

Date Printed: 02/05/2009

JTS Box Number: IFES_45
Tab Number: 26
Document Title: LAW ON LOCAL GOVERNMENTS ELECTIONS
Document Date: 1996
Document Country: MAL
Document Language: ENG
IFES ID: EL00747



* D 9 0 B F F 5 9 - D 8 6 7 - 4 4 5 E - B 1 9 F - A 3 C E 8 B 9 E B 8 3 A *

law/MAL/1996/015/eng

No. 24

Local Government Elections

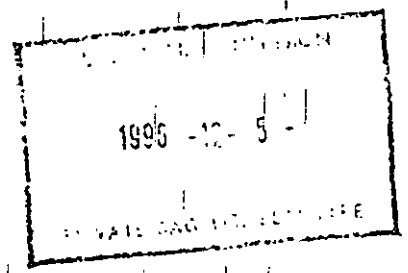
Malawi

Electoral Law Local/Govt 96

(Published 16th August, 1996)

Act
No. 24 of 1996

Assent



BAKILI MULUZI
PRESIDENT
5th August, 1996

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An Act to provide for the conduct of local government elections and to provide for matters incidental 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 Local Government Elections Act, 1996.

Interpretation

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

“candidate” means a person who has been nominated under this Act as a candidate for election as a councillor;

No. 31 of 1996

“Commission” means the Electoral Commission established under section 75 of the Constitution and appointed in accordance with section 4 of the Parliamentary and Presidential Elections Act;

“by-election” means the election of a councillor to fill a seat on the council which has become vacant otherwise than by dissolution of the council;

“Chief Elections Officer” means the person appointed as such under section 4;

“councillor” means a person elected under this Act to the office of councillor of a council;

“election” means an election to the office of councillor of a council;

"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;

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

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

"polling day" means any day appointed by the Commission under section 28 for the holding of a poll;

"polling station" means a place established as such under section 51;

"polling station officer" means a person appointed as such under section 52;

"presiding officer" means a polling station officer designated as such under section 52;

"registration" means the registration of voters in an election;

"voter" means a person registered to vote in an election;

"voter's register" means the register of voters established under section 13;

"voters' registration certificate" means a certificate issued to a voter under section 15;

"voting booth" means a compartment at a polling station for screening a voter from view when he is making his choice in the poll;

"ward" means an area delimited as such under section 3.

PART II—FUNCTIONS AND POWERS OF THE COMMISSION

3. In addition to the broad functions conferred on the Commission by the Constitution, the Commission shall organize, conduct and supervise the elections and, without prejudice to the generality of such power, the Commission shall have the following functions—

Functions of
the
Commission

(a) to determine the number of wards for the purpose of the elections and to undertake or supervise the demarcation of boundaries of wards;

- (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 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.

Election of
officers

4.—(1) The Commission shall appoint a Chief Elections Officer and officers subordinate to him to serve as election officers in the conduct of the election.

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

(3) The Chief Elections Officer shall be the chief executive officer of the Commission and shall supervise the officers thereof subject only to the general or special directions of the Commission.

Powers of the
Commission

5.—(1) Subject to the other provisions of this Act, the Commission may make regulations providing for the procedure and manner of conducting every election, and may, at any time, issue instructions to any election officer in connexion with his functions under this Act and may require any election officer to furnish to the Commission such information and returns as the Commission may consider necessary.

(2) Without prejudice to the generality of subsection (1), the Commission may make regulations providing for all or any of the following matters—

- (i) the division of the area of councils into wards;
- (ii) the establishment of polling stations in a ward;
- (iii) the nomination of candidates for any election and the withdrawal of nominations duly made;
- (iv) the making and determination of appeals against the rejection of nominations by a returning officer;

