

CONSTITUTION OF MALAWI

CHAPTER IV HUMAN RIGHTS

Political rights

40. — (1) Subject to this Constitution, every person shall have the right—

- (a) to form, to join, to participate in the activities of, and to recruit members for, a political party;
- (b) to campaign for, a political party or cause;
- (c) to participate in peaceful political activity intended to influence the composition and policies of the Government; and
- (d) freely to make political choices.

6 of 1995

(2) The State shall provide funds so as to ensure that, during the life of any Parliament, any political party which has secured more than one-tenth of the national vote in elections to that Parliament has sufficient funds to continue to represent its constituency.

11 of 2010

(3) Save as otherwise provided in this Constitution, every person shall have the right to vote, to do so in secret and to stand for election for public office.

CHAPTER VI LEGISLATURE

Qualification
of members
of Parliament

51. — (1) A person shall not be qualified to be nominated or elected as a Member of the Parliament unless that person—

6 of 1995
4 of 2001
13 of 2001
4 of 2004

- (a) is a citizen of the Republic who at the time of nomination has 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 Parliament; and
- (c) is registered as a voter in a constituency.

6 of 1995

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

- (a) owes allegiance to a foreign country;
- (b) is, under any law in force in the Republic, adjudged or otherwise declared to be mentally incompetent;
- (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 the Republic;
- (e) holds, or acts, in any public office or appointment, except where this Constitution provides that a person shall not be disqualified from standing for election solely on account of holding that office or appointment or where that person resigns from that office in order to stand;
- (f) belongs to, and is serving in the Defence Force of Malawi or the Malawi Police Service; and
- (g) has, within the last seven years, been convicted by a competent court of any violation of any law relating to election of the President or election of members of Parliament or local government elections.

13 of 2001

13 of 2001

4 of 2004

(3) For the purposes of subsection 2(e), an appointment as a Minister or Deputy Minister in accordance with section 94(1) shall not be construed to be an appointment to a public office or to be a public appointment.

Composition of
the National
Assembly

13 of 2001

62. — (1) The National Assembly shall consist of such number of seats, representing every constituency in Malawi, as shall be determined by the Electoral Commission.

(2) Each constituency shall freely elect any person, subject to this Constitution and an Act of Parliament, to represent it as a member of the National Assembly in such manner as may be prescribed by this Constitution or an Act of Parliament.

Vacancies in
the National
Assembly

31 of 1994

4 of 2001

63. — (1) The seat of a member of the National Assembly shall become vacant—

- (a) if the National Assembly has been dissolved;
- (b) if the member dies or resigns his or her seat;
- (c) if the member ceases to be a citizen of Malawi;
- (d) if the member assumes the office of President or Vice-President;
- (e) if any circumstances arise that, if he or she were not a member of the National Assembly, would cause that member to be disqualified for election under this Constitution or any Act of Parliament; or
- (f) if the National Assembly declares a member's seat vacant in accordance with such Standing Orders as may permit or prescribe the removal of a member for good and sufficient reason provided that they accord with the principles of natural justice

(2) The Speaker of the National Assembly shall give notice in the *Gazette* in the event that the seat of any member of the Assembly shall become vacant under this section:

Provided that—

31 of 1994

(a) Parliament shall make provision for holding by-elections to fill any vacancy that shall occur;

4 of 2023

(b) any by-election to fill the vacancy shall be held in the next quarter of the calendar year after the seat of the member becomes vacant, or if the circumstances do not so permit, then as expeditiously as possible, but a by-election shall not be held where a vacancy occurs within twelve months before the holding of a general election; and

(c) any member elected at a by-election shall serve until such a time as his or her seat becomes vacant in accordance with subsection (1).

(3) The Speaker may, upon a motion of the National Assembly, postpone the declaration of a vacant seat for such period as that motion prescribes so as to permit any member to appeal to a court or other body to which an appeal lies against a decision which would require that member to vacate his or her seat in accordance with this section.

Dissolution of
the National
Assembly
38 of 1998

11 of 1999

13 of 2020

67. — (1) The National Assembly shall stand dissolved on the 23rd day of July in the fifth year after its election, and the polling day for the general elections for the next National Assembly shall be the Tuesday in the third week of September that year:

Provided that where it is not practicable for the polling day to be held on the Tuesday in the third week of September, the polling shall be held on any day, within seven days from that Tuesday, appointed by the Malawi Electoral Commission; and provided further that, in the case of the National Assembly constituted in June, 2019, the members so elected and constituting the National Assembly shall hold office until the 23rd day of July, 2025.

(2) This section shall not preclude the Malawi Electoral Commission from setting other days for polling in the general election for special classes or categories of voters, provided that such polling takes place not more than two days, before or after the polling day, excluding Sundays.

CHAPTER VII ELECTIONS

The Electoral
Commission
13 of 2020
4 of 2023

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

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

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

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

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

Powers and
functions
13 of 2020
4 of 2023

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

(2) The duties and functions of the **Malawi** Electoral Commission shall include—

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

- (b) to review existing constituency boundaries at intervals of not more than ten years and alter them in accordance with the principles laid down in subsection (2)(a);
- (c) to determine electoral petitions and complaints related to the conduct of any elections;
- (d) to ensure compliance with the provisions of this Constitution and any Act of Parliament; and
- (e) to perform such other functions as may be prescribed by this Constitution or an Act of Parliament.

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

(4) The Malawi Electoral Commission shall exercise its powers, functions and duties under this section independent of any direction or interference by other authority or any person.

