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INTRODUCTION

In 1994 Malawi held presidential and parliamentary elections which led to the restoration of a multi-party system of government. For a period of 30 years before the May 17 elections, that country was ruled by one party, the greater part of which period the then ruling party was the only legal political party permitted.

In order to organise free and fair multi-party elections, the ruling party sought a mandate from the people through a referendum held in June 1993. The overwhelming majority of the voters in the referendum voted for multi-party democracy. As a result of the outcome of the referendum, new legal structures were created to permit the formation of political parties in addition to the ruling party and to guarantee a fair opportunity for qualified persons to register as voters.

A new Act, the National Consultative Council Act 1993, was passed establishing a new body to oversee appropriate constitutional amendments to allow the organisation of free and fair multi-party elections. A new electoral law, the Parliamentary and Presidential Elections Act (herein referred to as "the Act"), was also to be supervised by the new body – as well as a new Constitution which took effect on the day the multi-party elections were held.

For the sake of completeness, the relevant eight provisions of the National Consultative Council Act and amendments to the Constitution will be presented along with the principal provisions of the Electoral Law.

— Section 1 —

THE NATIONAL CONSULTATIVE COUNCIL

1.01 Establishment

The National Consultative Council ("the Council") was established by the National Consultative Council Act. The Council consisted of the representatives of all political parties which were registered under the Political Parties (Registration and Regulation) Act 1993 by 30 November 1993. Each registered political party was entitled to designate not more than seven representatives to the Council.¹

1.02 Functions

The functions of the Council were:

- (a) to participate in the formulation of policies and in the initiation of legislative measures necessary for the transition;

-
- (b) to initiate such amendments to the Constitution as were necessary to facilitate the transition to the first multi-party general election;
 - (c) to prepare the draft of a new electoral law suitable for a multi-party political system to be enacted by Parliament;
 - (d) to review the law governing the registration of political parties for the attention of Parliament;
 - (e) to prepare the draft of a new Constitution suitable for a multi-party political system which would become effective immediately after the first multi-party general election; and
 - (f) to prepare the draft Bill of Rights either as part of the new Constitution or as a separate Act of Parliament.²

1.03 Officers and Funds to Service the Council

There were assigned to the service of the Council –

- (a) one officer in the public service not below the rank of Deputy Secretary, being a person approved by the Council, designated as Secretary to the Council (hereinafter referred to as the “Secretary”) who was the chief executive officer thereof responsible for the day-to-day management and administration of the affairs of the Council;
- (b) such number of other officers in the public service as could have been required to be of service to the Council in capacities subordinate to the Secretary.

In the performance of their duties in the service of the Council, the Secretary and all officers in the service of the Council were subject only to the directions of the Council.

A person assigned to the service of the Council could, where the Council so requested, be withdrawn at any time from such service.

The funds for the management and administration of the affairs of the Council consisted of –

- (a) such sums as could have been appropriated for the purpose by Parliament; and
- (b) such sums as could have been received for the purposes of the Council by way of grants, gifts or donations from any government, organisation, agency or person.

All sums received for the purposes of the Council were under the control of the Council and all expenditures of each sum took place in accordance with the directions of the Council.

The Secretary submitted to the Council monthly reports and statements of accounts on receipts and expenditures.³

1.04 The National Executive Committee (“the Committee”)

This body was also set up by the National Consultative Council Act. It consisted of two representatives designated from amongst the seven representatives of each political party on the Council.⁴

1.05 Functions of the Committee

The functions of the Committee were –

- (a) to monitor the implementation of the policies of governing the transition;
- (b) to receive such information, relating to or affecting the transitional process, as it could have required from the Government;
- (c) to monitor the activities of all public offices which in the view of both the Committee and the Cabinet had a bearing on the management of the transition;
- (d) to consult with the Cabinet on any measures relating to the transition which had to be taken in the management of the transition;
- (e) to bring to the attention of the Cabinet for corrective action any abuses of political authority, public finances or property in the Government or in any statutory body for political campaigning or gain;
- (f) to monitor the implementation by the Government of legislation relating to the transition; and
- (g) to monitor the activities of the Malawi Broadcasting Corporation to ensure equal and fair access and coverage of the activities of all political parties generally and in particular in relation to their campaigns for the first multi-party general election.⁵

1.06 Officers and Funds

The provisions of Section 1.03 above applied also to the Committee.

