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Bills

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The following Bills, for introduction in Parliament, are published for
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ZOMBA, 23rd January, 1998.

R. L. GONDWE
Clerk of Parliament

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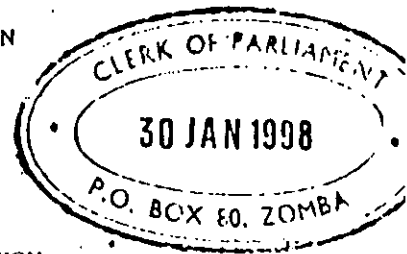
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A BILL

entitled

An Act to make provision for the appointment of members of the Electoral Commission; for the establishment of a Secretariat for the Electoral Commission; and for matters incidental thereto and connected therewith

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Electoral Commission Act, 1998.

Interpretation

No. 31 of 1993

2. In this Act, unless the context otherwise requires, the several words and expressions used in this Act shall have the same meanings assigned to them in the Constitution and the Parliamentary and Presidential Elections Act, 1993, and the following additional words shall have the following meaning—

"Chief Elections Officer" means the Chief Elections Officer appointed under section 12.

PART II—STATUS AND MEMBERSHIP OF THE COMMISSION

Legal
personality
and capacity
of the
Commission

3. The Commission shall be a body corporate with perpetual succession and a common seal and be capable of—

(a) acquiring, holding and disposing of real and personal property;

(b) suing and being sued in its own name; and

(c) doing or performing all such acts and things as bodies corporate may by law do or perform.

Appointment
of members
of the
Commission

- 4.—(1) The President shall, subject to the Constitution and to confirmation by the Public Appointments Committee, appoint suitably qualified persons to be members of the Commission on such terms and conditions as the President shall determine.

B. No. 5

(2) The remuneration and any allowance of a member of the Commission may not be reduced during his period of office without his consent and may be increased at such intervals as the President may determine.

(3) A member of the Commission may resign from his office at any time by notice in writing to the President.

5. No person who is a candidate in any election or is a serving employee of the Commission shall be eligible to be appointed a member of the Commission or any of its committees.

Eligibility for
appointment
to the
commission

6.—(1) Every individual member and employee of the Commission shall perform the functions and exercise the powers provided for in this Act independently of the direction or interference of—

Independence
of the
Commission

(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:

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

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

7.—(1) For the better carrying into effect of its functions, the Commission may establish such number of committees as it shall deem appropriate, to perform, subject to section 9, any of its functions and carry out such other responsibilities as the Commission may direct.

Committees
of the
Commission

(2) A committee of the Commission may consist of either members of the Commission only or members of the Commission and such other suitably qualified persons, including employees of the Commission, as the Commission may deem fit.

(3) The Commission shall appoint the chairman of each committee from only amongst the members of the Commission.

(4) The provisions of this Act relating to meetings of the Commission shall apply *mutatis mutandis* to the meetings of its committees.

(5) Every committee of the Commission shall act in accordance with any directions given to it in writing by the Commission.

PART III—FUNCTIONS AND POWERS OF THE COMMISSION

Functions and
powers of the
Commission

8.—(1) In addition to the broad functions and powers conferred on the Commission by the Constitution and, subject to the Constitution, the Commission shall exercise general direction and supervision over the conduct of every election and, without prejudice to the generality of such functions and powers, it shall have the following further functions—

No. 24 of 1996

(a) to determine the number of constituencies for the purposes of elections;

(b) to undertake or supervise the demarcation of boundaries of constituencies;

(c) subject to the Local Government Elections Act, 1996 and any other written law relating to local government elections, to undertake or supervise the demarcation of wards for purposes of local government elections and to determine the number of such wards; but so however that in demarcating wards the Commission shall have regard to population density, geographical features, easy communication and the wishes of the people, and shall ensure that ward boundaries do not cross local authority boundaries;

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

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

(f) to print, distribute and take charge of ballot papers and voters registers;

(g) to approve and procure ballot boxes;

(h) to establish and operate polling stations;

(i) to establish security conditions necessary for the conduct of every election in accordance with any written law governing elections;

(j) to promote public awareness of electoral matters through the media and other appropriate and effective means and to conduct civic and voter education on such matters;

(k) to promote and conduct research into electoral matters and into any matter pertaining to its functions and to publish the results of such research;

(l) to perform the functions conferred upon it by or under any written law; and

(m) to take measures and to do such other things as are necessary for conducting free and fair elections.

B. No. 5

(2) For purposes of discharging the functions and exercising the powers conferred upon it by the Constitution, this Act or any other written law relating to elections, the Commission shall freely communicate with the Government and any political party or any candidate, person or organization.

9. The Commission may delegate to any of its committees, the Chief Elections Officer or other employee of the Commission all or any of its powers and functions.

Delegation of powers and functions

10. Subject to the Constitution and to section 11 (3), any vacancy in the membership of the Commission shall not affect its decisions, the performance of its functions or the exercise of its powers under the Constitution, this Act or any other written law.

Vacancy in the membership of the Commission

PART IV—MEETINGS OF THE COMMISSION

11.—(1) The Commission shall meet at such place or places, and at such time or times as the Chairman may determine:

Meetings of the Commission

Provided that the Chairman shall convene a meeting within fourteen days of receipt by him of a request in writing signed by the majority of members of the Commission and specifying the purpose for which the meeting is to be convened.

(2) The Chairman shall take all reasonable steps to ensure that every member of the Commission is given due and adequate notice of every meeting of the Commission.

(3) The quorum at every meeting of the Commission shall be fifty-one per centum of the members of the Commission.

