register or deleting entries therefrom shall initial every such new entry or deletion.

(3) Upon the registration officer being satisfied with proof of loss of eligibility of a registered voter, he shall immediately up-date the voters register in accordance with the procedure under this section.

Initialling  
of pages in  
voters rolls

26. In the case of registration in a new voters register, the registration officer shall initial both sides of every page at a point where registration on the page ends.

Monitoring  
of registra-  
tion by  
political  
parties

27.—(1) Every political party contesting an election shall have the right to monitor the registration of voters and shall do so through its designated representatives assigned to a specified registration centre and whose names shall be notified in writing to the Commission, and in the absence of such notification by any political party it shall be presumed that such party does not desire to monitor the registration of voters at such registration centre.

(2) The Commission shall issue to every person designated as a representative under subsection (1) a document of identity which shall be in the prescribed form.

(3) There may be assigned to one registration centre more than one representative of a political party.

Rights and  
duties of  
representa-  
tives of  
political  
parties

28.—(1) Representatives of political parties shall have the following rights—

(a) to be treated with due respect and consideration by all persons administering the registration of voters and by the representatives of other political parties;

(b) to request and obtain information on activities relating to the registration of voters; and

(c) to submit, to the Commission, in writing complaints and appeals about any irregularities in the registration of voters.

(2) It shall be incumbent upon the representatives of political parties in exercising their rights under subsection (1)—

(a) to monitor the registration activities conscientiously and objectively;

(b) to co-operate in order to ensure that the registration activities proceed normally by avoiding unjustified interference in and obstacles to the work of registration officers;

(c) to refrain from submitting complaints or appeals in bad faith or with the purpose of paralysing the registration process; and

(d) to refrain from divulging any information about a voter or prospective voter obtained as a consequence of acting as a representative and which is not relevant to the registration process.

(3) In addition to political parties and their representatives any person eligible to be registered as a voter and any registered voter may submit to the Commission in writing complaints and appeals about any irregularity in the registration of voters.

(4) The Commission shall endeavour to determine every complaint or appeal relating to registration of voters before the polling day and to remedy any confirmed irregularity.

29. The period for the registration of voters shall be determined by the Commission and notified in the *Gazette*, being a period of not less than thirty days expiring not less than twenty-one days before the first polling day.

Period for  
registration  
of voters

30. At the close of registration, every registration officer shall sign off the voters register assigned to him and shall forward it for custody to the Chief Elections Officer or to such other officer as is designated by the Commission for the purpose and shall submit to such officer a summary of the total number of voters registered in the area assigned to him.

Closing of  
registration

31. A voters register shall be open to inspection, for purposes of verifying the entries therein, by voters, representatives of political parties and international observers, and for this purpose the Commission shall make copies of voters registers and post them for inspection at appropriate public places made known to the public.

Voters  
register  
open to  
inspection

PART IV—HOLDING OF A GENERAL ELECTION AND  
BY-ELECTIONS

*Division 1—General*

General  
election and  
by-election

32.—(1) A general election shall be held at such times as are required by the Constitution.

(2) When a member of the National Assembly dies or resigns, a new constituency is created, or the Speaker gives notice under the relevant provision of the Constitution that a seat of a member of the National Assembly has become vacant, a by-election shall be held.

(3) A candidate may stand for election as a member of the National Assembly or for election to the office of President either on the sponsorship of a political party or as an independent candidate, and the rights and duties conferred by this Act on political parties shall apply, *mutatis mutandis*, to an independent candidate as it applies to political parties.

(4) Subject to this Act, in a general election, the poll for election of members of the National Assembly may be taken simultaneously with the poll for election to the office of President.

Delay in  
publication  
of notice  
pending  
appeal

33. When a member of the National Assembly has been sentenced by a court to death or imprisonment for a term exceeding twelve months, is adjudged or declared by court to be of unsound mind or bankrupt, or has been convicted of any offence prescribed under this Act, it shall not be necessary for the Speaker to give notice that such member's seat has become vacant until the time for appeal against such decision has expired or, if there is an appeal, until the determination of that appeal.

Appointment  
of returning  
officers

34.—(1) The Commission shall appoint a returning officer with respect to every constituency who shall receive the nominations of candidates for election in that constituency as member of the National Assembly.

(2) For the purposes of subsection (1), the Commission may designate the District Commissioner as the returning officer in respect of every constituency in his District.

Election  
representative

35. Every candidate may appoint one person to be his election representative and notify in writing the returning officer of the constituency in which he is, or intends to be, a candidate of the name so appointed.

*Division 2—Nomination of Members of the National Assembly*

Procedure  
for  
commencing  
conduct of  
elections

**36.**—(1) Whenever a general election or a by-election is to be held, the Commission shall issue an order, notice of which shall be published in the *Gazette*—

(a) declaring—

(i) in the case of a general election, that an election be held throughout Malawi;

(ii) in the case of a by-election or by-elections, the constituency or constituencies in which an election is to be held;

(b) appointing the place, date and time for the receipt by the returning officer of the nominations of candidates, in respect of each such constituency;

(c) appointing the day or days on which a poll shall be taken if a poll becomes necessary in accordance with this Act.

(2) The date appointed under subsection (1) (b) shall be not less than fourteen days after the publication of the order.

(3) The period appointed under subsection (1) (c) during which a poll shall be taken shall commence not less than fourteen days after the nomination of candidates.

(4) Upon receipt of a copy of the order required by this section, the returning officer for each constituency named in the order shall proceed to hold an election in the manner prescribed by or under this Act.

**37.**—(1) On the day or days and at the time or times and place fixed for the nomination of candidates the returning officer shall attend in the open court at the place notified to receive the nomination of candidates and shall receive such nomination papers as may be tendered to him, and which appear to him to comply with this Act.

Nomination  
of  
candidates

(2) Subject to subsection (7), the nomination of every candidate shall—

(a) be made by means of a nomination paper in the prescribed form;

(b) be made by at least ten voters registered in the constituency in which the candidate intends to be a candidate, each of whom shall sign the nomination paper;

(c) be endorsed with the candidate's consent to nomination;

(d) if the candidate is to stand for, or to be sponsored by, a political party, specify that fact, together with the name of the political party and the name of the candidate or an abbreviation of the name of the candidate, and a distinctive



symbol, which the candidate wishes to appear on the ballot paper in conjunction with him; and

(e) in the case of an independent candidate, specify the name of the candidate or an abbreviation of the name of the candidate, and a distinctive symbol, which the candidate wishes to appear on the ballot paper in conjunction with him.

(3) Every nominated candidate shall produce to the returning officer evidence, satisfactory to the returning officer, identifying him as the person nominated.

(4) Where a nomination paper specifies the matters referred to in paragraph (d) of subsection (1), the nomination paper shall be countersigned by a person who is an office-bearer of the political party concerned and who has authority to certify that the candidate is to stand for that political party.

(5) The fact that subsequent to nomination the name of any person who nominated a candidate under subsection (2) (b) is struck off the voters register shall not invalidate the nomination of the candidate.

(6) No candidate may be nominated for election in more than one constituency or, in the case of a by-election, while he is a member of the National Assembly.

(7) A voter shall not be entitled to subscribe to more than one nomination paper.