1.07 Decisions of the Council and the Committee

Each member of the Council and each member of the Committee, including the chairman, vice-chairman or other person presiding, had one vote.

Members of the Council were required to seek to decide by way of consensus, but where they failed to do so they were required to vote by a show of hands and the decision thereon was taken by a simple majority of the vote of those present and voting.

A member was entitled in his own behalf or on behalf of the political party he represented to make any reservation on any decision of the Council or the Committee and to have the reservation recorded in the minutes of the meeting.⁶

1.08 Action on Certain Decisions

A decision of the Council or the Committee requiring legislative or executive action of the Government had to be submitted by the Secretary to the Minister of the Government responsible for the matter in question and in turn the Minister, with all dispatch, had to refer the matter to the Cabinet for necessary action.

Where the Cabinet did not agree with the decision of the Council or of the Committee on any matter referred to it, it had the right to refer the matter back to the Council or to the Committee for reconsideration, stating in writing the reasons for its position. The right of

the Cabinet to refer any matter back to the Council or to the Committee could be exercised only once in respect of that matter.

A decision of the Council or the Committee confirming or varying its earlier decision referred back to it had to be implemented by the Cabinet.

The Cabinet was required to take, with dispatch, such action as was necessary for giving legislative or executive effect to the decision of the Council or of the Committee and further, had to ensure that all legislative proposals presented to Parliament pursuant to the National Consultative Council Act were passed and enacted into law.⁷

1.09 Committees of the Council

The Council was empowered to appoint any number of committees of its own as it considered necessary for the discharge of its functions and to assign any of its functions to a committee. The assignment of any function to a committee was without prejudice to the authority of the Council to perform the same function.⁸

1.10 Duration of Mandate of the Council and the Committee

The Council and the Committee were mandated to cease to function upon the assumption of the power of government by any political party following the first multi-party general election held after the Referendum.⁹

— Section 2 —

RELEVANT CONSTITUTIONAL PROVISIONS

2.01 Amendments

Constitutional amendments were enacted to enable the formation and operation of political parties and to restore the fundamental rights which had been removed from the Constitution during one-party rule. Central to the concept of free and fair multi-party elections was the restoration of the right and freedom of expression, of assembly and association.¹⁰

2.02 Electoral Commission – Establishment

The Constitution established an Electoral Commission which shall exercise such functions in relation to elections as may be conferred upon it by the Constitution or by an Act of Parliament.

The members of the Electoral Commission were appointed by the President in accordance with an Act of Parliament in that behalf.

A person was not qualified to hold the office of a member of the Electoral Commission if

he was a Minister, a Parliamentary Secretary, a member of the National Assembly or a public officer.

A member of the Electoral Commission was required to vacate his office –

- (a) at the expiration of four years from the date of his appointment; or
- (b) if any circumstances arose that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.¹¹

2.03 Constituency Boundaries

The Constitution laid down a minimum number of constituencies (one hundred and forty-one), but provided for the Electoral Commission to review the boundaries of all constituencies at intervals of not less than three nor more than five years, and to alter where necessary the boundaries.¹²

It is to be noted that the Constitution described herein was superseded by a new Constitution which came into effect when the new Government took power in May 1994.

— Section 3 —

ELECTION ADMINISTRATION

3.01 The Electoral Commission

The Electoral Commission (“the Commission”) shall be appointed with respect to every general election and must consist of such number of persons as the President deems appropriate to appoint. The President must cause a notice of the appointment of the Commission to be published in the Gazette. However, for the first general election (which was held on 17 May 1994) members of the Commission were required to be appointed by the President on the recommendation of the Council.

The Commission is empowered to determine its own procedure.

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 must 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.¹³

3.02 Functions of the Commission

The Commission is required to 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 –

- (a) 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 organise 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;
- (i) to promote through the media and other appropriate and effective means the civic education of the citizens concerning the election; and
- (j) to ensure compliance with the Act and generally to adopt measures necessary to guarantee that the election is free and fair.¹⁴

3.03 Term of Office of Members of the Commission

A member of the Commission holds office from the date of his appointment to a date occurring 30 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.

All members of the Commission appointed with respect to one general election can 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.¹⁵

3.04 Independence of the Commission

In discharging the functions of the Commission, the Commission and every individual member thereof must 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 whatsoever or organisation whatsoever,

but for the purpose only of accountability the Commission and every individual member thereof is answerable, and reports directly to the President on the overall fulfilment of the functions of the Commission.¹⁶

3.05 Funds

The funds of the Commission consist of such sums as Parliament appropriates for the

purposes of the Commission and such other sums as may otherwise be received and accounted for by the Commission.