(4) The Chairman shall preside at all meetings of the Commission. In the absence of the Chairman the members present and forming a quorum shall elect one of their number to preside over the meeting of the Commission.

(5) At any meeting of the Commission, the decision of the Commission on any matter shall be that of the majority of the members of the Commission present and voting, and at all such meetings, the person presiding shall have, in the event of an equality of votes, a casting vote in addition to his deliberative vote.

(6) Subject to the Constitution and this Act, the Commission shall have power to regulate its own procedure by standing orders and the procedure of any of its committees and may vary, suspend or revoke any such standing orders.

(7) The Chief Elections Officer or such other employee of the Commission as the Commission may designate shall be the secretary to the Commission or at the meetings of any of its committees.

(E) Minutes of each meeting of the Commission or a committee of the Commission shall be kept by the secretary and shall be confirmed at the subsequent meeting of the Commission or committee, as the case may be.

PART V—MANAGEMENT

Appointment of
Chief Elections
Officer

12.—(1) The Commission shall appoint a suitably qualified person to be Chief Elections Officer upon such written terms and conditions as the Commission may, in its discretion, determine.

(2) The Chief Elections Officer shall hold office for a period of five years and shall be eligible to be re-appointed as Chief Elections Officer for a further period of five years.

(3) The Chief Elections Officer shall be the chief executive officer of the Commission and, in the performance of his functions and duties, shall be responsible and answerable only to, and shall be under the direction, supervision and control, of the Commission.

(4) The Chief Elections Officer shall not divulge any information to any person or accept or seek instructions from any person in relation to his functions and duties or the functions or powers of the Commission or in relation to the conduct of any election.

Appointment of
staff of the
Commission

13.—(1) The Commission shall appoint such other professional, technical and administrative officers and support staff as the Commission may deem necessary, subject to such terms and conditions as the Commission shall, in its discretion, determine.

(2) The Commission may pay to every person in its service, including the Chief Elections Officer, such remuneration and allowances and grant to every such person such fringe benefits as it may deem appropriate.

(3) There may be seconded to the Commission such number of public officers as the Commission may arrange with the appropriate authority responsible for such public officers for such periods and on such terms and conditions as may be agreed between the Commission and the authority concerned.

(4) For purposes of this Act, a public officer who is seconded to the Commission under subsection (3), shall be deemed to be an employee of the Commission and shall enjoy the same benefits and shall be required to comply with the Constitution, this Act and any other written law relating to elections and any instruction, orders and directions of the Commission in the same manner as an employee recruited directly by the Commission under this Act.

(5) The Commission shall deploy persons in its service in such manner as it deems appropriate and shall, for each district, constituency, ward and polling station, designate a District Elections Officer, elections officers, assistant elections officers, returning officers, presiding officers, registration officers, polling officials and counting officers in such numbers as the Commission shall deem appropriate for purposes of conducting or supervising elections.

(6) Upon assuming office, or immediately thereafter, every employee including the Chief Elections Officer shall take an oath of office in the prescribed form before a commissioner of oaths and, if there be no such form, in such form as the Commission shall determine.

14. The office or post an employee of the Commission shall automatically become vacant in the event that the employee becomes a candidate in any presidential, parliamentary or local government election.

Vacancy
where
employee
becomes
candidate in
elections

PART VI—FINANCIAL PROVISIONS

15.—(1) The funds of the Commission shall consist of—

Funds of the
Commission

(a) such sums as shall be appropriated by Parliament for purposes of the Commission;

(b) such sums or assets as may accrue to or vest in the Commission, whether in the course of the performance by the Commission of its functions or the exercise of its powers or otherwise;

(c) such sums or assets as may accrue to or vest in the Commission by way of grants, subsidies, bequests, donations, gifts and subscriptions, from the Government or any other person;

(d) such sums as are derived from the sale of any property, real or personal, by or on behalf of the Commission;

(e) such sums as are received by the Commission by way of voluntary contributions; and

(f) such sums or assets as may be donated to the Commission by any foreign government, international agency or other external body of persons, corporate or unincorporate.

(2) For the purposes of this section an "external body of persons", means any body of persons, corporate or unincorporated, formed under or by virtue of the laws of any country other than Malawi.

(3) The funds of the Commission shall exclusively be under the control of the Commission and shall be utilized solely for the purposes of this Act in accordance with the written directions of the Commission and for no other purpose.

Books and
other records
of accounts,
audit and
reports of the
Commission

16.—(1) The Commission shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Commission in accordance with acceptable principles of accounting.

(2) The accounts of the Commission shall be audited annually by the Auditor General or by independent professional auditors appointed by the Commission in consultation with the Auditor General, and the expenses of the audit shall be paid out of the funds of the Commission.

(3) The Commission shall, as soon as practicable, but not later than six months after the end of the financial year of the Commission submit to the Minister and publish in the *Gazette* annual report on all the financial transactions of the Commission and on the work, activities and operations of the Commission.

(4) The report referred to in subsection (3) shall include a balance sheet and an income and expenditure account, and shall be laid by the Minister before the National Assembly in accordance with the Finance and Audit Act.

Cap. 37:01

(5) The Commission shall at all times comply with the provisions of the Finance and Audit Act.

Cap. 37:01

Holdings of
funds of the
Commission

17.—(1) All sums received for the purposes of the Commission shall be paid into one or more banking accounts at such bank or banks as the Commission may determine, and no amount shall be withdrawn therefrom except under the written authority of the Commission and by means of cheques signed by such persons as are authorized in that behalf by the Commission.