Nomination  
paper and  
supporting  
documents

38.—(1) Every candidate or his election representative shall at the time of his nomination deliver to the returning officer—

(a) a nomination paper completed and executed in the prescribed form;

(b) evidence, or a statutory declaration by the candidate made before a magistrate or a commissioner for oaths, that the candidate—

(i) is a citizen of Malaŵi and has attained the minimum age required by the Constitution for election to the National Assembly; and

(ii) is able to speak and to read the English language well enough to take an active part in the proceedings of the National Assembly;

(c) evidence that he is registered as a voter in the constituency.

(2) The returning officer shall, if the candidate or his election representative so requests, examine the nomination paper and supporting documents of the candidate before they are tendered

and advise the candidate or his election representative whether in his opinion they are in order.

(3) The returning officer shall, at the earliest opportunity and in any case, before the close of the period allowed for nominations, advise the candidate or his election representative of any defect in the candidate's nomination paper or supporting documents and the candidate or his election representative may, before the close of such period, rectify the defect.

39. Where a nomination paper is delivered in conformity with this Part and it is not withdrawn, the candidate shall be deemed to stand nominated unless the returning officer is satisfied of the candidate's death or decides that the nomination paper is invalid on one of the following grounds, but on no other grounds, namely—

Invalid  
nominations

(a) that the description of the candidate is insufficient to identify him;

(b) that the nomination paper does not comply with this Act;

(c) that the nomination paper was not tendered within the time prescribed;

(d) that any supporting document required to accompany the nomination paper has not been lodged with the returning officer; or

(e) that the evidence delivered to the returning officer under section 37 (3) is insufficient.

40.—(1) If, after the close of the period allowed for nominations but before the polling day, the returning officer is of the opinion that—

Rejected  
nominations

(a) a candidate whose nomination paper has been lodged with him has not been duly nominated in accordance with this Act or is not qualified for election or has obtained nomination by fraud or false pretences;

(b) any symbol or abbreviation specified in respect of a candidate pursuant to paragraph (d) or (e) of section 37 (2) is indecent or obscene or is too complex or elaborate to be reproduced on a ballot paper or so closely resembles the symbol of any candidate contesting the election in the constituency concerned or the recognized symbol or abbreviation of any other candidate or of any political party, other than the political party, if any, for which the candidate concerned is standing or which is sponsoring him as to be likely to cause confusion; or

(c) where the nomination paper states that a candidate is to stand for or to be sponsored by a political party, there is reason to believe that that fact is not true; or

(d) the nomination paper lodged with the returning officer in respect of any candidate is for any other reason not in order; or

(e) the deposit referred to in section 45 was not lodged with a candidate's nomination paper; or

(f) a candidate is not qualified for election at that election; or

(g) a candidate has been duly nominated for election for another constituency,

the returning officer shall forthwith notify such candidate or his election representative giving the reasons for such opinion, and, if so requested by the candidate or his election representative, the returning officer shall draw up and sign a statement of the facts and his opinion based thereon and transmit it, together with the nomination paper and any certificate or affidavit which has been lodged with such nomination paper, to the Registrar of the High Court for hearing and decision by the High Court at the earliest opportunity; and a copy of the statement shall, at the same time, be delivered to the candidate or his election representative and to the Commission.

(2) If no request is made under subsection (1) the candidate shall be deemed not to have been duly nominated.

(3) The High Court may call for further information from the person making the request or from the returning officer.

(4) The High Court shall after determination of the matter direct the returning officer either to accept or to reject the nomination and the returning officer shall comply with such direction.

(5) Where any nomination has been referred to the High Court under the provisions of this section, the proceedings under sections 41, 42 and 43 shall be suspended pending determination of the matter.

(6) Without derogation from subsection (1), the returning officer shall not take the action under that subsection—

(a) solely on account of any minor variation between the name of any person as it appears on the nomination and as it appears on the voters register if the returning officer is reasonably satisfied that the variation is due to an error which is without significance;

(b) any other imperfection in the nomination paper if the returning officer is reasonably satisfied that there has been substantial compliance with this Part.

41. If at the end of the period allowed for nomination no candidate has been duly nominated for a constituency, the Commission shall by notice published in the *Gazette*, extend the period for the receipt by the returning officer of nominations to a date not later than seven days before the polling day.

No nomination of candidate

42. If at the end of the period allowed for nomination there shall be only one candidate duly nominated in a constituency, the returning officer shall publicly declare that candidate to be elected and shall immediately thereafter inform the Commission of the name of the elected candidate and the constituency for which he has been elected. Such candidate shall thereupon be a member of the National Assembly.

Procedure for uncontested election

43.—(1) When two or more persons have been duly nominated as candidates for election in any constituency, the returning officer in such constituency shall, as soon as practicable after the close of the period for nomination, publicly declare and give public notice that a poll is to be taken stating—

Procedure when poll to be held

(a) the names of the candidates in alphabetical order of surnames;

(b) the day or days and the times, as declared by the Commission under section 36, on which the poll shall be held; and

(c) the location of the polling station or stations.

(2) The returning officer may, with the consent of the Commission, alter the provisions of a public notice given under subsection (1) for the purpose of fulfilling the requirements of this Act and any such alteration shall be published in the same matter as the notice.

44.—(1) A vacancy in the membership of the National Assembly which exists otherwise than by reason of a dissolution of Parliament shall be published by the Speaker by notice in the *Gazette* stating the cause of the vacancy.

Special provisions with respect to by-elections

(2) If—

(a) within fourteen days of the publication of a notice referred to in subsection (1), the person to whom the notice relates has not presented a petition to the High Court seeking an order declaring that he has not ceased to be a member of the National Assembly; or

(b) after presenting a petition referred to in paragraph (a),

the petitioner by his own default does not prosecute his petition within fourteen days of presenting the petition;

(c) after hearing the petition, the High Court confirms the declaration of the Speaker,

the Registrar of the High Court shall forthwith give notice of that fact to the Speaker.

(3) If, after hearing a petition referred to in subsection (2), the High Court makes an order declaring that the petitioner has not ceased to be a member of Parliament, the Registrar of the High 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 High Court.

(4) The Attorney General shall be respondent on the hearing of a petition referred to in subsection (2).

Deposit on  
nomination

45.—(1) At the same time as the nomination paper for a candidate is lodged, there shall be deposited with the returning officer by or on behalf of the person nominated, such sum as may be fixed by the Commission.

(2) If a poll takes place for the constituency concerned, the sum deposited under subsection (1) shall be refundable to the payee, whether the candidate in respect of whom the sum was deposited is or is not elected in the poll, unless the number of valid votes cast for an unsuccessful candidate is less than five per cent of the total valid votes cast in the constituency in which case such sum shall be paid into the Consolidated Fund.

(3) If a poll for the constituency concerned does not take place, the sum deposited under subsection (1) shall be refundable to the payee.

Withdrawal  
of a  
candidate

46.—(1) Subject to this section, a duly nominated candidate for elections for a constituency may withdraw his nomination at any time before the polling day.

(2) A withdrawal of a candidate under subsection (1) shall be effected by means of a written notification to the returning officer, signed by the candidate personally, and the returning officer shall notify the Commission in writing.

(3) Where a candidate has withdrawn his nomination under this section the sum deposited by or on his behalf under section 45 shall be forfeited and paid into the Consolidated Fund.