The funds of the Commission and all expenditure of the funds shall be in accordance with the directions of the Commission.

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.¹⁷

3.06 Legal Representation

The Commission may instruct the Attorney-General or any legal practitioner to provide legal representation to the Commission in any court proceedings concerning appeals against its decisions on complaints about any aspect of the electoral process, or to provide general legal advice to the Commission.¹⁸

3.07 Publicity

The Commission is required to establish its own publicity machinery and is free to communicate openly and equally with each political party or any candidate, person or organisation.¹⁹

3.08 Duty to Co-operate with the Commission

It is 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.

It is the special duty of –

- (a) 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 the Act.²⁰

3.09 Election Officers

The Clerk of Parliament and officers subordinate to him are required to serve as election officers and must be attached to the Commission and act in its service for the conduct of an election.

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.

The Clerk of Parliament shall while in the service of the Commission be designated as the Chief Elections Officer and, as such, he is the chief executive officer of the Commission and must supervise the affairs thereof subject only to the general or special directions of the Commission.²¹

— Section 4 —

REGISTRATION OF VOTERS

4.01 Eligibility

Every citizen of Malawi residing in Malawi and who on or before polling day, shall have attained the age of 18 years is eligible to register as a voter in an election.

It is the right and the civic duty of every eligible citizen to present himself for registration as a voter and further he is entitled 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.²²

4.02 Commission's Duty to Promote Registration

The Commission is required to 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.

A citizen eligible to register as a voter shall be registered only once.

A person shall be registered as a voter in the area where he ordinarily resides or was born or is employed or carries on business.²³

4.03 Temporary Registration Officers

The Commission may employ temporary staff, on such terms and conditions as it shall determine, as registration officers who shall register voters throughout Malawi.

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 18 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.

Every registration officer shall, before commencing his duties, receive vocational training in the identification and registration of voters and generally in the requirements of the Act with respect to the registration of voters.

In the performance of their duties, registration officers are under the supervision of the Chief Elections Officer and such of the other election officers as he or the Commission designates for the purpose.²⁴

4.04 Registration Centres

The Commission is required to establish centres throughout every constituency in Malawi 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.

No form of propaganda campaign material or advertisement must be exhibited at a registration centre or within a radius of 100 metres of a registration centre.²⁵

4.05 Voters' Registers

Voters' registers must be in the prescribed form and the Commission must procure sufficient copies thereof for the registration of voters throughout Malawi 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.²⁶

4.06 Evidence of Eligibility to Vote

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

- (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 similar alternative document of identity; or
- (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.²⁷

4.07 Registration Certificate

Upon a registration officer being satisfied with proof of eligibility of a person to vote, he shall –

- (a) issue to that person a voter's registration certificate in the prescribed form;
- (b) register that person in the voters' register by entering the particulars of that person as prescribed therein.

If a voter's 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 authorised 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 voter's registration certificate with the words "duplicate" clearly marked or printed thereon.²⁸

4.08 Updating of Voters' Registers

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.

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

Upon the registration officer being satisfied with proof of loss of eligibility of a registered voter, he must immediately update the voters' register in accordance with the foregoing procedure.²⁹

4.09 Initialling of Pages in Voters' Roll

In the case of registration in a new voters' register, the registration officer must initial both sides of every page at a point where the registration on the page ends.³⁰

4.10 Role of Political Parties

Every political party contesting an election has the right to monitor the registration of voters and must do so through its designated representatives assigned to a specified registration centre and whose names must 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.

The Commission is required to issue to every person designated as a representative a document of identity which shall be in the prescribed form. There may be assigned to one registration centre more than one representative of a political party.

Representatives of political parties 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.

It is incumbent upon the representatives of political parties in exercising their rights to –

- (a) monitor the registration activities conscientiously and objectively;
- (b) 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) refrain from submitting complaints or appeals in bad faith or with the purpose of paralysing the registration process; and
- (d) 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.

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.

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.³¹

4.11 Period for Registration of Voters

The period for the registration of voters is determined by the Commission and notified in the Gazette, being a period of not less than 14 days before the first polling day.

