

CHAPTER 2:03

THE ELECTORAL COMMISSION ACT

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11 of 1998

16 of 2010

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

ENACTED by the Parliament of Malawi as follows-

PART I

PRELIMINARY

- |                |  |
|----------------|--|
| Short title    | 1. This Act may be cited as the Electoral Commission Act.  |
| Interpretation | 2. In this Act, unless the context otherwise requires, the several words and expressions used in this Act shall have the same meanings assigned to them in the Constitution and the Parliamentary and Presidential Elections Act, and the following additional words shall have the following meaning- |
| Cap 2:01       | “Chief Elections Officer” means the Chief Elections Officer appointed under section 12.  |

PART II

STATUS AND MEMBERSHIP OF THE COMMISSION

- |  |   |
|--|---|
| Legal personality and capacity of the Commission | 3. The Commission shall be a body corporate with perpetual succession and a common seal and be capable of— <ul style="list-style-type: none"><li>(a) acquiring, holding and disposing of real and personal property;</li><li>(b) suing and being sued in its own name; and</li><li>(c) doing or performing all such acts and things as bodies corporate may by law do or perform.</li></ul> |
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Appointment of  
members of the  
Commission

4.- (1) The President shall, subject to the Constitution and in consultation with the leaders of the political parties represented in the National Assembly, appoint suitably qualified persons to be members of the Commission on such terms and conditions as the Public Appointments Committee of Parliament shall determine.

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

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

Eligibility for  
appointment to the  
Commission

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

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

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

Provided that for the purpose only of accountability the Commission shall be answerable, and report directly, to the President on the overall fulfillment of the functions and powers of the Commission.

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

Committees of  
the Commission

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

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

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

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

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

### PART III FUNCTIONS AND POWERS OF THE COMMISSION

Functions and  
powers of the  
Commission

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

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- (a) to determine the number of constituencies for the purposes of elections;
- (b) to undertake or supervise the demarcation of boundaries of constituencies;
- (c) subject to the Local Government Elections Act, and any other written law relating to local government elections, to undertake or supervise the demarcation of wards for purposes of local government elections and to determine the number of such wards:

Provided that-

- (i) in the case of City of Blantyre, the total number of wards shall not exceed thirty;
- (ii) in the case of the City of Lilongwe, the total number of wards shall not exceed thirty;
- (iii) in the case of the city of Mzuzu, the total number of wards shall not exceed fifteen ;
- (iv) in the case of the City of Zomba, the total number of wards shall not exceed ten ;
- (v) in the case of Kasungu Municipal Council, the total number of wards shall not exceed ten;
- (vi) in the case of Luchenza Municipal Council, the total number of wards shall not exceed eight;

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(vii) In the case of Mangochi Town Council, the total number of wards shall not exceed ten; and

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(viii) in all other cases, the number of wards shall not exceed two (2) for each parliamentary constituency,

and the Commission shall ensure that ward boundaries do not cross local authority boundaries;

- (d) to organize and direct the registration of voters;
- (e) to devise and establish voters registers and ballot papers;
- (f) to print, distribute and take charge of ballot papers and voting registers;
- (g) to approve and procure ballot boxes;
- (h) to establish and operate polling stations;
- (i) to establish security conditions necessary for the conduct of every election in accordance with any written law governing elections;
- (j) to promote public awareness of electoral matters through the media and other appropriate and effective means and to conduct civic and voter education on such matters;
- (k) to promote and conduct research into electoral matters and into any matter pertaining to its functions and to publish the results of such research;

- (l) to perform the functions conferred upon it by or under any written law; and
- (m) to take measures and to do such other things as are necessary for conducting free and fair elections.

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

Delegation of powers and functions

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

Vacancy in the membership of the Commission

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

#### PART IV

##### MEETINGS OF THE COMMISSION

Meetings of the Commission

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

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

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

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

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

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

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

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

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

PART V  
MANAGEMENT

Appointment to  
Chief Elections  
Officer

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

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

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

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

Appointment of staff  
of the Commission

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

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

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

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

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

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

Vacancy where  
employee becomes  
candidate in elections

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

PART VI  
FINANCIAL PROVISIONS

Funds of the  
Commission

- 15.- (1) The funds of the Commission shall consist of-
- (a) such sums as shall be appropriated by Parliament for purposes of the Commission;
  - (b) such sums or assets as may accrue to or vest in the Commission, whether in the course of the performance by the Commission of its functions or the exercise of its powers or otherwise;
  - (c) such sums or assets as may accrue to or vest in the Commission by way of grants, subsidies, bequests, donations, gifts and subscriptions, from the Government or any other person;
  - (d) such sums that are derived from the sale of any property, real or personal, by or on behalf of the Commission;
  - (e) such sums as are received by the Commission by the way of voluntary contributions; and
  - (f) such sums of assets as may be donated to the Commission by any foreign government, international agency or other external body of persons, corporate or unincorporate.

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

(3) The funds of the Commission shall exclusively be under the control of the Commission and shall be utilized solely for the purposes of

this Act in accordance with the written directions of the Commission and for no other purposes.

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

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

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

(3) The Commission shall, as soon as practicable, but no later than six months after the end of the financial year of the Commission submit to the Minister and publish in the *Gazette* annual report on all the financial transactions of the Commission and on the work, activities and operations of the Commission.

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

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

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Holdings of funds of the Commission

17.- (1) All sums received for the purposes of the Commission shall be paid into one or more bank accounts at such bank or banks as the Commission may determine, and no amount shall be withdrawn therefrom except under the written authority of the Commission and by means of

cheques signed by such persons as are authorized in that behalf by the Commission

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

Financial year

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

Provided that the first financial year may be a period shorter or longer than twelve months as the Commission shall determine, but in any case longer than eighteen months.

## PART VII MISCELLANEOUS

Duty to co-operate

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

(2) It shall be the special duty of -

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

(b) officers-in-charge of police, in their respective areas of operation, to take all necessary measures for the

maintenance of law and order and stability necessary for the conduct of an election and to protect and uphold the rights of all persons under any written law relating to elections.

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

Publicity

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

- (a) the location of its principal office; and
- (b) its address or addresses, telephone numbers and other means of communication or contact with the Commission.

Regulations

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

## PART VIII

### TRANSITIONAL PROVISIONS

Savings

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

(2) The validity of any legal proceedings commenced by or against the Commission and anything done or action or decision taken or

made by a court or the Commission or any of its employees prior to the commencement of this Act shall not be affected by this Act.

Transfer of  
assets, etc.

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

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

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

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

Passed in Parliament this fifth day of June, one thousand, nine hundred and ninety-eight