(4) In the event of a candidate withdrawing his nomination under this section, the returning officer shall take all such steps as are reasonably practicable to ensure that—

(a) the withdrawal is brought to the attention of voters in the constituency; and

(b) the name of the candidate who has withdrawn is either omitted or deleted from all ballot papers.

47.—(1) If the returning officer of a constituency is satisfied that a duly nominated candidate for election in that constituency died before the close of the poll in that constituency, he shall stop all proceedings relating to the election in that constituency and forthwith notify the Commission of that fact.

Death of  
candidate

(2) Where—

(a) the Commission is satisfied that a duly nominated candidate for election for a constituency died before the poll commenced or, if the poll has commenced, before the close thereof;

(b) the proceedings relating to an election for a constituency have been stopped under subsection (1),

the Commission shall, so far as concerns that constituency, declare that all proceedings relating to the election in that constituency are void and that all proceedings relating to that election shall be commenced afresh in the same manner 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 such candidate or his election representative notifies the returning officer of the constituency in writing of his intention to remain a candidate.

*Division 3—Nominations for Election to the office of President*

48.—(1) For the purpose of election to the office of President, the Commission shall publish in the *Gazette* a notice declaring—

Notice of  
election to  
office of  
President

(a) a place or places at which, and a day or days, not less than fourteen and not more than twenty-one days after the day of publication of the notice, on which the Commission shall sit in the open for the purpose of receiving nominations of candidates for election to the office of President; and

(b) a day or days, not less than twenty-one and not more than forty-five days after the nomination day or last nomination day, as the case may be, fixed under paragraph (a), on which a poll shall be taken if a poll becomes necessary in accordance with this Act.

(2) The Commission may, by further notice published in the *Gazette*, alter any day, time or place fixed under subsection (1).

Nomination  
of candidates  
for election  
to office of  
President

49.—(1) The nomination of a candidate for election to the office of President shall be made by at least ten registered voters in each district each of whom shall sign a nomination paper in the prescribed form which—

(a) the candidate or his election representative shall lodge with the Commission;

(b) shall be countersigned by the candidate, endorsing thereby his acceptance of the nomination;

(c) shall, if the candidate is to stand for or to be sponsored by a political party, specify that fact, together with the name of the political party, the name of the candidate and an abbreviation of the name of the candidate and the distinctive symbol and other particulars approved by the Commission which the candidate wishes to appear on the ballot paper in conjunction with him;

(d) in the case of an independent candidate, shall specify the name of the candidate or an abbreviation of the name of the candidate and the distinctive symbol and other particulars approved by the Commission which the candidate wishes to appear on the ballot paper in conjunction with him; and

(e) shall be accompanied with evidence, or a statutory declaration by the candidate made before a magistrate or a commissioner for oaths, that the candidate is a citizen of Malawi and has attained the minimum age required by the Constitution for the election to the office of President.

(2) Where a nomination paper specifies the matters referred to in paragraph (c) of subsection (1), the nomination paper shall be countersigned by another person who is an office-bearer of the political party concerned and who has authority to certify that the candidate is to stand for or to be sponsored by that political party.

(3) Subject to this section, the provisions of sections 37 (2) and (3), 38 and 39 shall apply, *mutatis mutandis*, in relation to the nomination of candidates for election to the office of President, and references in that section to the returning officer shall be read as references to the Commission.

Deposit on  
nomination

50.—(1) At the same time as nomination papers are lodged by or on behalf of a candidate for election as President, there shall be deposited with the Commission by or on behalf of the person nominated, such sum as may be fixed by the Commission.

(2) Save as provided in section 52 (3), a deposit under subsection (1) shall, *mutatis mutandis*, be treated in the same manner as a deposit under section 45.

51. As soon as practicable after the sitting of the Commission to receive nominations of candidates for election to office of President under this Part, the Commission shall cause to be published in the *Gazette* and on the radio and in a newspaper in general circulation in Malawi the names of all candidates who have been validly nominated for election to the office of President in alphabetical order of surnames.

Publication  
of names of  
Presidential  
candidates

52.—(1) A nominated candidate for election to the office of President may, by notice in writing addressed to the Commission, withdraw his candidature at any time before the day on which the poll in an election to the office of President is to be taken.

Withdrawal  
of a  
candidate

(2) On receipt of a notice of withdrawal under subsection (1), the Commission shall cause the withdrawal to be published in the *Gazette* and on the radio and in a newspaper in general circulation in Malawi.

(3) Where a candidate for election as President has withdrawn his nomination under this section, the sum deposited by or on his behalf under section 50 shall be forfeited and paid into the Consolidated Fund.

53. If at the end of the period allowed for nomination for election to the office of President no candidate has been duly nominated for election to the office of President, the Commission shall by notice published in the *Gazette* extend the period for the receipt by the Commission of nominations.

No nomination  
of candidate  
for election to  
office of  
President

54. Where—

(a) no candidate for election to the office of the President has been validly nominated at the expiry of the time fixed for lodging nomination papers with the Commission; or

When fresh  
nominations  
are to be  
held

(b) no candidate nominated for election to the office of President is qualified in accordance with the Constitution for election as President; or

(c) a candidate nominated for election of President dies on or before the day on which the poll in the election is to be taken; or

(d) a candidate nominated for election to the office of President who would otherwise have been entitled to be declared duly elected as President dies after the poll has begun in the election to the office of President, but before he has been declared duly elected as President, the Commission



shall, by notice published in the *Gazette*, declare that all proceedings relating to the election to the office of President are void and that proceedings shall be immediately commenced afresh in accordance with this Act.

Procedure  
when poll  
to be held  
for election  
to office of  
President

55. If two or more persons have been duly nominated as candidates for election to the office of President the Commission shall, as soon as practicable after the close of the period for nomination give public notice that a poll is to be taken and such notice shall state—

(a) the names of the candidates in alphabetical order of surnames;

(b) the day or days and the times on which the poll shall be held as determined by the Commission under section 48 (1) (b); and

(c) the location of the polling stations.

(2) The Commission may, for the purpose of fulfilling the requirements of this Act, alter the provision of a public notice given under subsection (1) and any such alteration shall be published in the same manner as the notice.

#### PART V—CAMPAIGNING

Campaigning  
by political  
parties

56.—(1) All political parties shall have the right to campaign in an election.

(2) Campaigning by or in the name of any political party shall not be conducted in any public place unless the political party has notified the District Commissioner in writing, with a copy of such notification to the officer-in-charge of Police.

(3) The District Commissioner shall stamp every notification he has received under subsection (2) with his official date stamp showing the date the notification was received by him.

(4) Where two or more political parties have given notification under subsection (1) to hold a public meeting at the same venue, the political party whose notification was first received by the District Commissioner shall be the party entitled to hold the public meeting at such venue.

Period of  
campaigning

57. For the purposes of this Act the period of campaigning in public by every political party under this Part shall be a period of two months closing forty-eight hours before the opening of the poll on the first polling day:

Provided that in the case of the first general election such period shall be of any duration closing forty-eight hours before the opening of the poll on the first polling day.

**58.** Every public officer and public entity or authority shall give and be seen to give equal treatment to all political parties to enable each political party to conduct its campaign freely.

Equal  
treatment  
of political  
parties

**59.** Every political party and every representative, member or supporter thereof shall enjoy complete and unhindered freedom of expression and information in the exercise of the right to campaign under this Act and no person shall, during or after the period of campaigning, be subjected to any criminal prosecution for any statement he made or any opinion he held or any campaign material he produced, published or possessed while campaigning in the election.