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

A voters' register must 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 must make copies of voters' registers and post them for inspection at appropriate public places made known to the public.³²

— Section 5 —

PREPARATION FOR ELECTIONS

5.01 Notice of Election

Whenever a general election or a by-election is to be held, the Commission is required to issue an order, notice of which must be published in the Gazette –

- (a) declaring –
 - (i) in the case of a general election, that an election is to be held in 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 constituency;
 - (c) appointing the day or days on which a poll shall be taken if a poll becomes necessary in accordance with the Act.

The date appointed for the nominations must not be less than 14 days after the publication of the order.

The period appointed for the poll must commence not less than 14 days after the nomination of candidates.

Upon receipt of a copy of the order, the returning officer for each constituency named in the order must proceed to hold an election in the manner prescribed.³³

5.02 Nomination of Candidates

On the day or days and at the time or times and place fixed for the nomination of candidates the returning officer must 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 the Act.

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 person intends to be a candidate, each of whom must sign the nomination paper;
- (c) be endorsed with the candidate's consent to nomination;
- (d) if the candidate is to stand for, or is 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.

Every nominated candidate must produce to the returning officer evidence, satisfactory to the returning officer, identifying him as the person nominated.

Where a nomination paper specifies the political party for which the candidate is running, the nomination paper must be countersigned by a person who is an officer-bearer of the political party concerned and who has authority to certify that the candidate is to stand for that political party.

The fact that subsequent to nomination the name of any person who nominated a candidate is struck off the voters' register shall not invalidate the nomination of the candidate.

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

A voter is not entitled to subscribe to more than one nomination paper.³⁴

5.03 Procedure for Nominating Candidates

Every candidate or his election representative must 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 maximum 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.

The returning officer must, 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.

The returning officer must, 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.

Where a nomination paper is delivered in conformity with the Act and is not withdrawn, the candidate is 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, namely –

- (a) that the description of the candidate is insufficient to identify him;
- (b) that the nomination paper does not comply with the 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 to the returning officer identifying the candidate is insufficient.³⁵

5.04 Rejected Nominations

If, after the close of the period allowed for nominations but before the polling day, the returning officer is of the opinion that –

- (a) a candidate whose nomination paper has been lodged with him has not been duly

- nominated 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 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 other candidate contesting the election in the constituency concerned or the recognised 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 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 must 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 must draw up and sign a statement of the facts and his opinion based thereon and transmit it, together with the 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 must, at the same time, be delivered to the candidate or his election representative and to the Commission.

If no request is made to refer the matter to the High Court, the candidate is deemed not to have been duly nominated.

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

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 must comply with such direction.

Where any nomination has been referred to the High Court, the nomination proceedings shall be suspended pending determination of the matter.

The returning officer is not to reject any nomination –

- (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 the Act.³⁶

5.05 No Nomination of Candidate

If at the end of the period allowed for nomination no candidate has been duly nominated for a constituency, the Commission is required to publish by notice in the Gazette, and extend the period for the receipt by the returning officer of nominations to a date not later than seven days before the polling day.³⁷

5.06 Procedure for Uncontested Election

If at the end of the period allowed for nomination there is only one candidate duly nominated in a constituency, the returning officer is required to 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.³⁸

5.07 Procedure for Contested Election

When two or more persons have been duly nominated as candidates for election in any constituency, the returning officer in such constituency must, 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 –

- (a) the names of the candidates in alphabetical order of surnames;
- (b) the day or days and the times, as declared by the Commission on which the poll is to take place; and
- (c) the location of the polling station or stations.

The returning officer may, with the consent of the Commission, alter the provisions of a public notice for the purpose of fulfilling the requirements of the Act and any such alteration must be published in the same matter as the notice.³⁹

5.08 Deposit on Nomination

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.

If a poll takes place for the constituency concerned, the sum deposited is 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.

If a poll for the constituency concerned does not take place, the sum deposited must be refunded to the payee.⁴⁰

5.09 Withdrawal of a Candidate

A duly nominated candidate for election for a constituency may withdraw his nomination at any time before the polling day.

A withdrawal of a candidate must be effected by means of a written notification to the returning officer, signed by the candidate personally, and the returning officer must notify the Commission in writing.

Where a candidate has withdrawn his nomination pursuant to the provisions of the Act, the sum deposited by or on his behalf must be forfeited and paid into the Consolidated Fund.

In the event of a candidate withdrawing his nomination, the returning officer must take 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.⁴¹

5.10 Death of Candidate

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 must stop all proceedings relating to the election in that constituency and forthwith notify the Commission of that fact.