(2) Any sums not immediately required for the purposes of the Commission may be invested in such manner as the Commission may, in its discretion, determine.

Financial year

18. The financial year of the Commission shall be the period of twelve months commencing on the 1st July of each year and ending on the 30th June of the following year:

Provided that the first financial year may be a period shorter or longer than twelve months as the Commission shall determine, but in any case not longer than eighteen months.

PART VII—MISCELLANEOUS

19.—(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, and all Clerks of local authorities, in their respective local authorities, 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; and

(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 any written law relating to elections.

20. The Commission may instruct the Attorney General or any legal practitioner to provide legal representation to the Commission in any court proceedings, including proceedings concerning appeals against its decisions on complaints about any aspect of the electoral process, or to provide general legal advice to the Commission.

Legal
representation

21. The Commission shall, in such manner as it shall consider appropriate, publish a notice for public information specifying—

Publicity

(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.

22. The Minister may, on the recommendation of the Commission, make regulations for the better carrying out of this Act.

Regulations

PART VIII—TRANSITIONAL PROVISIONS

23.—(1) Any person who, at the commencement of this Act, is a member or employee of the Commission, shall continue as such member or employee pursuant to the terms and conditions of his appointment.

Savings

(2) The validity of any legal proceedings commenced by or against the Commission and any thing done or action or decision taken or made by a court or the Commission or any of its employees prior to the commencement of this Act shall not be affected by this Act.

Transfer of
assets, etc.

24.—(1) All property, assets, rights, liabilities, obligations, agreements and other arrangements (other than arrangements with foreign Governments or other foreign donor agencies) existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Commission shall, upon the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Commission and shall become enforceable by or against the Commission to the same extent as they were enforceable by or against the Commission before the commencement of the Act.

(2) Where the transfer of any property transferred to or vested in the Commission under subsection (1) is required by any written law to be registered, the Commission shall, within one year from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Commission or any person by way of registration fees, stamp or other duties—

(a) make such entries in the appropriate register as shall give effect to the transfer;

(b) where appropriate, issue to the Commission a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and

(c) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

OBJECTS AND REASONS

The principal object of this Bill is to make provisions aimed at promoting and enhancing the powers and functions and the independence of the Electoral Commission ("the Commission") through the establishment of a separate Secretariat independent of the National Assembly or any other institution.

Presently, by virtue of the Parliamentary and Presidential Elections Act (No. 31 of 1993), the Clerk of Parliament and other officers subordinate to him serve as elections officers and are attached to the Commission and act in its service for the conduct of elections. Further more the Clerk of Parliament is designated as the Chief Elections Officer and, as such, he is the *ex-officio* chief executive officer of the Commission. Since the Clerk of Parliament and his subordinate staff are not employees of the Commission, the Commission does not have sufficient authority over them.

The Parliamentary and Presidential Elections Act under which this arrangement is provided for was enacted in 1993 in order to facilitate the holding of the first multiparty general elections of 1994. While the said arrangement was necessary then, it is now considered to be inadequate and inappropriate for the efficient functioning of the Commission and for conducting and promoting free and fair elections. Accordingly, the Bill seeks to establish an independent Secretariat for the Commission and to enable the Commission to engage its own employees rather than depend on employees of Parliament which has no mandate whatsoever to conduct national elections. The Bill further seeks to make it clear that the Commission has legal personality of its own.

In this regard the Bill, therefore, makes provision for the appointment of members of the Commission by the President subject to approval by the Public Appointments Committee and for guaranteeing, to some extent, their tenure of office. It also makes provision for the appointment by the Commission of a Chief Elections Officer to replace the Clerk of Parliament as Chief Elections Officer and chief executive officer of the Commission and for the appointment, again, by the Commission, of other employees of the Commission who may include persons seconded from the public service. Provision has also been made for the independence of the Commission, its members and employees.

The Bill finally makes provision for the usual matters connected with the establishment of a statutory organization such as funds of the Commission, financial management and accountability and other miscellaneous matters.

DR. C. CHILUMPHA, SC
Attorney General

CONSTITUTION (AMENDMENT) BILL, 1997

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of s. 51 of the Constitution
3. Amendment of s. 75 of the Constitution

A BILL

entitled

An Act to amend the Constitution

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Constitution (Amendment) Act, 1997. Short title
2. Section 51 of the Constitution is amended, in subsection (1) (c), by deleting the word "a" and substituting therefor the word "any". Amendment of s. 51 of the Constitution
3. Section 75 of the Constitution is amended in subsection (2), by deleting the words, "a member of Parliament or a person holding public office" and substituting therefor the words "or a member of Parliament". Amendment of s. 75 of the Constitution

OBJECTS AND REASONS

The object of this Bill is to make clear in section 51 (1) (c) of the Constitution that a person wishing to contest Parliamentary elections or by-elections may register in any constituency in order to qualify as a candidate for the elections or by-elections and not necessarily only in the constituency where he intends to stand as a candidate.

B. No. 28

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 Malawi residing in Malawi 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 Malawi 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 Malawi.
- (2) No person shall be employed as a registration officer with respect to any local area of Malawi, unless—
- (a) he is a citizen of Malawi 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 Malawi 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 or 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 Malawi and by radio announcements and by any other appropriate means the names of all places throughout Malawi 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	<p>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.</p>
Ballot boxes	<p>78.—(1) The Commission shall procure ballot boxes of suitable material, specification and design for use in the casting of votes by voters.</p> <p>(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.</p>
Right of employees to be released for voting	<p>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.</p>
Hours of voting	<p>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.</p>
Order of voting	<p>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.</p>
Continuity of the voting process	<p>82. Subject to section 83, voting at every polling station shall continue uninterrupted until closed.</p>

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.