Freedom of  
expression  
and  
information

**60.** Subject only to section 56 (2), every political party and any representative, member or supporter thereof shall, either alone or in common with others, enjoy complete and unhindered freedom of peaceful assembly in campaigning in any election.

Freedom  
of assembly

**61.—**(1) Notwithstanding guarantees of freedom of expression, information and assembly under this Act, no person shall in campaigning in an election use language which is inflammatory, defamatory or insulting or which constitutes incitement to public disorder, insurrection, hate, violence or war.

Ethical  
norms during  
campaigning

(2) The Commission may prescribe a code of conduct to be complied with by every political party in conducting its campaign in an election.

**62.** No person shall hold a campaign meeting under this Act in or within the premises of—

Prohibited  
places for  
campaigning

(a) military units or police stations;

(b) public institutions and workplaces during normal working hours;

(c) educational institutions during periods of classes.

**63.—**(1) Every political party shall have the right to have the substance of its campaign propaganda reported on radio news broadcasts of the Malaŵi Broadcasting Corporation and in any newspaper in circulation in Malaŵi:

News  
broadcasts  
and reports

Provided that in the case of news broadcasts by the Malaŵi Broadcasting Corporation—

(a) the content of the news shall be professionally determined by the Malaŵi Broadcasting Corporation;

(b) the Malaŵi Broadcasting Corporation shall maintain neutrality in the manner of reporting the news of the campaign propaganda of political parties and generally in its commentaries;

(c) the Commission shall monitor such news broadcasts and shall ensure equal news coverage of the campaigning by all political parties;

(d) no political party or candidate shall be entitled to make commercial advertisement for its campaign.

(2) The Commission may, by arrangements with the Malaŵi Broadcasting Corporation, allocate time on the radio during which political parties may be allowed to speak in campaigning for an election and the Commission shall allocate equal time to every political party.

(3) For the purposes of this section, "campaign propaganda" means any activity, statement or any other form of expression aiming directly or indirectly at promoting votes for any candidate or political party contesting in an election.

Publication  
of books,  
pamphlets,  
etc.,  
Cap. 21:01

64. During the campaign period any political party may publish campaign materials in the form of books, booklets, pamphlets, leaflets, magazines or newspapers and shall, in any such publication, specify particulars sufficient to identify the political party.

Campaign  
posters

65. The District Commissioner shall designate places or spaces in parts of his district on which may be posted or affixed campaign materials of political parties and every political party shall be entitled to equal access to such place or space.

Campaign  
financing

66. Every political party may, for the purpose of financing its campaign, appeal for and receive voluntary contributions from any individual or any non-governmental organization or other private organization in or outside Malaŵi.

#### PART VI—POLLING STATIONS

Polling  
stations

67. (1) The Commission shall establish polling stations throughout the Republic and there shall be at least one polling station for every registration centre established under section 21.

(2) All polling stations shall be established and located in public buildings, including schools, community or social halls, administrative offices of the Government or local authorities, but not—

(a) at a military unit or police station;

(b) in a residential building;

(c) in a building occupied by a political party;

(d) in premises where alcoholic drinks are ordinarily sold or consumed;

- (e) places of worship or dedicated to worship; and
- (f) hospitals or other health centres.

(3) The Commission shall, before the polling day, publish in the *Gazette* and in more than one issue of a newspaper in general circulation in Malaŵi and by radio announcements and by any other appropriate means the names of all places throughout Malaŵi at which polling stations have been established.

**68.**—(1) The Commission shall appoint polling station officers in its service whose duty shall be to administer the proceedings at polling stations, including more particularly the casting of votes, and to count the votes cast at polling stations.

Polling  
station  
officers

(2) The Commission shall post at every polling station at least five polling station officers one of whom the Commission shall designate as the presiding officer for that polling station and at least one of whom shall be a person able to speak the language commonly spoken in the area of the polling station.

(3) Polling station officers may be appointed from amongst persons who served as registration officers and every person appointed as a polling station officer shall receive vocational training in his duties.

**69.** Every polling station officer shall, on the polling day, report for work at the polling station not later than thirty minutes before the opening time for the casting of votes at that polling station and at any given time of the polling day there shall be a majority of polling station officers attending to their business at the polling station.

Working  
hours for  
polling  
station  
officers

**70.** The Commission shall ensure, in due time, that polling station officers at every polling station are supplied with all necessary items, namely—

Work items  
for polling  
station  
officers

(a) an authenticated copy of the voters register of the voters registered at the centre served by the polling station;

(b) the ballot papers and accompanying envelopes for use by voters in casting their votes;

(c) the ballot boxes;

(d) the seals, sealing wax and envelopes for the votes;

(e) indelible ink;

(f) record sheets for the record required under section 93;

(g) a special container to be positioned in the polling booth into which a voter shall deposit the ballot paper he has discarded;

(h) a lamp or lamps to be lit and used for counting votes at the close of the poll;

(i) a log book in which formal complaints under section 89 shall be recorded:

Security  
of work  
items at  
polling  
station

**71.** Presiding officers at polling stations and, in general, the Commission shall be responsible for creating and guaranteeing all necessary and indispensable conditions for the custody, conservation, security and inviolability of the items specified in section 70, including more particularly the ballot papers and ballot boxes.

Monitoring  
of voting  
by political  
parties

**72.—(1)** Every political party shall have the right to monitor the voting process at polling stations and shall do so through its designated representatives who shall be notified to the Commission in writing specifying their names and the polling stations to which they are to be assigned and in the absence of such notification by any political party it shall be presumed that the political party does not desire to monitor the voting process at that polling station.

**(2)** The Commission shall issue to every person designated as a representative of a political party under subsection (1) a document of identity in the prescribed form.

Rights and  
duties of re-  
presentative  
of political  
Parties

**73.** Representatives of political parties shall have—

(a) the following rights—

(i) to be present at the polling stations and to occupy the nearest seats or positions to the polling station officers so as to be able to monitor all the operations relating to the casting and counting of votes;

(ii) to verify and inspect, before the beginning of the casting of the votes, the ballot boxes and the polling booths;

(iii) to request and obtain from the polling station officers any information which they consider necessary relating to the voting process and the counting of the votes;

(iv) to be consulted about any question raised on the operation of the polling station whether during the casting or the counting of the votes;

(v) to consult the voters registers at any time;

(b) the following duties—

(i) to act conscientiously and objectively in the exercise of their rights under this section;

(ii) to co-operate with polling station officers in the operations relating to the casting and counting of votes;

- (iii) to refrain from interfering unjustifiably and in bad faith with the duties of the polling station officers so as not to disturb the process of casting and counting the votes;
- (iv) to maintain the secrecy of the ballot.

#### PART VII—THE VOTE AND THE VOTING PROCESS

74.—(1) The right of a person to vote in the general elections shall be exercised individually by him and he shall be required to be physically present. Characteristic of the vote

(2) Voting shall be by secret ballot.

(3) A voter shall be entitled to cast his vote only once and one person shall have one vote.