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 as a result of the death of a candidate,

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 must be commenced afresh in the same manner as if a vacancy had occurred. No fresh nomination is 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.⁴²

— Section 6 —

CAMPAIGNING

6.01 Right to Campaign

All political parties have the right to campaign in an election.

Campaigning by or in the name of any political party must not be conducted in any public

place unless the political party has notified the District Commissioner in writing, with a copy of such notification being sent to the officer-in-charge of police.

The District Commissioner is required to stamp every notification he has received with his official stamp showing the date the notification was received by him.

Where two or more political parties have given notification 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.⁴³

6.02 Period of Campaigning and Treatment of Political Parties

For the purposes of the Act the period of campaigning in public by every political party is two months closing 48 hours before the opening of the poll on the first polling day. In the case of the first general election (which was held 17 May 1994) such period shall be of any duration closing 48 hours before the opening of the poll on the first polling day.

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

Every political party and every representative, member or supporter thereof is entitled to enjoy complete and unhindered freedom of expression and information in the exercise of the right to campaign 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.

Except the duty to inform the District Commissioner in writing, 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.

Notwithstanding guarantees of freedom of expression, information and assembly under the Act, no person shall in campaigning in an election use language which is inflammatory, defamatory or insulting or which constitutes incitement to public disorder, insurrect, hate, violence or war.

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

No person shall hold a campaign meeting in or within the premises of –

- (a) military units or police stations;
- (b) public institutions and work places during normal working hours;
- (c) educational institutions during periods of classes.⁴⁴

6.03 News Broadcasts and Reports

Every political party is entitled to have the substance of its campaign propaganda reported

on radio news broadcasts of the Malawi Broadcasting Corporation and in any newspaper in circulation in Malawi.

In the case of news broadcasts by the Malawi Broadcasting Corporation –

- (a) the content of the news must be professionally determined by the Malawi Broadcasting Corporation;
- (b) the Malawi Broadcasting Corporation must maintain neutrality in the manner of reporting the news of the campaign propaganda of political parties and generally in its commentaries;
- (c) the Commission is required to monitor such news broadcasts and shall ensure equal news coverage of the campaign by all political parties;
- (d) no political party or candidate is entitled to make commercial advertisement for its campaign.

The Commission may, by arrangements with the Malawi 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.

For the purposes of these provisions the term “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 an election.⁴⁵

6.04 Pamphlets, Books and Campaign Posters

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.

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 is entitled to equal access to such place or space.⁴⁶

6.05 Campaign Financing

Every political party may, for the purpose of financing its campaign, appeal for and receive voluntary contributions from any individual or any non-governmental organisation or other private organisation in or outside Malawi.⁴⁷

— Section 7 —

POLLING STATIONS AND POLLING

7.01 Selection of Polling Stations

The Commission shall establish polling stations throughout the Republic and there shall be at least one polling station for every registration centre established.

All polling stations must 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 dedication to worship; and
- (f) hospitals or other health centres.

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.⁴⁸

7.02 Polling Station Officers

The Commission is required to appoint polling station officers in its service whose duty is to administer the proceedings at polling stations, including more particularly the casting of votes, and to count the votes cast at polling stations.

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 must be a person able to speak the language commonly spoken in the area of the polling station.

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.

Every polling station officer shall, on polling day, report for work at the polling station not later than 30 minutes before the opening time for the casting of votes at that polling station and at any given time of the day there shall be a majority of polling station officers attending to their business at the polling station.

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

- (a) an authenticated copy of the voters' register of 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 in respect of the polling process;
- (g) a special container to be positioned in the polling booth into which a voter shall deposit the ballot paper or papers 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 are recorded.⁴⁹

7.03 Security of Work Items at Polling Station

Presiding officers at polling stations and, in general, the Commission, are responsible for creating and guaranteeing all necessary and indispensable conditions for the custody, conservation, security and inviolability of the items required for the polling station, including more particularly the ballot papers and ballot boxes.⁵⁰

7.04 Monitoring of Voting by Political Parties

Every political party has the right to monitor the voting process at polling stations and must do so through its designated representatives who must be notified to the Commission in writing specifying their names and polling stations to which they are to be assigned and in the absence of such notification by any political party, it is presumed that the political party does not wish to monitor the voting process at that polling station.

The Commission is required to issue to every person designated as a representative of a political party a document of identity in the prescribed form.