(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.

Require-
ments for
exercising
the right
to vote

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.

Manner of
casting
the 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

pecially 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—

Null and
void votes

- (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.

(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 Malawi 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-section (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 Malawi 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 Malawi, have the right—

(a) to obtain a multiple entry visa to enter Malawi 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 Malawi;

(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 Malawi 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

An act to make provision with respect to the Electoral Commission and for matters ancillary thereto or connected therewith

ENACTED by the Parliament of Malawi as follows:-

PART I - PRELIMINARY

Short title

1. This Act may be cited as the Electoral Commission Act, 1995

Interpretation

2. (1) In this Act, unless the context otherwise requires:

"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;

"Chairperson" means the Chairperson of the Commission;

"Commission" means the Electoral Commission referred to in Section 75 of the Constitution.

"Constituency" means an area demarcated as such under the Parliamentary and Presidential Elections Act, 1993.

"Director of Elections" means the Director of Elections referred to in Section 16.

"Electoral matters" includes matters relating to parliamentary elections, Presidential elections and local government elections;

"General Election" means an election consequent upon the dissolution of Parliament;

"Local Government Election" means an election under the Local Government Act; 1995

"Parliamentary Election" means an election to the National Assembly.

"Parliamentary matters" includes matters relating to the role and functions of the Parliament: and

"Ward" means an area demarcated as such under the Local Government Act (to be enacted).

- (2) For the purposes of this Act, a person shall be taken to be a member of the staff of the Commission if he or she is:
- (a) the Director of Elections;
 - (b) a person appointed under Section 18 or designated under Section 19.

PART II - THE COMMISSION

Establishment and Status of the Electoral Commission

- 3.1 There is hereby established a Commission known as the Electoral Commission.
- 3.2 The Commission shall be non-profit making corporation with perpetual succession and a common seal, which is capable of suing and being sued of acquiring, holding, letting and otherwise disposing of land, and of doing and performing such acts and things as bodies corporate may by law do and perform.

Membership of the Commission

4. **Functions and powers of the Commission**

4.1 The Commission shall consist of no fewer than six and not more than ten members who shall be appointed by the State President after consulting leaders of all political parties represented in Parliament. All political parties registered as the date hereof and who shall be impartial, respected and suitably qualified men and women, who do not have high political profile, are themselves voters and represent a broad cross section of the population.

4.2(a) The State President shall, upon the advice of the Judicial Service Commission designate one member as Chairperson of the Commission.

4.2(b) In the absence of the Chairperson, the remaining members shall by simple majority elect another person as Acting Chairperson of the Commission.

4.2(c) The State President shall from time to time, after consulting all leaders of political parties represented in Parliament and subject to subsection (1) appoint additional members of the Commission subject to the maximum number contemplated in that subsection.

4.3 The performance of the functions of the exercise of the powers of the Commission shall not be affected by reason of there being a vacancy, or vacancies in the membership of the Commission.

Functions and powers of the Commission

5. (1) The functions of the Commission are;

(a) to perform functions that are permitted or required to be performed by or under the Constitution;

(b) to perform functions that are permitted or required to be performed by or under this Act;

- © to organise and conduct, and exercise general direction and supervision over parliamentary elections, presidential elections and local government elections;
- (d) to organise and conduct, and exercise general direction and supervision over parliamentary elections, presidential elections and local government elections;
- (d) without prejudice to the generality of paragraph (c), to:
 - (i) determine subject to the Constitution, the number of constituencies for the purposes of parliamentary elections and undertake the demarcation of boundaries of constituencies;
 - (ii) undertake the demarcation of boundaries for local government;
 - (iii) determine the number of wards for the purposes of local government elections and undertake the demarcation of the boundaries of wards;
 - (iv) organise and direct the registration of voters;
 - (v) devise and establish voters registers and ballot papers;
 - (vi) print, distribute and take charge of ballot papers;
 - (vii) approve and procure ballot boxes;
 - (viii) establish and operate polling stations;
 - (ix) take measures for ensuring that elections are conducted under conditions of complete freedom and fairness;
 - (x) establish security conditions necessary for the conduct of elections in accordance with the law; and
 - (xi) ensure compliance with the law and adopt measures necessary to guarantee that elections are free and fair.
- (e) to promote public awareness of electoral matters by means of the conduct of civic and voter education.
- (f) to conduct and promote research into electoral matters and other matters that relate to functions;
- (g) to perform such other functions as are conferred on it by or under any law of Malawi.

- (2) The Commission may establish its own publicity machinery and shall be free to communicate openly and equally with each political party or any candidate, person or organisation.

Independence of the Commission

6. (1) In discharging its functions, the Commission and every individual member thereof and all staff of the Commission, shall act, and strive to be seen to act independently or
- (2) For the purpose only of accountability, the Commission and every member thereof shall, in relation to the overall fulfilment of the functions of the Commission, be answerable to, and shall report directly to the President.
- (3) Upon assuming his or her office or immediately thereafter, every member of the Commission shall take oath before the Chief Justice in the prescribed form.

Terms and conditions

7. (1) Commissioners shall hold office on such terms and conditions of service, including terms and conditions relating to remuneration and allowances, as shall from time to time be determined by the President in consultation with the Public Appointment Committee of Parliament.
- (2) Subject to subsection (3), the terms and conditions of service of a Commissioner shall not without his or her consent be altered during his or her period of office to his or her detriment.
- (3) Any monetary payment due to a Commissioner pursuant to his or her terms and

conditions of service shall be increased at intervals so as to retain its original value and shall be a charge upon the Consolidated Fund.