75.—(1) Subject to subsection (2), a person shall be allowed to exercise his right to vote at a polling station located at the registration centre where he is registered. Place where to cast the vote

(2) If it is not possible for a person to vote at a polling station located at the registration centre where he is registered, the registration officer of that centre or other duly authorized officer may, on the request of such person, grant him written authorization in the prescribed form to vote at a polling station located in the place where he will be present on the polling day and in that case the polling station officers at such other polling station shall record in the manner prescribed by the Commission instructions in writing his name, the number of his voters registration certificate and the place of his registration:

Provided that the registration officer or other authorized officer may at his sole discretion refuse to grant the request.

76.—(1) The Commission shall arrange for the printing in sufficient quantities of distinctly identifiable ballot papers for— Ballot papers and accompanying envelopes

(a) each candidate for election as member of Parliament; and

(b) each candidate for election as President,

on which shall be printed clearly and legibly his name or an abbreviation thereof and his election symbol or the election symbol of his political party and such other particulars as the Commission may determine to identify him distinctly from other candidates.

(2) In addition to the ballot papers as required under subsection (1), the Commission shall procure specially printed envelopes for use by voters in casting their votes in accordance with the requirements of section 85.

Voting  
booths

77. The Commission shall establish one voting booth or more at each polling station and a voting booth shall be constructed in such a way as to screen a voter from observation when he is selecting and discarding ballot papers according to his choice consistent with the doctrine of secret ballot.

Ballot  
boxes

78.—(1) The Commission shall procure ballot boxes of suitable material, specification and design for use in the casting of votes by voters.

(2) Subject to satisfying the requirements of this Act, on the polling day the presiding officer of a polling station shall position in respect of each voting booth at that polling station one ballot box in such a way that when voters cast their votes in the ballot box they shall do so in full view of the polling station officers and other officials present thereat.

Right of  
employees  
to be  
released  
for voting

79. Notwithstanding any provision to the contrary in any contract of employment, all persons in paid employment, including those working by shift, shall have the right to be released for the necessary time to exercise their right to vote.

Hours of  
voting

80. On the polling day voting shall begin at 6 o'clock in the morning and close at 6 o'clock in the evening, but before voting begins the presiding officer, together with the other polling station officers and representatives of political parties, shall verify that there are no irregularities with the voting booth and the working documents of the polling station officers and, shall, in particular, exhibit in front of all present the ballot box to verify that it is empty after which the ballot box shall be closed and sealed.

Order of  
voting

81. Upon verification in accordance with section 80 that there are no irregularities, the first persons to be allowed to vote shall be the presiding officer, the other polling station officers, representatives of political parties and all officers responsible for ensuring order and security at the polling station after whom all other persons shall vote according to the order of their arrival at the polling station and, to this end, they shall form a line; but subject thereto, the presiding officer shall exercise general powers for keeping order at the polling station and for regulating the number of persons to be admitted to vote at any time and may, if circumstances so require, use his discretion to allow certain persons to vote inconsistently with the order of priority required by this section.

Continuity  
of the  
voting  
process

82. Subject to section 83, voting at every polling station shall continue uninterrupted until closed.

**83.** Voting at any polling station may be adjourned to another day to be fixed by the Commission if—

Adjourn-  
ment in  
certain  
cases

(a) the polling station officers are unable to assemble at that polling station in accordance with this Act;

(b) there occurs some commotion which causes voting to be interrupted for more than three hours; and

(c) in the area where the polling station is located there has occurred some public disaster or a serious disturbance of public order, not being the death of any person, which affects the voting.

(2) Where voting has been adjourned to another day under subsection (1)—

(a) the hours of voting on that day shall be the same as for the original day;

(b) the voting process shall be conducted afresh and not as continuing from the original day; and

(c) the votes cast on the original day shall be null and void and shall be classified as such in the records of that polling station prepared under section 93.

**84.—**(1) No form of propaganda, campaign material or advertisement shall be exhibited inside a polling station or within a radius of one hundred metres outside a polling station.

Prohibited  
presence,  
etc., at  
polling  
stations

(2) Unless his presence is otherwise permitted under this Act, no person shall be allowed while voting continues within the premises of a polling station or to remain within the premises of a polling station if—

(a) he is not a registered voter; and

(b) he has already voted at that polling station or at any other polling station.

(3) An agent of a media organization shall be entitled to be present at a polling station during polling and for that purpose every such agent shall identify himself to the polling station officers by presenting his credentials from the organization he represents.

(4) No person shall be present at a polling station in the capacity of a member of the armed forces or the police or as a member of any paramilitary force or a uniformed organization, unless he is employed in the service of the Commission or has been invited by the presiding officer for purposes of keeping order.



Require-  
ments for  
exercising  
the right  
to vote

Manner of  
casting  
the vote

(5) The presiding officer shall take all necessary steps to effectively bar or expel from within a radius of one hundred metres of a polling station any person who is evidently drunk and disorderly or is carrying a weapon of any kind or is disturbing the order or the peace at the polling station.

85. For a person to be allowed to vote he must first present to the polling station officers his voters registration certificate and must not yet have exercised his right to vote.

86.—(1) To be able to cast a vote at any polling station, a voter shall present himself to the polling station officers at the first desk as he approaches the polling station and hand to them his voters registration certificate whereupon the polling station officers shall proceed to verify his identity by examining the voters register.

(2) If the polling station officers are satisfied with the identity of a voter in accordance with subsection (1), they shall—

(a) mark his voters registration certificate and record his name and registration number and hand back the certificate to him;

(b) dip the right index finger of the voter in indelible ink provided for the purpose to the polling station officers after which the presiding officer or other polling station officer authorized in that behalf shall hand to the voter one ballot paper for each candidate in the constituency for election as member of Parliament and one specially printed envelope for use by the voter in accordance with subsection (3) and direct the voter to the voting booth for the poll for election of a member of Parliament.

(3) The voter shall, while in the voting booth enclose in the envelope handed to him with the ballot papers the ballot paper corresponding to the candidate whom he favours for election as member of Parliament for the constituency and discard the other ballot papers into a container positioned in the voting booth and shall then emerge from the voting booth and cast, in full view of the polling stations officers and other officials present, the envelope in the ballot box positioned thereat for the poll for election of a member of Parliament.

(4) After a voter has cast his vote in accordance with subsection (3) with respect to the election of a member of Parliament, he shall immediately be led to the next desk of polling station officers who, on verifying that the voter has had his right index finger dipped in indelible ink, shall dip the voters left index finger in indelible ink and hand to him one ballot paper for each candidate for election to the office of President and one

specially printed envelope for use by the voter in accordance with subsection (5) and then direct the voter to the voting booth for the poll for election to the office of President.

(5) The voter shall, while in the voting booth for the poll for election to the office of President, enclose in the envelope handed to him with ballot papers under subsection (4), the ballot paper corresponding to the candidate whom he favours for election to the office of President and discard the other ballot papers into a container positioned in the voting booth and shall then emerge from the voting booth and cast, in full view of the polling station officers and other officials present, the envelope in the ballot box positioned thereat for the poll for election to office of the President.

87. A voter who is blind or is affected by disease or other physical disability may vote accompanied by another registered voter of his own choice or, failing such voter, by a polling station officer who shall assist such person in casting his vote and shall act faithfully to the wish expressed by such person and with absolute secrecy regarding the vote cast by such person.

Voting  
by blind  
and disabled  
persons

88.—(1) A vote cast is null and void if—

- (a) the ballot paper has been torn into two or more parts; or
- (b) has been classified as such pursuant to section 83 (2) (c);
- (c) the envelope used for casting the vote contains two or more ballot papers.