Representatives of political parties 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; and
 - (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;
 - (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; and
 - (iv) to maintain the secrecy of the ballot.⁵¹

7.05 Polling Procedure

The right of a person to vote in the general election must be exercised individually by him

and he is required to be physically present. Voting is by secret ballot. A voter is entitled to cast his vote only once and one person has one vote.

A person shall be allowed to exercise his right to vote at a polling station located at the registration centre where he is registered.

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 authorised officer may, on the request of such person, grant him written authorisation in the prescribed form to vote at a polling station located in the place where he will be present on polling day and in that case the polling station officers at such other polling station must record in the manner prescribed by the Commission instructions in writing his name, the number of his voter's registration certificate and the place of his registration.

The registration officer or other duly authorised officer may at his sole discretion refuse to grant the request.

The Commission must arrange for the printing in sufficient quantities of distinctly identifiable ballot papers for –

- (a) each candidate for election as a 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. The Commission is required to procure specially printed envelopes for use by voters in casting their votes.

The Commission is required to establish one voting booth or more at each polling station and a voting booth must 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.

The Commission is required to procure ballot boxes of suitable material, specification and design for use in the casting of votes by voters.

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 when voters cast their votes in the ballot box they shall do so in the full view of the polling station officers and other officials present thereat.

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.

On the polling day voting begins at 6 o'clock in the morning and closes 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, must 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 must be closed and sealed.

The first persons to be allowed to vote are 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 must form a line; but subject thereto, the presiding officer must 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 provision.⁵²

7.06 Adjournment of Polls in Certain Cases

Voting at any polling station may be adjourned to another day to be fixed by the Commission if –

- (a) the polling station officers are unable to assemble at that polling station in accordance with the Act;
- (b) there occurs some commotion which causes voting to be interrupted for more than three hours;
- (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.

Where voting has been adjourned to another day –

- (a) the hours of voting on that day shall be the same as for the original day;
- (b) the voting process must 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.⁵³

7.07 Manner of Casting the Vote

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

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

If the polling station officers are satisfied with the identity of a voter in accordance with the above provision, they shall –

- (a) mark his voter's 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 authorised 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 and direct the voter to the voting booth for the poll for election of a member of Parliament.

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 must 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 of a member of Parliament.

After a voter has cast his vote 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 voter's left index finger in indelible ink and hand to him one ballot paper for each candidate for election to the office of President and one specially printed envelope for use by the voter and then direct the voter to the voting booth for the poll for election to the office of President.

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 the ballot papers, 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 the office of President.⁵⁴

7.08 Voting by Blind and Disabled Persons

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 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.⁵⁵

7.09 Null and Void Votes

A vote cast is null and void if –

- (a) the ballot paper has been torn into two or more parts; or
- (b) has been classified as such where the polling has been adjourned;
- (c) the envelope used for casting the vote contains two or more ballot papers.

A null and void vote shall not be regarded as valid and must not be counted in determining the results of the elections.⁵⁶

7.10 Complaints

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.

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

Any presentation received by polling station officers must 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.⁵⁷

— Section 8 —

DETERMINATION OF RESULTS OF THE ELECTIONS

8.01 Unused Ballot Papers

At the close of the poll at any polling station, the presiding officer must 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.⁵⁸

8.02 Classification of Votes Cast

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 President.⁵⁹

8.03 Counting of the Votes

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 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;
- (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.

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.

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.

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.

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 –

- (a) the record prepared as required;
- (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.⁶⁰

8.04 Compilation of the Results

On receipt of records from polling stations, the District Commissioner or an officer of the Commission duly authorised in that behalf shall, at the office of the District Commissioner, compile the results 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 –

- (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;
- (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 decision thereon.

Representatives of political parties duly designated for the purpose are entitled to observe the entire procedure followed at the office of the District Commissioner in compiling the district results of the elections.

The record must 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.

The District Commissioner or an officer of the Commission duly authorised in that behalf shall publicly announce the result of the election in each constituency and in the entire district.

The District Commissioner or a duly authorised officer of the Commission must, with all dispatch, deliver to the Chief Elections Officer under conditions of absolute security against loss, tampering or interference –

- (a) the record prepared as required;
- (b) all items received from all polling stations in the district concerned.

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.

The determination of the national result of a general election must begin immediately after the Commission has received records from all districts and shall continue uninterrupted until concluded.

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.