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- (v) the publication of names of candidates whose nominations are accepted;
 - (vi) the payment of registration fees by candidates;
 - (vii) the use of, and the allocation of, symbols at an election;
 - (viii) the appointment of, and the duties of, election officers;
 - (ix) the fixing of dates and times for the taking of polls;
 - (x) the equipment and facilities to be provided at polling stations;
 - (xi) the persons who may be admitted to polling stations;
 - (xii) the manner and procedure of voting in an election;
 - (xiii) the manner of ascertaining the identity of persons wishing to vote at an election and whether such persons are qualified to vote;
 - (xiv) the manner in which persons who are blind, or otherwise incapacitated, may vote;
 - (xv) voting by persons employed on election duties on the day of an election;
 - (xvi) the maintenance of secrecy at an election;
 - (xvii) the postponement of, the adjournment of, or an extension of, time for a poll in case of riot or open violence at an election;
 - (xviii) the administering of oaths or affirmations by election officers in respect of such matters as may be prescribed;
 - (xix) the procedure to be followed at the conclusion of a poll in an election;
 - (xx) the procedure for counting votes in an election, and the circumstances in which votes in an election may be rejected by a returning officer as invalid;
 - (xxi) for the purpose of declaring any candidate duly elected and the procedure to be followed where there is an equality of votes between candidates in an election;
 - (xxii) the procedure to be followed where only one person or where no person is duly nominated for election in a ward;
 - (xxiii) the declaration, notification and publication of the results of an election;
 - (xxiv) the custody and disposal of nomination papers, ballot papers, records, documents and other things relating to the conduct of elections;
 - (xxv) election expenses and returns relating to such expenses;

(xxvi) the notification and publication of any vacancy in the elected membership of a council;

(xxvii) the forms and records to be used for any of the purposes of this Act; and

(xxviii) any matter to be prescribed under this Act.

PART III—REGISTRATION OF VOTERS

Eligibility

6. Any person 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

7. It shall be the right and the civic duty of every eligible person residing in Malawi 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

8. The Commission shall, in accordance with this Act, create the necessary conditions and take all necessary actions for promoting awareness amongst persons residing in 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

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

Place of registration

10. 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.

Temporary registration officers

11.—(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 ward, unless—

(a) he is an eligible voter 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 ward.

(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.

12.—(1) The Commission shall establish centres throughout every ward 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.

Registration centres

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

13. Voters registers shall be in the prescribed form and the Commission shall 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.

Voters registers

14. An eligible person wishing to be registered as 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, marriage certificate, an employment identity card or employment discharge certificate or a birth certificate or a 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.

15.—(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 word "DUPLICATE" clearly marked or printed thereon.

Updating of
voters registers

16.—(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 update the voters register in accordance with the procedure under this section.

Initialing of
pages in voters
rolls

17. 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
registration by
political parties

18.—(1) Every political party sponsoring a candidate in 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
representatives
of political
parties

19.—(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 with 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.

20. 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 fourteen days expiring not less than twenty-one days before the first polling day.

Period for registration of voters

21. 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

22. A voters register shall be open to inspection, for purposes of verifying the entries therein, by voters, representatives of political parties and 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 ELECTIONS AND BY-ELECTIONS

Division 1—General

23.—(1) An election shall be held every three years.

Election and by-election

(2) When a councillor dies or resigns, a new ward is created, or the Commission gives notice that a seat of a councillor has become vacant, a by-election shall be held.

(3) A candidate may stand for election as councillor 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 they apply to political parties.

Delay in
publication
of notice
pending
appeal

24. When a councillor has been sentenced by a court to death or imprisonment for a term exceeding six months without the option of a fine, 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 Commission 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

25.—(1) The Commission shall appoint a returning officer with respect to every ward who shall receive the nominations of candidates for election in that ward as councillor.

(2) For the purposes of subsection (1), the Commission may designate the chief executive officer of the Council as the returning officer in respect of every ward in his Council.

Election
representative

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

Division 2—Nomination of Councillors

Qualifications
of councillors

27.—(1) A person shall not be qualified to be nominated or elected as a councillor unless that person—

(a) has, at the time of nomination, attained the age of twenty-one years;

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

(c) is registered as a voter.

(2) Notwithstanding subsection (1), no person shall be qualified to be nominated or elected as a councillor who—

(a) owes allegiance to a foreign country;

(b) is, under any written law in force in Malawi, adjudged or otherwise declared to be of unsound mind;

(c) has, within the last seven years, been convicted by a competent court of a crime involving dishonesty or moral turpitude;

(d) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Malawi;

(e) holds or acts in any public office or appointment;

Procedure for conducting elections

(f) belongs to and is serving in the Defence Forces of Malawi, the Malawi Police Force or the Malawi Prison Service; and

(g) has, within the last seven years, been convicted by a competent court of any law relating to elections.