Null and  
void votes

(2) A null and void vote shall not be regarded as valid and shall not be counted in determining the results of the elections.

89.—(1) In addition to representatives of political parties, any voter present at a polling station may raise doubts and present in writing complaints relating to the voting at the polling station and shall have the right to obtain information from the polling station officers and from relevant documents available at the polling station.

Doubts and  
complaints

(2) No polling station officer shall refuse to receive a complaint presented to him under subsection (1) and shall initial every such presentation and annex it as part of the official record of the polling station.

(3) Any presentation received by polling station officers under this section shall be deliberated upon among, and be resolved by, the polling station officers who may, if necessary in their opinion, postpone such deliberation or resolution until the end of the voting process to enable the process to proceed.

## PART VIII—DETERMINATION OF RESULTS OF THE ELECTIONS

Unused  
ballot papers

90. At the close of the poll at any polling station, the presiding officer shall proceed by first collecting together and separately all unused ballot papers and placing them in a separate envelope provided to him for the purpose and then sealing the envelope and initialling or stamping it over the sealed area.

Classifi-  
cation of  
votes cast

91. For the purposes of determining the results of the elections at a polling station and, in particular, in counting the votes thereat, the votes cast at a polling station shall be separately classified into—

(a) null and void votes;

(b) votes for each of the candidates for election as members of Parliament;

(c) votes for each of the candidates for election to the office of the President.

Opening of  
ballot  
box and  
counting  
of votes

92. After the close of the poll at any polling station, and only thereafter, the presiding officer shall, in the presence of other polling station officers and representatives of political parties if any be present, open the ballot box and order the counting of the votes to proceed separately according to a procedure entailing the polling station officers—

(a) picking out of the ballot box one envelope at a time and then opening the envelope and displaying the ballot paper or papers to all present and announcing aloud the classification of the vote as specified in section (91);

(b) recording on a sheet of paper provided to the polling station officers for the purpose, showing the classification of votes, the votes cast for each classification;

(c) displaying the already announced ballot papers and separating them into lots corresponding to each classification; and

(d) announcing, through the presiding officer, the number of votes cast at the polling station under each classification.

Record of  
the polling  
process

93.—(1) The presiding officer shall cause to be prepared by the polling station officers—

(a) a record of the entire polling process at his polling station containing—

(i) the full particulars of the polling station officers and representatives of political parties;

(ii) the total number of voters;

(iii) the total number of votes for or under each classification of votes;

- (iv) the number of unused ballot papers;
- (v) the number of ballot papers which have been the subject of complaints, if any;
- (vi) the discrepancies, if any, between votes counted and the number of voters;
- (vii) the number of complaints and responses thereto and decisions taken thereon by the polling station officers;
- (viii) any other occurrence which the polling station officers consider to be important to record; and

(b) a brief summary of the final result, and such record and summary shall be legibly signed by the presiding officer and each of the other polling station officers and, if any be present, at least one representative of each political party.

(2) Representatives of political parties at a polling station shall be entitled to a copy of the duly signed summary of the final result of the poll at that polling station.

(3) The presiding officer shall post at the polling station a copy of the duly signed summary of the final result of the poll at that polling station.

**94.** The presiding officer of a polling station shall, with all dispatch, deliver to the office of the District Commissioner of his district under conditions of absolute security against loss, tampering or interference—

Delivery of ballot papers, etc., from polling stations

- (a) the record prepared under section 93;
- (b) all the ballot papers collected in separate lots corresponding to the classification under which they were counted;
- (c) all unused ballot papers; and
- (d) all voters registers and other work items provided to that polling station.

**95.—**(1) On receipt of records from polling stations, the District Commissioner or an officer of the Commission duly authorized in that behalf shall, at the office of the District Commissioner, compile the result of the elections in his district on the basis of the duly signed summaries received with such records and shall prepare, on the appropriate sheets in the prescribed form provided for the purpose by the Commission, a record in respect of each constituency in the district and also in respect of the entire district showing—

Compilation of the district result of the elections

- (a) the total number of persons who registered as voters;
- (b) the total number of persons who voted;

(c) the total number of votes for or under each classification of votes in accordance with section 91;

(d) the discrepancies, if any, between the votes counted and the number of persons who voted; and

(e) the complaints, if any, received by him and his decisions thereon.

(2) Representatives of political parties duly designated for the purpose, shall be entitled to observe the entire procedure followed at the office of the District Commissioner in compiling the district result of the elections under subsection (1).

(3) The record prepared under subsection (1) shall be legibly signed by the District Commissioner or other officer supervising the compilation thereof and, if any be present, by at least one representative of a political party which shall in addition, be entitled to receive a copy of the record.

(4) The District Commissioner or an officer of the Commission duly authorized in that behalf shall publicly announce the result of the election in each constituency and in the entire district in accordance with the record prepared under subsection (1).

(5) The District Commissioner or a duly authorized officer of the Commission shall, with all dispatch, deliver to the Chief Elections Officer under conditions of absolute security against loss, tampering or interference—

(a) the record prepared under subsection (1); and

(b) all items received from all polling stations in the district concerned.

Determina-  
tion of the  
national  
result of a  
general elec-  
tion

**96.**—(1) The Commission shall determine and publish the national result of a general election based on the records delivered to it from the districts and polling stations.

(2) The determination of the national result of a general election shall begin immediately after the Commission has received records from all districts and shall, subject only to subsection (3), continue uninterrupted until concluded.

(3) If a record from any district or other element necessary for the continuation and conclusion of the determination of the national result of the election is missing, the Chairman of the Commission shall take necessary steps to rectify the situation and may, in such case, suspend the determination for a period not exceeding twenty-four hours.

(4) Representatives of political parties designated in writing to the Commission shall be entitled to observe the determination of the national result of the election.

(5) Subject to this Act, in any election the candidate who has obtained a majority of the votes at the poll shall be declared by the Commission to have been duly elected.

97. At the beginning of determining the national result of a general election, the Commission shall take a decision on any matter which has been a subject of a complaint and shall examine the votes which have been classified as null and void and may affirm or correct the determination thereof at the polling stations and at the offices of District Commissioners but without prejudice to the right of appeal conferred under section 114.

Analysis of complaints, etc., prior to determination of the national result

98. The Commission shall summarize its determination of the national result of a general election in a written record indicating—

Records of the national result of a general election

(a) the national result of the election as determined;

(b) the complaints and responses thereto and the decisions taken on them,

and the Chairman of the Commission shall legibly seal the national result of the election by signing the summary and every political party shall be entitled to receive a signed copy of the summary.

99. The Commission shall publish in the *Gazette* and by radio broadcast and in at least one issue of a newspaper in general circulation in Malawi the national result of an election within eight days from the last polling day and not later than forty-eight hours from the conclusion of the determination thereof and shall, in such publication, specify—

Publication of the national result

(a) the total number of voters registered for the election;

(b) the total number of voters who voted;

(c) the total number of null and void votes; and

(d) the total number of valid votes cast for each classification of votes as specified in section 91.

#### PART IX—ELECTION PETITION IN RESPECT OF ELECTION TO OFFICE OF PRESIDENT

100.—(1) A complaint alleging an undue return or an undue election of a person to the office of President by reason of irregularity or any other cause whatsoever shall be presented by way of petition directly to the High Court within forty-eight hours, including Saturday, Sunday and a public holiday, of the

Election petition in respect of election to office of President

declaration of the result of the election in the name of the person—

(a) claiming to have had a right to be elected at that election; or

(b) alleging himself to have been a candidate at such election.