Representatives of political parties designated in writing to the Commission are entitled to observe the determination of the national result of the election.

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.

At the beginning of determining the national result of a general election, the Commission is required to take a decision on any matter which has been a subject of a complaint and must 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.

The Commission shall summarise its determination of national result of a general election in a written record indicating –

- (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 is entitled to receive a signed copy of the summary.⁶¹

8.05 Publication of the Results

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 48 hours from the conclusion of the determination thereof and shall, in such publication, specify –

- (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.⁶²

— Section 9 —

ELECTION PETITION

9.01 Undue Election

A complaint alleging an undue return or an undue election of a person as a member of the National Assembly or to the office of President by reason of irregularity or any other cause whatsoever must be presented by way of petition directly to the High Court within 48 hours, including Saturday, Sunday and a public holiday, of the 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.

In proceedings with respect to a petition under the foregoing provisions, the Commission shall be joined as a respondent.

If, on the hearing of a petition presented under the provisions set out above, the High Court makes an order declaring –

- (a) that the member of the National Assembly or the President, as the case may be, was duly elected, such election shall be and remain valid as if no petition had been presented against his election; or
- (b) that the member of the National Assembly or the President, as the case may be, was not duly elected, the Registrar of the High Court must 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.

Pursuant to an order of the High Court declaring that the member of the National Assembly or the President, as the case may be, was not duly elected, a fresh election for the seat of the member of the National Assembly or to the office of President, as the case may be, shall be held in accordance with the Act.

A declaration by the High Court shall not invalidate anything done by the President before that declaration.⁶³

9.02 Complaints

Any complaint submitted in writing alleging any irregularity at any stage, if not satisfactorily resolved at a lower level of authority, must be examined and decided on by the Commission which must take necessary action to correct the irregularity and the effects thereof.

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 must be made by way of a petition, supported by affidavits of evidence, which must clearly specify the declaration the High Court is being requested to make by order.

On hearing a petition, the High Court –

- (a) shall 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.

An order of the High Court shall 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 the 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 must not declare an election void if it is satisfied that the number of votes involved under (a), (b) or (c) above could not have affected the result of the election;

- (d) non-compliance with the Act in the conduct of the election – however if the court is satisfied that any failure to comply with the 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.

The court has 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.

At the conclusion of the trial of an election petition the court must determine whether the member whose nomination or election is complained of, or any and what person was duly nominated or elected, or whether the election was void, and must report such determination to the Commission.

Upon such report being given such determination is final.⁶⁴

— Section 10 —

OFFENCES

10.01 Offences

A person who –

- (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 voter's 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 without notifying the District Commissioner thereof in writing;
 - (ii) prevents the holding, or interrupts the proceedings of a public meeting;
 - (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 authorised 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 authorised place or space any campaign material, and fails to display or deposit such campaign material or misplaces, steals, removes or destroys such material;
 - (vi) contravenes the provision of the Act which prohibits inflammatory language, etc, during an election campaign;
 - (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 authorised 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 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 100 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 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
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- 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 the Act;
 - (xii) illicitly introduces ballot papers in a ballot box before, during or after the voting;
 - (xiii) fraudulently takes possession of or conceals a ballot box with uncounted ballot papers 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 a police officer 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 the Act, is guilty of an offence.⁶⁵

10.02 Maintenance of Secrecy

Every election officer, candidate, election representative of a political party or other person in attendance at a polling station must maintain and aid in maintaining the secrecy of the voting at such station, and must not communicate, except for some purpose authorised 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 a voter after he has received a ballot paper and before he has placed a ballot paper in a ballot box.

No person, other than a person aiding a blind or an incapacitated voter in accordance with the 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.

Any person who contravenes the foregoing provisions is guilty of an offence.⁶⁶

— *Section 11* —

INTERNATIONAL OBSERVATION

11.01 Scope of International Observation

International observation is defined to mean the verification of the various stages of the elections by international organisations, non-governmental organisations, foreign governments and foreign personalities duly recognised for the purpose.

International observation consists of the following activities –

- (a) to verify and monitor the impartiality and the functioning of the Commission and its officers in conformity with the 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.

Any irregularities noted by international observers must be reported to the Commission or to the competent officers of the Commission and the Commission or such officers of the Commission 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 the Act.⁶⁷

11.02 Invitation of International Observers

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, organisation or person competent to undertake international observation.