28. (1) Wherever an election or a by-election is to be held, the Commission shall issue an order, notice or which shall be published in the Gazette -

(a) declaring -

(i) that an election be held throughout Malawi;

(ii) in the case of a by-election or by-elections, the ward or wards 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 ward;

(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 ward named in the order shall proceed to hold an election in the manner prescribed by or under this Act.

29. (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.

(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 ward 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

Nomination of candidates

of the name of the candidate, and a distinctive symbol, which the candidate wishes to appear on the ballot paper together with his photograph; and

(c) 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 together with his photograph

(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 has authority to certify that the candidate is sponsored by 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 ward or, in the case of a by-election, while he is a councillor.

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

Nomination
paper and
supporting
documents

30.—(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 of twenty-one years; and

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

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

(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.

31. 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 29 (3) is insufficient.

32.—(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 29 (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 ward concerned or the recognized symbol or abbreviation of another 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 be sponsored by a political party, there is reason to believe that fact is not true; or

(d) the deposit referred to in section 37 was not lodged with a candidate's nomination paper; or

- (e) a candidate is not qualified for election in that election; or
 (f) a candidate has been duly nominated for election for another ward.

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 papers, 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 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 33, 34 and 35 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 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.

No nomination
of
candidate

33. If at the end of the period allowed for nomination no candidate has been duly nominated for a ward, 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.

Procedure for
unopposed
election

34. If at the end of the period allowed for nomination there shall be only one candidate duly nominated in a ward, 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 ward for which he has been elected, and each candidate shall thereupon be a member of the council.

35.—(1) When two or more persons have been duly nominated as candidates for election in any ward, the returning officer in such ward shall, as soon as practicable after the close of the period for nomination, declare and give 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 times, as declared by the Commission under section 28, 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 manner as the notice.

36.—(1) A vacancy in the membership of a council which exists otherwise than by reason of a dissolution of the Council shall be published by the Commission 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 council; 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; and

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

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

(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 the council, the Registrar of the High Court shall forthwith give notice of that fact to the Commission, who shall publish a notice in the *Gazette* stating the effect of the order of the High Court.

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

37.—(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

Deposit on nomination

(2) If a poll takes place for the ward concerned, the sum deposited under subsection (1) shall, in the case of a candidate who has lost, be forfeited.

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

Withdrawal of
a candidate

38.—(1) Subject to this section, a duly nominated candidate for election for a ward 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 37 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 ward; and

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

Death of
candidate

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

(2) Where—

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

(b) the proceedings relating to an election for a ward have been stopped under subsection (1), the Commission shall, so far as concerns that ward, declare that all proceedings relating to the election in that ward 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 notified the returning officer of the ward in writing of his intention to remain a candidate.

PART V—CAMPAIGNING

40. All candidates shall have the right to campaign in an election. Campaigning by candidates

41. For the purpose of this Act the period of campaigning by every candidate 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. Period of campaigning

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

42. Every public officer and public entity or authority shall give and be seen to give equal treatment to all candidates to enable each candidate to conduct his campaign freely. Equal treatment of candidates

43. Every candidate and every representative or supporter the candidate 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

Provided that 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.

44. Every candidate and any representative or supporter of the candidate shall, either alone or in common with others, enjoy complete and unhindered freedom of peaceful assembly in campaigning in any election. Freedom of assembly

45. The Commission may prescribe a code of conduct to be complied with by every candidate in conducting his campaign in an election. Code of conduct

46. 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.

News broadcast and reports

47. — (1) Every candidate shall have the right to have the substance of his campaign propaganda reported on television news, radio news broadcasts of the Malawi Broadcasting Corporation and in any newspaper in circulation in Malawi:

Provided that in the case of television news and news broadcasts by the Malawi Broadcasting Corporation—

(a) the content of the news shall be professionally determined by the television station and the Malawi Broadcasting Corporation;

(b) the television station and the Malawi Broadcasting Corporation shall maintain neutrality in the manner of reporting the news of the campaign propaganda of candidates and generally in their commentaries;

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

(d) a candidate shall be entitled to make commercial advertisement for his campaign.

(2) The Commission may, by arrangement with the Malawi Broadcasting Corporation, allocate time on the radio during which candidates may be allowed to speak in campaigning for an election and the Commission shall allocate equal time to every candidate.