(2) In proceedings with respect to a petition under subsection (1), the Commission shall be joined as respondent.

(3) If, on the hearing of a petition presented under subsection (1), the High Court makes an order declaring—

(a) that the President was duly elected, such election shall be and remain valid as if no petition had been presented against his election; or

(b) that the President was not duly elected, the Registrar of the High Court shall forthwith give notice of that fact to the Commission which shall publish a notice in the *Gazette* stating the effect of the order of the High Court.

(4) Pursuant to an order of the High Court under subsection 3 (b) declaring that the President was not duly elected, a fresh election to the office of President shall be held in accordance with this Act.

(5) A declaration by the High Court under subsection (2) (b) shall not invalidate anything done by the President before that declaration.

#### PART X—INTERNATIONAL OBSERVATION

Meaning of  
international  
observation

**101.** For the purposes of this Act, international observation means the verification of the various stages of the election by international organizations, non-governmental organizations, foreign governments and foreign personalities duly recognized for the purpose in accordance with this Part.

Scope of  
international  
observation

**102.** International observation shall consist of the following activities—

(a) to verify and monitor the impartiality and the functioning of the Commission and its officers in conformity with this Act;

(b) to verify and monitor the impartiality and legality of the decisions taken by the Commission and its officers in settling disputes;

(c) to verify and monitor the registration of voters;

(d) to observe the course of the campaigning for elections;

- (e) to verify and monitor the voting process;
- (f) to verify and monitor the determination of the results of the elections at all stages of determination;
- (g) to observe access to and the use of the media.

(2) Any irregularities noted by international observers shall be reported to the Commission or to the competent officers of the Commission and the Commission or such officers shall examine the activities reported as irregularities and shall, where the irregularities are confirmed, take corrective measures necessary to bring the elections into conformity with this Act.

**103.** International observation shall begin with the appointment of the Commission and end with the determination of the national result of the election or the settlement thereafter of all election disputes.

Beginning  
and end  
of  
international  
observation

**104.** It shall be the duty of the Commission, every officer thereof and every competent public officer or other competent authority in Malaŵi to co-operate with international observers in their role and to offer to them the guarantees and other facilities necessary to fulfil their role.

Collabora-  
tion by  
competent  
authorities

**105.** The Commission may send invitations for international observation and may do so on its own initiative or on request by a political party or by any government, organization or person competent under this Act to undertake international observation.

Invitation  
to interna-  
tional  
observers

**106.—(1)** For purposes of recognition under this Act, international observers shall be categorized as follows—

Categories  
of observers

- (a) observers from the United Nations Organization and its agencies, the Organization of African Unity and its agencies, the Commonwealth Secretariat and other international organizations;
- (b) observers from non-governmental organizations constituted and operating in any foreign country;
- (c) observers from foreign governments; and
- (d) individual observers.

(2) A person shall not be recognized as an international observer unless—

- (a) in the case of the first three categories specified in sub-subsection (1), he has been designated by the relevant organization or foreign government in writing to the Commission disclosing his particulars and credentials;



(b) in the case of the category of individual observers, he is a person of recognized international experience and prestige.

Recognition and identification of international observers

**107.** Recognition of international observers on arrival in Malaŵi shall be granted by the Commission which, for that purpose, shall—

(a) establish adequate administrative procedures for the proper and timely recognition of the observers;

(b) devise an identity card for each category of international observers and issue to every recognized observer the card corresponding to his category;

(c) devise a common and easily identifiable badge for all international observers and issue the badge to every recognized international observer.

Compulsory use of identity cards and the common badge

**108.** Every international observer recognized under this Act shall, while exercising his functions, use the identity card and the badge issued to him.

Rights of international observers

**109.** International observers shall, in Malaŵi, have the right—

(a) to obtain a multiple entry visa to enter Malaŵi for the duration of the period of international observation as specified in section (103);

(b) to have unimpeded access to all election events and to observe all aspects of the civic education programmes, the registration of voters, the nomination of candidates, the campaign, the voting and the counting of votes at all stages;

(c) to enjoy freedom of circulation throughout Malaŵi;

(d) to seek and obtain information on the official organs involved in the conduct of an election and regarding the election itself;

(e) to communicate freely with any political party and with any organization or person;

(f) to have access to information transmitted by or to the Commission and its officers;

(g) to have access to complaints and responses about any occurrence or matter relating to the conduct of elections;

(h) to open offices within Malaŵi for the performance of their functions;

(i) to communicate any specific concerns they may have to members and officers of the Commission; and

(j) to communicate to the local and international media.

**110.**—(1) International observers shall have the following obligations—

Obligations  
of  
international  
observers

(a) to exercise their role with impartiality, independence and objectivity;

(b) to respect the Constitution and the laws of Malaŵi;

(c) not to interfere in, or to impede, the normal course of the election;

(d) to maintain the secrecy of the ballot;

(e) to provide to the Commission copies of written information and statements which they have produced; and

(f) to return the identity cards, the badge and any other identification material issued to them by the Commission after the end of their mission as observers.

(2) The Commission may revoke the accreditation of any international observer who persistently violates the obligations laid down in subsection (1) and thereupon his status as an international observer shall cease.

**111.** Diplomats accredited to Malaŵi who are designated and recognized as international observers under this Act shall exercise their functions as such international observers without prejudice to their status and positions as such diplomats.

Position  
of  
diplomats

**112.** International observers may operate separately or jointly with other international observers of the same or different categories.

Separate  
and joint  
operation  
of  
international  
observers

#### PART XI—COMPLAINTS AND APPEALS

**113.** Save as otherwise provided in this Act, any complaint submitted in writing alleging any irregularity at any stage, if not satisfactorily resolved at a lower level of authority, shall be examined and decided on by the Commission and where the irregularity is confirmed the Commission shall take necessary action to correct the irregularity and the effects thereof.

Commission  
to decide  
on  
complaints

**114.**—(1) An appeal shall lie to the High Court against a decision of the Commission confirming or rejecting the existence of an irregularity and such appeal shall be made by way of a petition, supported by affidavits of evidence, which shall clearly specify the declaration the High Court is being requested to make by order.

(2) On hearing a petition under subsection (1), the High Court—

(a) shall subject to subsection 3, make such order or orders as it thinks fit;

(b) in its absolute discretion, may or may not condemn any party to pay cost in accordance with its own assessment of the merits of the complaint.

(3) An order of the High Court shall under subsection (2) not declare an election or the election of any candidate void except on the following grounds which are proved to the satisfaction of the court—

(a) that voters were corruptly influenced in their voting contrary to any provision of this Act; or had their ballot papers improperly rejected, or voted more than once;

(b) that persons not entitled to them were improperly granted ballot papers; or

(c) that persons entitled to them were improperly refused ballot papers:

Provided that the court shall not declare an election void, after proof of any ground in paragraphs (a), (b) or (c), if it is satisfied that the number of votes involved could not have affected the result of the election;

(d) non-compliance with this Act in the conduct of the election:

Provided that, if the court is satisfied that any failure to comply with this Act did not affect the result of the election, it shall not declare the election void;

(e) that the candidate was at the time of his election a person not qualified for election or that he was not properly nominated, or that a duly qualified candidate had his nomination improperly rejected by the returning officer.