International observation begins with the appointment of the Commission and ends with the determination of the national result of the election or the settlement thereafter of all election disputes.

It is 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.⁶⁸

11.03 Categories of Observers

For the purposes of the Act, international observers are categorised as follows –

- (a) observers from the United Nations Organisation and its agencies, the Organisation of

- African Unity and its agencies, the Commonwealth and other international organisations;
- (b) observers from non-governmental organisations constituted and operating in any foreign country;
 - (c) observers from foreign governments; and
 - (d) individual observers.

A person is not recognised as an international observer unless –

- (a) in the case of the first three categories specified, he has been designated by the relevant organisation 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 recognised international experience and prestige.

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 recognised 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 recognised international observer.

Every international observer recognised under the Act shall, while exercising his functions, use the identity card and badge issued to him.⁶⁹

11.04 Right of International Observers

International observers in Malawi have the right –

- (a) to obtain a multiple entry visa to enter Malawi for the duration of the period of international observation;
- (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 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 organisation 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.⁷⁰

11.05 Obligations of International Observers

International observers have the following obligations –

- (a) to exercise their role with impartiality, independence and objectivity;
- (b) to respect the Constitution and the laws of Malawi;
- (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.

The Commission may revoke the accreditation of any international observer who persistently violates the obligations laid down in the Act and thereupon his status as an international observer ceases.⁷¹

11.06 Position of Diplomats

Diplomats accredited to Malawi who are designated and recognised as international observers shall exercise their functions as such international observers without prejudice to their status and positions as diplomats.⁷²

11.07 Joint Operation

International observers may operate separately or jointly with other international observers of the same or different categories.⁷³

NOTES

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|---|-----------------------------------|
| 1. National Consultative Council Act, see sections 3 and 4 | 14. Ibid., see section 5 |
| 2. Ibid., see section 5 | 15. Ibid., see section 7 |
| 3. Ibid., see sections 6 and 7 | 16. Ibid., see section 8 |
| 4. Ibid., see section 4 | 17. Ibid., see section 9 |
| 5. Ibid., see section 5 | 18. Ibid., see section 11 |
| 6. Ibid., see section 13 | 19. Ibid., see section 13 |
| 7. Ibid., see section 17 | 20. Ibid., see section 14 |
| 8. Ibid., see section 19 | 21. Ibid., see section 6 |
| 9. Ibid., see section 21 | 22. Ibid., see sections 15 and 16 |
| 10. Constitution (Amendment) (No. 3) Act 1993, see sections 6J and 6K | 23. Ibid., see sections 17 and 19 |
| 11. See section 30 of the Constitution as amended | 24. Ibid., see section 20 |
| 12. See section 31 of the Constitution as amended | 25. Ibid., see section 21 |
| 13. Parliamentary and Presidential Elections Act, see section 4 | 26. Ibid., see section 22 |
| | 27. Ibid., see section 23 |
| | 28. Ibid., see section 24 |
| | 29. Ibid., see section 25 |

30. Ibid., see section 26
31. Ibid., see sections 27 and 28
32. Ibid., see sections 29-31
33. Ibid., see section 36
34. Ibid., see section 37
35. Ibid., see sections 38 and 39
36. Ibid., see section 40
37. Ibid., see section 41
38. Ibid., see section 42
39. Ibid., see section 43
40. Ibid., see section 45
41. Ibid., see section 46
42. Ibid., see section 47
43. Ibid., see section 56
44. Ibid., see sections 57-62
45. Ibid., see section 63
46. Ibid., see sections 64 and 65
47. Ibid., see section 66
48. Ibid., see section 67
49. Ibid., see sections 68-70
50. Ibid., see section 71
51. Ibid., see sections 72 and 73
52. Ibid., see sections 74-81
53. Ibid., see section 83
54. Ibid., see sections 85 and 86
55. Ibid., see section 87
56. Ibid., see section 88
57. Ibid., see section 89
58. Ibid., see section 90
59. Ibid., see section 91
60. Ibid., see sections 92-94
61. Ibid., see sections 95-98
62. Ibid., see section 99
63. Ibid., see section 100
64. Ibid., see sections 113 and 114
65. Ibid., see section 115
66. Ibid., see section 116
67. Ibid., see sections 101 and 102
68. Ibid., see sections 103-105
69. Ibid., see sections 106-108
70. Ibid., see section 109
71. Ibid., see section 110
72. Ibid., see section 111
73. Ibid., see section 112