Leave of Absence

8. The Commission may grant a Commissioner leave of absence from a meeting of a Commission.

Resignation

9. A Commissioner may resign by delivering to the President a signed notice of resignation.

Disclosure of Conflicting interests

10. (1) A Commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to his or her interest at a meeting of the Commission.
 - (2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Commission and the Commissioner shall not-
 - (a) be present during any deliberation of the Commission with respect to that matter; or
 - (b) take part in any decision of the Commission with respect to that matter.

Removal from Office

11. If a Commissioner

- (a) is absent, except on leave granted by the Commission in accordance with section 8, from three consecutive meetings of the Commission; or
- (b) fails, without reasonable excuse, to comply with his or her obligations under section 10.

The President may remove the Commissioner from office.

Meetings of the Commission

- 12.
- (1) The Chairperson may, at any time, convene a meeting of the Commission.
 - (2) The Chairperson shall convene such meetings of the Commission as, in his or her opinion, are necessary of the efficient performance of its functions.
 - (3) If there is delivered to the Director of Elections a letter, signed by a majority of Commissioners, requesting him or her to convene a meeting of the Commission by a specified date, shall convene a meeting by that date.
 - (4) *The Chairperson or the Director of Elections (as the case may be) shall take reasonable steps to ensure that all Commissioners are given adequate notice of any meetings of the Commission which he or she convenes.*
 - (5) The Commission may by resolution set a date and time for a meeting of the Commission.
 - (6) At a meeting of the Commission, comprising 51% of the Commissioners shall constitute a quorum.
 - (7) The Chairperson shall preside at all meetings of the Commission at which he or she

is present.

- (8) If the Chairperson is not present at a meeting of the Commission, the *Commissioners present shall elect one of their number to preside at that meeting.*
- (9) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the Commissioners present and voting.
- (10) The person presiding at a meeting of the Commission has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.
- (11) The Commission may regulate the conduct of proceedings at its meetings as it thinks fit.

Committees of the Commission

- 13. (1) The Commission may appoint such Committees as it deems necessary for the *performance of its functions.*
- (2) A committee appointed under subsection (1) may consist of:
PROVIDED the Chairman of any such Committee shall be a member of the Commission.
 - (a) Commissioners only;
 - (b) Commissioners and staff of the Commission; or
 - (c) Commissioners and persons not staff of the Commission; or
 - (d) Commissioners and staff of the Commission and persons not staff of the Commission.

- (3) A Committee may, subject to the directions of the Commission, determine its own procedures.
- (4) The Commission may terminate the appointment of a Committee at any time.

Delegation by the Commission

- 14. The Commission may by resolution delegate to a Committee of the Commission referred to in Section 13 (2)(a) all or any of its powers.
- (2) The Commission may by resolution delegate to;
 - (a) A Committee of the Commission referred to in Section 13(2)(b)
 - (b) The Director of Elections; or

All or any of its powers, other than those conferred on it by Section 76 (2) (a), (b) and © of the Constitution and Section 4(1) (d)(i), (ii) and (iii) of this Act.

Reports by the Commission

- 15. (1) The Commission shall, as soon as practicable after the end of each year, prepare and furnish to the President a report of the operations of the Commission during the year.
- (2) The President shall cause a copy of a report furnished under sub-section (1) to be laid before each House of Parliament within 15 sitting days of that house after the day on which he or she receives the report.

PART III - THE SECRETARIAT OF THE COMMISSION

Director of Elections

16. (1) There shall be a Director of Elections.
- (2) The Director of Elections shall serve full-time, shall be the chief executive officer of the Commission and shall have such functions, and such powers, as are conferred upon him or her by or under any law of Malawi.
- (3) The Director of Elections shall exercise his or her powers and perform his or her functions subject to the direction, supervision and control of the Commission/
- (4) *The Director of Elections shall be answerable solely to the Commission for the manner in which he or she performs his or her tasks and exercises his or her powers, and shall not, in relation to the performance of those tasks or the exercise of those powers:*
- (a) be required to provide reports to; or
- (b) seek or accept instructions from any person or body other than the Commission.
- (5) The Director of Elections may give written directions to other staff of the Commission with respect to the exercise of their powers, and the performance of their functions, under this Act.
- (6) The Director of Elections shall be appointed by the Commission by instrument in writing.
- (7) Subject to this Act, the Director of Elections shall hold office for such period as a

specified in the instrument of appointment.

- (8) The Director of Elections shall hold office on such terms and conditions of service, including terms and conditions relating to remuneration and allowances, as are specified in the instrument by which he or she was appointed.
- (9) The Director of Elections may resign by delivering to the Commission a signed notice of resignation.
- (10) The Commission may terminate the appointment of the Director of Elections in accordance with the procedures specified in the instrument by which he or she was appointed.

Delegation by Director of Elections

- 17. The Director of Elections may by signed instrument delegate a member of the staff of the Commission all or any of the powers and function of the Director of Elections.

Staff of the Commission

- 18.
 - (1) The Commission may appoint such staff as it deems necessary for the due and proper execution of its functions and the appropriate exercise of its powers.
 - (2) The Commission may from time to time determine the terms and conditions of service, including terms and conditions relating to remuneration and allowances of staff appointed under subsection (1)
 - (3) There may be seconded to the Commission such number of public officers as the Commission may request in writing to the Secretary to the President and Cabinet.