(4) The court shall have power to direct scrutiny and recount of votes if it is satisfied, during proceedings on an election petition, that such scrutiny and recount are desirable.

(5) At the conclusion of the trial of an election petition the court shall determine whether the member whose nomination or election is complained of, or any other and what person was duly nominated or elected, or whether the election was void, and shall report such determination to the Commission. Upon such report being given such determination shall be final.

## PART XII—OFFENCES AND PENALTY

## 115. A person who—

Offences

## (a) in relation to registration of voters—

- (i) obtains his registration by giving false information;
- (ii) gives false information to obtain his registration or the registration of another person;
- (iii) obtains registration in more than one registration area;
- (iv) registers another person knowing that that other person is not eligible for registration;
- (v) prevents the registration of another person knowing that that person is eligible for registration;
- (vi) having the authority to do so, does not delete a registration which he knows to be incorrect;
- (vii) falsifies a register;
- (viii) with fraudulent intent, modifies or substitutes a voters registration certificate;
- (ix) through violence, threat or fraudulent intent, prevents the registration of another person;
- (x) knowingly obstructs the detection of incorrect registration or the verification of voters rolls;

## (b) in relation to campaigning for elections—

- (i) holds a public meeting contrary to section 56 (2);
- (ii) prevents the holding, or interrupts the proceedings of a public meeting authorized under section 56 (2);
- (iii) denies any political party equal treatment with any other political party;
- (iv) destroys, defaces, tears or in any manner causes to be totally or partially useless or illegible any campaign material displayed in an authorized place or space or superimposes thereon any other material concealing the earlier material;
- (v) is entrusted, by virtue of his office or functions, with displaying or depositing in an authorized place or space any campaign material, fails to display or deposit such campaign material or misplaces, steals, removes or destroys such material;
- (vi) contravenes section 61 (1);
- (vii) because another person attended or did not attend any campaign meeting, directly or indirectly, dismisses that

other person from any employment or other gainful occupation or prevents or threatens to prevent that other person from obtaining any employment or other gainful occupation or from continuing in any gainful occupation or applies or threatens to apply any sanction whatsoever to that other person;

(c) in relation to voting—

(i) not being otherwise authorized to be present or not being a registered voter, knowingly presents himself at a polling station;

(ii) knowing that he is not eligible to vote, casts a vote at any polling station;

(iii) fraudulently uses the identity of another person in order to exercise the right to vote;

(iv) consciously allows that the right to vote to be exercised by a person who does not have that right;

(v) votes more than once;

(vi) accompanying a blind or a disabled person to vote, fraudulently and faithlessly expresses a vote not according to the wish of that person;

(vii) within a radius of one hundred metres of a polling station, reveals his vote or procures another person by force or deceit to reveal that other person's vote;

(viii) uses or threatens violence or uses false information or other fraudulent means to coerce or induce another person to vote for or against a particular candidate or a candidate of a particular political party or to abstain from voting;

(ix) being a public officer, uses his office to coerce or induce another person to vote for or against a particular political party or candidate or abstain from voting;

(x) directly or indirectly, dismisses or threatens to dismiss another person from any employment or other gainful occupation or prevents or threatens to prevent another person from obtaining any employment or other gainful occupation or from continuing in any gainful occupation or applies or threatens to apply any sanction whatsoever to another person in order to induce that other person to vote for, or because that other person voted for, a particular candidate or a candidate of a particular political party or because that other person voted for or did not vote for a particular candidate or a candidate of a particular political party or because that other person abstained from voting;

(xi) being a presiding officer of a polling station, fails to display a ballot box in accordance with the requirements of this Act;

(xii) illicitly introduces ballot papers in a ballot box before, during or after the voting;

(xiii) fraudulently takes possession or conceals a ballot box with uncounted ballot paper or removes an uncounted ballot paper from a ballot box;

(xiv) being a polling station officer, purposely neglects his duty with a view to occasioning an irregularity;

(xv) being a polling station officer, unjustifiably refuses to receive a complaint, or a response to a complaint about the proceedings at his polling station or to examine and seek to resolve such a complaint;

(xvi) disturbs the regular functioning of a polling station;

(xvii) refuses to leave a polling station after being asked to do so by a polling station officer;

(xviii) being an officer in-charge of police requested to assign police officers to keep order at a polling station, fails without justification to do so within a reasonable time;

(xix) being a police officer assigned to keep order at a polling station wilfully neglects his duties;

(d) uses or threatens to use any force or restraint to induce or compel another person to sign or refrain from signing any nomination paper;

(e) in any manner, fraudulently spoils, substitutes, conceals, destroys, amends or falsifies any document relating to the election;

(f) in bad faith, submits a complaint, or a response to a complaint or challenges or questions the decisions thereon by a competent person or body; and

(g) without justification neglects to fulfil obligations imposed on him by or under this Act,

shall be guilty of an offence.

**116.--**(1) Every election officer, candidate, election representative of a political party or other person in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting at such station, and shall not communicate, except for some purpose authorized by law, to any person any information as to the name of any voter who has or has not applied for any ballot paper or voted at that station; and no such officer, candidate, representative or other person shall interfere with

Maintenance  
of secrecy

a voter after he has received a ballot paper and before he has placed a ballot paper in a ballot box.

(2) No person, other than a person aiding a blind or an incapacitated voter in accordance with this Act, shall attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence.

Offences  
under this  
Act  
cognizable  
offences

**117.** Every offence under this Act shall be a cognizable offence within the meaning of the Criminal Procedure and Evidence Code.

General  
penalty

**118.—(1)** A person guilty of an offence under this Act for which no other penalty has been specified shall be liable to a fine of K5,000 and to imprisonment for two years.

(2) In addition to the penalty under subsection (1), the court may make an order—

(a) where applicable, barring the convicted person from performing the duties of his office in connexion with the election;

(b) suspending the right of the convicted person to vote in the election or annulling the vote cast by such person; and

(c) having regard to the nature of the activity constituting the offence, giving such directions as the court considers to be warranted in the circumstances.

#### PART XIII—GENERAL

Preservation  
of the  
election  
documents

**119.** At the end of its functions, the Commission shall deposit all documents forming the official record of an election (including voters registers, ballot papers, records from districts and polling stations and summaries thereof and the record and summary of the national result) with the Clerk of Parliament who shall retain and preserve such documents in safe and secure custody without destruction for a period of twelve months.

Failure to  
elect a  
member  
of the  
National  
Assembly

**120.** If after the holding of a general election no person has been elected in one or more constituencies, a session of the National Assembly may commence notwithstanding any such vacancy.

Regulations

**121.** The Minister may by regulations make provisions for giving effect to this Act.

## PART XIV—REPEALS AND SAVINGS

**122.** The Presidential Elections Act, the Parliamentary Elections Act and the Registration of Voters Act are hereby repealed.

Repeals  
Cap. 2:01  
Cap. 2:02  
Cap. 2:03

**123.** A person who at the commencement of this Act is a member of the National Assembly shall continue as such member until dissolution of Parliament next following the Referendum.

Savings

Passed in Parliament this eighteenth day of November, one thousand, nine hundred and ninety-three.

R. L. GONDWE  
*Clerk of Parliament*