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

Publication of books, pamphlets, etc.

48. During the campaign period any candidate 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 candidate.

Campaign posters

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

Campaign financing

50. Every candidate may, for the purpose of financing his campaign, appeal for and receive voluntary contributions from any individual or any non-governmental organization or other private organization in or outside Malawi.

PART VI—POLLING STATIONS

51.—(1) The Commission shall establish polling stations throughout the Republic and there shall be at least one polling station for every registered centre established under section 12.

Polling stations

(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.

52.—(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.

53. 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

54. 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 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 77;

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

(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 73 shall be recorded.

Security of
work items at
polling station

55. 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 54, including more particularly the ballot papers and ballot boxes.

Monitoring of
voting by
candidates

56.—(1) Every candidate shall have the right to monitor the voting process at polling stations and shall do so through his 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 candidate it shall be presumed that the candidate 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 candidate under subsection (1) a document of identity in the prescribed form.

Rights and
duties of repre-
sentatives of
candidates

57.—(1) Representatives of candidates shall have the right—

(a) 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;

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

(c) 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;

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

(e) to consult the voters registers at any time.

(2) Representatives of candidates shall have the following duties—

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

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

(c) 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;

(d) to maintain the secrecy of the ballot.

PART VII—THE VOTE AND THE VOTING PROCESS

58.—(1) The right of a person to vote in the election 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.

59.—(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 in writing his name, the number of his voters registration certificate and the place of his registration.

60. (1) The Commission shall arrange for the printing of sufficient quantities of ballot papers for candidates for election as a councillor on which shall be printed clearly and legibly, in respect of each candidate, his name or an abbreviation thereof and his election symbol, and such other particulars as the Commission may determine to identify him distinctly from other candidates.

Ballot papers

61. 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 casting his vote according to his choice consistent with the doctrine of secret ballot.

Voting booths

Ballot boxes

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

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

Right of employees to be released for voting

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

Hours of voting

64. 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 candidates, shall verify that there are no irregularities with the voting booth and the working documents of the polling station officers and, shall, in particular, exhibit in front of all present the ballot box to verify that it is empty after which the ballot box shall be closed and sealed.

Order of voting

65. Upon verification in accordance with section 64 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 candidates and all officers responsible for ensuring order and security at the polling station after whom all other persons shall vote according to the order of their arrival at the polling station and, to this end, they shall form a line; but subject thereto, the presiding officer shall exercise general powers for keeping order at the polling station and for regulating the number of persons to be admitted to vote at any time and may, if circumstances so require, use his discretion to allow certain persons to vote inconsistently with the order of priority required by this section.

Continuity of the voting process

66. Subject to section 67, voting at every polling station shall continue uninterrupted until closed.

Adjournment in certain cases

67.—(1) 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 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 77.

68.—(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;

(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.

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

Requirements for exercising the right to vote

70.—(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

Manner of casting the vote

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 the 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 a ballot paper 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 councillor.

(3) The voter shall then proceed to cast his vote in such a manner as the Commission may determine.

Voting by
blind and
disabled
persons

71. 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.

Null and void
votes

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

(a) the ballot paper has been torn into two or more parts; or

(b) it has been classified as such pursuant to section 67 (2) (c).

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

Doubts and
complaints

73.—(1) In addition to representatives of candidates 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.

(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 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

74. 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.

Unused ballot papers

75. 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—

Classification of votes cast

(a) null and void votes;

(b) votes for each of the candidates for election as councillors.

76. 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 candidates 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—

Opening of ballot box and counting of votes

(a) picking out of the ballot box one ballot paper and displaying the ballot paper to all present and announcing aloud the classification of the vote as specified in section 75;

(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;

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

Record of the polling process

(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 candidates;

(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

(ix) 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 candidate.

(2) Representatives of candidates 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.

Delivery of
ballot papers,
etc., from
polling stations

78. 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 under section 77;

(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.

Compilation
of the district
result of the
election

79.—(1) On receipt of records from polling stations, the District Commissioner or other 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 ward in the area of the council and also in respect of the area of the council 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 in accordance with section 75;

(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 candidates duly designated for the purpose shall be entitled to observe the entire procedure followed at the office of the District Commissioner in compiling the result of the election 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 candidate who 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 ward and in the entire area of the council 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.