- (4) Staff appointed under subsection (1), including those seconded under subsection (3) shall be answerable solely to the Commission for the manner in which they perform their tasks and exercise their powers as staff of the Commission, and shall *not, in relation to the performance of those tasks or the exercise of those powers,*
- (a) *be required to provide reports to; or*
- (b) *seek or accept instructions from any person or body other than the Commission.*
- (5) No candidate nominated under the Parliamentary and Presidential Election Act or the Local Government Act (to be enacted) shall be appointed to the staff of the Commission, and a member or the staff of the Commission who becomes a candidate under the aforesaid Acts shall thereby vacate his or her office.

Designation of officers

19. (1) The Commission may designate from the staff of the Commission;
- (a) for each District, a District Election Officer;
- (b) for each District, one or more Deputy Elections Officers;
- (c) for each constituency, a returning officer;
- (d) for each ward, a returning officer;
- (e) for each polling station, a presiding officer; and
- (f) such registration officers, polling officials, counting officers and other staff as may be required for the purposes of this Act or any other law.
- (2) The Commission may consult the Director of Elections prior to making designations under subsection (1).
- (3) A person may be designated under subsection (1) to be a returning officer for more than one constituency or for more than one ward.

- (4) Notwithstanding the provisions of subsection (1):
- (a) a presiding officer or a polling official for a polling station in any constituency or ward or a registration officer, may, in case of urgency, be designated by Returning Officer of that constituency or ward; and
 - (b) a polling official for any polling station may be designated by the presiding officer for such polling station.
- (5) Where two or more registration officers operate as a team, the Director of Elections, the District Elections Officer of the District concerned, or the returning officer for the constituency or ward concerned, may designate one of them as the leader of the team, who shall, subject to the control of the returning officer, be responsible for the organisation and control of the work of the team.

Conditions of designation

22. (1) The designation of any person under Section 19 may be withdrawn, without prior notice to any person and without any person being entitled to a hearing, by any person or authority empowered to make a designation of the nature in question.
- (2) Any designation made under Section 19 otherwise than in writing shall be confirmed in writing as soon as circumstances permit.

PART IV - FINANCES OF THE COMMISSION

Funds

21. (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) No Ministry, authority or body external to the Commission, nor any person who is not a Commissioner or a member of the staff of the Commission, shall be permitted to incur expenditure without the authority of the Commission.
- (4) *The books of account of the Commission shall be audited at any time as the Commission may direct by a professional auditor appointed by the Commission every financial year and after a general election.*

PART V - MISCELLANEOUS

Legal representation

- 22. (1) The Commission may obtain legal advice from any source it deems appropriate in relation to any matter relating to its functions.
- (2) The Commission may be represented in any court proceedings to which it is a party by any duly admitted legal practitioner.
- (3) Without prejudice to the generality of subsections (1) and (2), the Attorney General may, and at the request of the Commission shall:
 - (a) provide legal representation to the Commission in any court proceedings to which the Commission is a party; and
 - (b) provide general legal advice to the Commission.

Principal office of the Commission

23. 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.*

Duty to co-operate

24. (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.
- (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; and
 - (b) the Inspector General of Police 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 VI - REPEALS AND SAVINGS

Amendments of the Parliamentary and Presidential Elections Act, 1993

25. The Parliamentary and Presidential Elections Act, 1993 is amended:
- (a) by deleting from section 3 the definition of "Chief Elections Officer".
 - (b) by deleting from the definition of "Commission" in section 3 the words "and appointed in

accordance with section 4 of this Act".

- © by deleting from the definition of "constituency" in Section 3 the words "and Section 5 (a) of this Act" and substituting the words "and subsection 4(1)(d)(i) of the Electoral Commission Act, 1995"; and
- (d) by deleting Part II.

Savings

- 26. Notwithstanding any other provision of this Act, any appointment of a person to serve as a Commissioner which was in force at the time of the commencement of this Act continues to have full force and effect in accordance with its terms.

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PROPOSED AMENDMENTS TO THE PARLIAMENTARY AND PRESIDENTIAL ELECTIONS ACT, 1993 (THE ACT) AND THE CONSTITUTION.

- (i) Section 75(1) of the Constitution should be amended to read " There shall be an independent Electoral Commission which shall be a body corporate and shall consist of ..."
- (ii) Both the Constitution (Section 75(1)) and the Act (section 4(1) should specify that the appointment of the members of the Commission shall be made by the President subject to confirmation by the Public Appointments Committee.
- (iii) There is some inconsistency between the Constitution (Section 75(3)(a)) relating to tenure of office of a member of the Commission as four years, whereas section 4(1) of the Act provides that the Commission shall be appointed with respect to every general election which is described under section 67(1)(2) of the Constitution.
- (iv) Section 75(4) of the Constitution should be amended to provide that the removal of a member of the Commission shall be made on the recommendations of the Public Appointments Committee provided that the procedure for the removal of a member shall be in accordance with the principles of natural justice.
- (v) Section 76(2) of the Constitution should merely provide principles whereas specific duties of the Commission should be contained in the Electoral Commission Act.
- (vi) Use of public resources. There has been an outcry against use of government resources for party political campaign during electoral process for which the Commission has been bashed. It is recommended that

use of government resources for campaign purposes during the electoral process should be prohibited and a suitable penalty created.

(vii) Section 3 of the Act should contain interpretation on:-

- (a) CAMPAIGN
- (b) RE-RUN
- ✓ (c) RETURNING OFFICER

✓ (viii) Definition of 'registration' in section 3 of the Act should stop after the word voters.

(ix) Part II of the Act - The Electoral Commission, should be removed and put in an Electoral Commission Draft Bill. Similarly, Part II of Local Government Elections Act (1996) should be removed and placed in the Electoral Commission Draft Bill.