(5) Without prejudice to subsection (3)—

- (a) the High Court shall have jurisdiction to entertain applications for judicial review of the exercise by the Malawi Electoral Commission of its powers and functions to ensure that such powers and functions were duly exercised in accordance with this Constitution or any Act of Parliament; and
- (b) the National Assembly shall confirm all determinations by the Malawi Electoral Commission with regard to the drawing up of constituency boundaries but may not alter the boundaries of any constituency, except upon the recommendation of the Malawi Electoral Commission.

The franchise
6 of 1995
13 of 2020

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

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

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

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

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

6 of 1995
11 of 2010

question and the person so disqualified shall be qualified to be registered as a voter in the next or any subsequent election.

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

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

CHAPTER VIII

THE EXECUTIVE

Election of the President and the First Vice-President
31 of 1994
6 of 1995
38 of 1998

80. — (1) The President shall be elected in accordance with the provisions of this Constitution in such manner as may be prescribed by Act of Parliament and, save where this Constitution provides otherwise, the ballot in a Presidential election shall take place concurrently with the general election for members of the National Assembly as prescribed by section 67(1).

31 of 1994
13 of 2020
4 of 2023

(2) The President shall be elected by a majority of more than fifty percent of the valid votes cast through direct, universal and equal suffrage and, where such majority is not obtained by any candidate in the first poll, a second poll shall be held within sixty days after the declaration of the result in which the candidates who obtained the highest votes cast in the first poll shall be the only candidates.

31 of 1994

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

31 of 1994

(4) The First Vice-President shall be elected concurrently with the President and the name of a candidate for the First Vice-President shall appear

6 of 1995

on the same ballot paper as the name of the Presidential candidate who nominated him.

(5) Where the President considers it desirable in the national interest so to do, he or she may appoint a person to the office of Second Vice-President and may do so upon taking his or her oath of office or at any time thereafter or upon a vacancy in the office of Second Vice-president; and, where no person has been appointed to the office of Second Vice-President then—

- (a) the provisions of this Chapter making reference to that office shall read *mutatis mutandis*; and
- (b) the office of First Vice-President shall be known as office of the Vice-President as if section 79 created the office of a Vice-President only:

31 of 1994

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

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

31 of 1994
6 of 1995
38 of 1998

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

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

38 of 1998

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

Oath of Office
31 of 1994
13 of 2001

81. — (1) Before a person elected to be President or First Vice - President or appointed to be First Vice – President or Second Vice – President takes office that person shall take the following oath which shall be administered in public by the Chief Justice –

“I, do solemnly swear that I will well and truly perform the functions of the high office of President (or Vice-President) of the Republic of Malawi, and that I will preserve and defend the Constitution, and that I will do right to all manner of people according to law without fear or favour, affection or ill will. So help me God!”

(2) Instead of taking oath, the President, First Vice President or Second Vice President may, if he or she thinks fit, make an affirmation which shall be in the like form with the substitution of “affirm” for “swear” and the omission of the final sentence.

13 of 2020

(3) A person elected to be President or First Vice President shall not be sworn into office until after the expiry of seven days but before the expiry of thirty days from the date the election result is declared.

13 of 2020

(4) A person appointed to be First Vice President or Second Vice President in accordance with the provisions of this Constitution, shall be sworn into office within fourteen days of being appointed.

(5) The President and First Vice President shall hold office until such time as his or her successor is sworn in.

Tenure of office
31 of 1994
38 of 1998

83.— (1) The President shall hold office for five years from the date that his or her oath of office is administered, but shall continue in office until his or her successor has been sworn in.

(2) The First Vice-President and the Second Vice President shall hold office from the date of the administration of the oath of office to them until the end of the President's term of office unless their office should come to an end sooner in accordance with the provisions of this Constitution.

(3) The President, the First Vice-President and the Second Vice-President may serve in their respective capacities a maximum of two consecutive terms, but when a person is elected or appointed to fill a vacancy in the office of President or Vice-President, the period between that election or appointment and the next election of a President shall not be regarded as a term.

(4) Whenever there is a vacancy in the office of President, the First Vice-President shall assume that office for the remainder of the term and shall appoint another person to serve as First Vice-President for the remainder of the term.

Appointment of
Ministers and

94. — (1) The President shall have the power to appoint Ministers or Deputy Ministers and to fill vacancies in the Cabinet.

Deputy
Ministers
6 of 1995
13 of 2001

(2) A person shall not be qualified to be appointed as a Minister or Deputy Minister unless that person—

- (a) is a citizen of the Republic who upon taking office, has attained the age of twenty-one years;
- (b) is able to speak and to read the English language; and
- (c) is registered as a voter in a constituency.

6 of 1995

(3) Notwithstanding subsection (2), no person shall be qualified to be appointed as a Minister or Deputy Minister who—

- (a) owes allegiance to a foreign country;
- (b) is, under any law in force in the Republic, 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 the Republic;
- (e) holds or acts in any public office or appointment;
- (f) belongs to, and is serving in the Defence Force of Malawi or in the Malawi Police Service;
- (g) has, within the last seven years, been convicted by a competent court of any violation of any law relating to election of the President or election of the members of Parliament.

13 of 2001

25 of 2012

CHAPTER XIV

LOCAL GOVERNMENT

25 of 2012
13 of 2020
18 of 2021

147. — (5) Local Government elections shall take place concurrently with general elections for members of the National assembly as prescribed under section 67(1) and local government authorities shall stand dissolved on the 23rd day of **July** in the fifth year after their election:

Provided that in the case of local councillors elected on 21st day of May, 2019, the local councillors so elected shall hold office until the 23rd day of **July**, 2025.