80.—(1) The Commission shall determine and publish the national result of the election based on the records delivered to it from the district and polling stations.

Determina-
tion of the
national result
of the
election

(2) The determination of the national result of the 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 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 candidates 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.

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

81. At the beginning of determining the national result of an 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 91.

Records of the
national results
of the elections

82. The Commission shall summarize its determination of the national result of an 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 candidate shall be entitled to receive a signed copy of the summary.

Publication
of the
national
result

83. 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—

(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 75.

PART IX OBSERVATION

Meaning of
Observation

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

Scope of
Observation

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

(2) Any irregularities noted by 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 election into conformity with this Act.

86. Observation shall begin with the registration and end with the determination of the national result of the election or the settlement thereafter of all election disputes.

Beginning
and end of
observation

87. 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 observers in their role and to offer to them the guarantees and other facilities necessary to fulfil their role.

Collaboration
by competent
authorities

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

Invitation to
observers

89.—(1) For purposes of recognition under this Act, 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 non-governmental organizations constituted and operating in Malawi;
- (d) observers from foreign governments; and
- (e) individual observers;

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

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

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

Recognition and identification of observers

90. Recognition of 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 observers and issue to every recognized observer the card corresponding to his category;

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

Compulsory use of identity cards and the common badge

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

Rights of observers

92. Observers shall have the right—

(a) to obtain a multiple entry visa to enter Malawi for the duration of the period of observation as specified in section 86;

(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 candidate 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 of matter relating to the conduct of the election;

(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.

Obligations of observers

93. (1) Observers shall 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 materials issued to them by the Commission after the end of their mission as observers.

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

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

Position of diplomats

95. Observers may operate separately or jointly with other observers of the same or different categories.

Separate and joint operation of observers

PART X—COMPLAINTS AND APPEALS

96. Save as otherwise provided in this Act, any complaint submitted in writing alleging any irregularity at any stage, if not satisfactorily resolved by the Chief Elections Officer or by the Returning Officer, 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

97.— (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.

Appeals to the High Court

(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) may, in its absolute discretion, condemn any party to pay costs 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;

(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, and upon such report being given such determination shall be final.

PART XI—OFFENCES AND PENALTIES

Offences

98.—(1) 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 voters registration certificate;

(c) through violence, threat or fraudulent intent, prevents the registration of another person;

(d) knowingly obstructs the detection of incorrect registration or the verification of voters rolls;

(f) in relation to campaigning for the election—

(i) prevents the holding or interrupts the proceedings of a meeting;

(ii) denies any candidate equal treatment with any other candidate;

(iii) destroys, defaces, tears or in any manner causes to be totally or partially useless or illegible any campaign material displayed in any place or superimposes thereon any other material concealing the earlier material;

(iv) being entrusted, by virtue of his office or functions, with displaying or depositing any campaign material, fails to display or deposit such campaign material or misplaces, steals, removes or destroys such material;

(v) 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;

(g) 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 the right to vote 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 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 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 or did not vote for a particular candidate 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 decision thereon by a competent person or body; and

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

(h) induces the sale or surrender of a registration certificate;

(i) sales or surrenders or buys a registration certificate,

shall be guilty of an offence.

(2) Any person convicted of an offence under section 98 (1) (h) or (i) shall be liable to a sentence of three years without the option of a fine.

99.—(1) Every election officer, candidate, election representative of a candidate 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 a voter after he has received a ballot paper and before he has placed a ballot paper in a ballot box.

Maintenance
of secrecy

(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.

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

Offences
under this Act
cognizable
offences
Cap. 8:01
General
penalty

101.—(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 K50,000 and to imprisonment for five 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 XII—GENERAL

Preservation
of election
documents

102. 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 council areas and polling stations and summaries thereof and the record and summary of the national result) with the Chief Elections Officer which shall retain and preserve such documents in safe and secure custody without destruction for a period of twelve months.

Failure to
elect a
councillor

103. If after the holding of an election no person has been elected in one or more wards, a session of the council may commence notwithstanding any such vacancy.

Regulations

104. The Minister may make regulations for carrying into effect the provision of this Act and for matters necessary or required to be prescribed or specified under this Act.

Passed in Parliament this ninth day of July, one thousand, nine hundred and ninety-six.

R. L. GONDWE
Clerk of Parliament