(x) Section 4(1) of the Act, the proviso should be removed.

(xi) Section 7 of the Act should be re-examined in the light of the provision of the Constitution (75(3)(a))

(xii) Section 8 of the Act should also cover staff of the Commission whether serving on permanent or temporary basis.

(xiii) Section 10 of the Act should be amended to provide that allowances of members shall be determined by the Commission subject to approval by the President.

(xiv) Section 20(1) should be amended by deleting the word 'temporary' to cater for continuous registration.

- (xv) Section 27(1) should be amended to provide that there shall not be more than two monitors at any time.
- (xvi) There should be provision for a doubts and complaints log book for use during registration.
- (xvii) Provision should be made against safekeeping by another person of voter registration certificate of another or buying or selling of voter registration certificates and an appropriate offence should be created accordingly.
- (xviii) Section 31 should be amended by deleting the words appearing immediately after the words 'international observers' in the third line.
- (xix) ✓ Section 32(2) should be amended by deleting the words 'a new constituency is created' appearing in the second line, to remove confusion.
- (xx) ✓ The position of Returning Officer which is very crucial in the electoral process should be defined and its relationship with the Commission clearly stated.
- (xxi) ✓ Section 46 should be amended to include a provision prohibiting anyone from influencing or inducing a candidate to withdraw his nomination through corrupt practices, and to create an appropriate offence in Part XII accordingly.
- (xxii) Section 54 should state what happens to the deposit of a Presidential candidate who dies on or before the day on which poll in the election is to be taken.
- (xxiii) Section 57 should be amended and an appropriate offence created in Part XII of the Act. At the moment people can contravene Section 57 with impunity.

- (xxiv) Section 67(2)(a) should be amended to allow security personnel to vote at a military unit or police station a day or two days before polling day when they are expected to concentrate on their security duties.
- (xxv) Section 68(2) should be amended by deleting the words 'at least five' to allow for flexibility.
- (xxvi) Section 70(g) should be deleted in view of the proposal introduction of single ballot paper.
- (xxvii) Section 72(1) should be amended and specify that the maximum number of party monitors shall be two per station at any time.

There should be a provision requiring political party monitors to be able to read and write in order to understand critical elements in the voting process.
- (xxviii) An offence should be created for those contravening section 73(b)(iii)
- (xxix) Section 77 should be amended by deleting the words 'and discarding ballot papers' in the fourth line.
- (xxx) Provision should be made for proxy voting. The manner of voting to be determined by the Commission.
- (xxxi) Section 86(2)(a)
- (xxxii) The words 'District Commissioner' should be deleted wherever they appear in sections 94, 95 and 97 and be replaced by the words 'Returning Officer'.

- (xxxiii) Section 96(3) should be ammended by deleting the words twenty - four hours and replacing them with the words 'seventy - two hours'.
- (xxxiv) The petition referred to in section 100 of the Act should also cater for parliamentary candidate.
- (xxxv) Section 121 of the Act should be amended to empower the Commission to make rules and regulations necessary for the electoral process.

twenty-one days referred to in subsection (2) and three months from that date, the Bill shall again be presented for assent by the President.

(4) Where a Bill is again presented to the President for assent in accordance with subsection (3), the President shall assent to the Bill within twenty-one days of its presentation.

(5) When a Bill that has been duly passed is assented to in accordance with this Constitution, the Clerk shall cause it to be published immediately in the *Gazette*.

The coming into
force of laws

74. No law made by Parliament shall come into force until it has been published in the *Gazette*, but Parliament may prescribe that a law shall not come into force until some later date, after its publication in the *Gazette*.

Chapter VII Elections

The Electoral
Commission

75. (1) There shall be an Electoral Commission which shall consist of a chairman who shall be a Judge nominated in that behalf by the Judicial Service Commission and such other members, not being less than six, as may be appointed in accordance with an Act of Parliament.

(2) A person shall not be qualified to hold the office of a member of the Electoral Commission if that person is a Minister, Deputy Minister, a member of Parliament or a person holding public office.

(3) Subject to this section, a person shall cease to be a member of the Electoral Commission –

- (a) at the expiration of four years from the date of his or her appointment, unless reappointed to a new four-year term; or
- (b) if any circumstances arise that, if that person were not a member of the Electoral Commission, he or she would be disqualified for appointment as such.

(4) A member of the Electoral Commission may be removed from office by the President on the recommendation of the Public Appointments Committee on the grounds of incapacity or incompetence in the performance of the duties of that office.

Powers and
functions

76. (1) The Electoral Commission shall exercise such functions in relation to elections as are conferred upon it by this Constitution or by an Act of Parliament.

(2) The duties and functions of the Electoral Commission shall include –

- (a) to determine constituency boundaries impartially on the basis of ensuring that constituencies contain approximately equal numbers of voters eligible to register, subject only to considerations of –
 - (i) population density;
 - (ii) ease of communication; and
 - (iii) geographical features and existing administrative areas;

(b) to review existing constituency boundaries at intervals of not more than five years and alter them in accordance with the principles laid down in subsection (2) (a);

(c) to determine electoral petitions and complaints related to the conduct of any elections;

(d) to ensure compliance with the provisions of this Constitution and any other Act of Parliament; and

(e) to perform such other functions as may be prescribed by this Constitution or an Act of Parliament.

(3) Any person who has petitioned or complained to the Electoral Commission shall have a right to appeal to the High Court against determinations made under subsections (2) (c) and (2) (d).

(4) The Electoral Commission shall exercise its powers, functions and duties under this section independent of any person.

(5) Without prejudice to subsection (3) –

(a) the High Court shall have jurisdiction to entertain applications for judicial review of the exercise of the Electoral Commission of its powers and functions to ensure that such powers and functions were duly exercised in accordance with the Constitution or any Act of Parliament; and

(b) the National Assembly shall confirm all determinations by the Electoral Commission with regard to the drawing up of constituency boundaries but may not alter the boundaries of any constituency, except upon the recommendation of the Electoral Commission.

The franchise

77. (1) All persons shall be eligible to vote in any general election, by-election, presidential election, local government election or referendum, subject only to this section.

(2) Subject to subsection (3), a person shall be qualified to be registered as a voter in a constituency if, and shall not be so qualified unless, at the date of the application for registration that person –

- (a) is a citizen of Malawi or, if not a citizen, has been ordinarily resident in the Republic for seven years;
- (b) has attained the age of eighteen years; and
- (c) is ordinarily resident in that constituency or was born there or is employed or carries on a business there.

(3)* No person shall be qualified for registration as a voter in a constituency if that person –

- (a) is under any law in force in the Republic adjudged or otherwise declared to be mentally incompetent;
- (b) is under sentence of death imposed by a court having jurisdiction in the Republic, either before or after the appointed day; or
- (c) is disqualified from registration as a voter on the grounds of his or her having been convicted of any violation of any law relating to elections passed by Parliament and in force at the time of, or after

* Amended text. The full text of the Constitution (Amendment) Act, 1995 is given in Annex I.

the commencement of, this Constitution but such disqualification shall be valid only with respect to registration for the election in question and the person so disqualified shall be qualified to be registered as a voter in the next or any subsequent election.

(4) Where any person is qualified to be registered in more than one constituency as a voter, he or she may be so registered only in one of the constituencies.

(5) No person shall exercise more than one vote in any one election.

Chapter VIII

The Executive

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| The President | 78. There shall be a President of the Republic who shall be Head of State and Government and the Commander-in-Chief of the Defence Forces of Malawi. |
| Vice-Presidents | 79.* There shall be a First Vice-President and, subject to section 80 (5), a Second Vice-President both of whom shall assist the President and who shall exercise the powers and perform the functions conferred on the First Vice-President or the Second Vice-President, as the case may be, by this Constitution or by any Act of Parliament and by the President. |
| Election of the President and the First Vice-President | 80. (1) The President shall be elected in accordance with the provisions of this Constitution in such manner as may be prescribed by an Act of Parliament.

(2) The President shall be elected by a majority of the electorate through direct, universal and equal suffrage.

(3)* Every presidential candidate shall declare who shall be his or her First Vice-President if he or she is elected at the time of his or her nomination.

(4)* The First Vice-President shall be elected concurrently with the President and the name of a candidate for the First Vice-President shall appear on the same ballot paper as the name of the Presidential candidate who nominated him.

(5)* Where the President considers it desirable in the national interest so to do, he or she may appoint a person to the office of Second Vice-President and may do so upon taking his or her oath of office or at any time thereafter or upon a vacancy in the office of Second Vice-President and, where no person has been appointed to the office of Second Vice-President then –
(a) the provisions of this Chapter making reference to that office shall be read <i>mutatis mutandis</i> ; and |

* Amended text. The full text of the Constitution (Amendment) Act, 1994 is given in Annex I.

(b) the office of First Vice-President shall be known as the office of Vice-President as if section 79 created the office of a Vice-President only;

Provided that where the President was elected on the sponsorship of a political party, then he or she shall not appoint a Second Vice-President from that political party.

(6)* Notwithstanding any provision of this Constitution to the contrary, a person shall only be qualified for nomination for election as President or First Vice-President or for appointment as First Vice-President or Second Vice-President if that person –

- (a) is a citizen of Malawi by birth or descent; and
- (b) has attained the age of thirty-five years.

(7)* No person shall be eligible for nomination as a candidate for election as President or First Vice-President or for appointment as First Vice-President or Second Vice-President if that person –

- (a) has been adjudged or declared to be of unsound mind;
- (b) is an undischarged bankrupt having been declared bankrupt under a law of the Republic;
- (c) has, within the last seven years, been convicted by a competent court of a crime involving dishonesty or moral turpitude;
- (d) is under a declaration of allegiance to a foreign country;
- (e) is the holder of a public office or a member of Parliament, unless that person first resigns;
- (f) is a serving Member of the Defence Forces or Malawi Police Force; or
- (g) has, within the last seven years, been convicted by a competent court of any violation of any law relating to election of the President or election of the members of Parliament.

Oath of office

81. (1)* Before a person elected to be President or First Vice-President or appointed to be First Vice-President or Second Vice-President takes office that person shall take the following oath which shall be administered in public by the Chief Justice –
 "I..... do solemnly swear that I will well and truly perform the functions of the high office of President (or Vice-President) of the Republic of Malawi, and that I will preserve and defend the Constitution, and that I will do right to all manner of people according to laws without fear or favour, affection or ill-will. So help me God."
- (2)* Instead of taking an oath, the President, First Vice-President or Second Vice-President may, if he or she thinks fit, make an affirmation which shall be in the like form with the substitution of "affirm" for "swear", and the omission of the final sentence.
- (3)* A person elected to be President or appointed to be First Vice-President or Second Vice-President shall be sworn into office, in accordance with sub-section (1), within thirty days of being elected or appointed.

* Amended text. The full text of the Constitution (Amendment) Act, 1994 is given in Annex I.

