



# **MALAWI ELECTORAL COMMISSION**

## **HANDBOOK ON ELECTION MONITORING AND OBSERVATION**

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## **MESSAGE FROM THE CHAIRPERSON**

Political parties, independent candidates and observers are among the major players in an election. As such they have every right to monitor and observe electoral processes. Electoral laws require them to designate and assign not more than two representatives per centre and polling station during voter registration and polling respectively.

Political parties/independent candidates and observers also have the right to monitor and observe proceedings at constituency, district, and national tally centres. The Commission shall duly determine the number of political parties/independent candidate representatives at the tally centres in terms of section 95 (5) of the PPLGEA.

To effectively follow electoral processes, political party/independent candidate representatives and observers should be those who can read, write, enumerate and understand the electoral processes.

This Handbook therefore aims at aiding political party/independent candidate representatives and observers to understand the electoral processes and what is required of them at a voter registration centre, polling station, constituency, district, and national tally centres.

It is our hope that this Handbook will assist the representatives to be well versed with their rights, duties and responsibilities and will contribute towards the conduct of free and fair elections.



**Justice Annabel Mtalimanja**

**Chairperson**

## **PART A: POLITICAL PARTY/INDEPENDENT CANDIDATE REPRESENTATIVES AND ELECTION OBSERVERS**

### **1.0 POLITICAL PARTY/INDEPENDENT CANDIDATE REPRESENTATIVES**

#### **1.1 Who are they?**

Political party/independent candidate representatives are individuals who are designated and assigned to a specific voter registration centre, polling station, constituency, district and national tally centres to monitor or observe all electoral processes. Such processes include voter registration, voting, counting and tallying of results and determination of the national result of an election.

Names of the designated persons are submitted in writing to the Commission through the Returning Officer, who passes on the names to the respective Registration Centre Supervisors during voter registration or Presiding Officers during polling. The Registration Centre Supervisor or Presiding Officer, as the case may be, issues identity documents to each political party/independent candidate representative.

#### **1.2 Requirements of a political party/independent candidate representative (PPLGEA s.25)**

The electoral law provides that any person can be a political party/independent candidate representative depending on the choice of the political party or independent candidate. The requirements as provided under the law include:

- i. must be a Malawian citizen;
- ii. should not be a candidate in an election;

### **1.3 Qualities of a good political party/independent candidate representative are as follows:**

- i. is literate (preferably those who can read and write English);
- ii. is a registered voter;
- iii. comes from the area she or he would like to monitor/observe;
- iv. speaks the local language commonly used in the area;
- v. have good listening skills;
- vi. is always alert.

Placement of political party/independent candidate representatives who have the above qualities will assist in reducing the number of complaints resulting from ignorance of the electoral process and inability to understand what is happening in all the assigned places.

### **1.4 Political party/independent candidate representatives during voter registration.**

#### **1.4.1 Rights of political party/independent candidate representatives during registration of voters [PPLGEA s.17(1)]**

When monitoring the registration process, political party / independent candidate representatives have the following rights:

- i. To be treated with due respect and consideration by all persons administering the registration of voters and by the representatives of other political parties or independent candidates;
- ii. To request and obtain information on activities relating to the registration of voters;
- iii. To submit to the Commission, in writing, complaints and appeals about any irregularities in the registration of voters.

#### **1.4.2 Powers of Political Party/Independent Candidate representative [PPGEA s26 (1)]**

An election representative shall observe proceedings during:

- i. polling
- ii. the counting of votes; and
- iii. the announcement and declaration of results of an election.

#### **1.4.3 Duties of political party/independent candidate representatives during registration of voters [PPLGEA s.17(2)]**

During registration of voters, political party/independent candidate representatives have the following duties and responsibilities:

- i. To monitor the registration activities conscientiously and objectively;
- ii. To cooperate in order to ensure that the voter registration activities proceed smoothly by avoiding unjustified interference in, and obstacles to, the work of the registration staff;
- iii. To refrain from submitting complaints or appeals in bad faith or with the purpose of paralyzing the registration process.
- iv. To refrain from divulging any information about a voter or a person intending to register as a voter obtained in the course of monitoring the registration process.

### **1.5 Political party/independent candidate representatives during voting.**

#### **1.5.1 Rights of political party/independent candidate representatives during voting [PPLGEA s.68 (1)]**

Political party/independent candidate representatives will have the following rights during the voting process:

- i. to be present at the polling stations and to occupy positions within the polling station so as to be able to monitor and observe all the operations relating to the casting of votes;

- ii. to verify and inspect the ballot boxes and the polling booths before the beginning of the casting of the votes ;
- iii. to request and obtain from the polling station officers any information, which they consider necessary relating to the voting process and the counting of votes;
- iv. to be consulted about any question raised on the operation of the polling station whether during the casting or the counting of the vote;
- v. to consult the voters registers at any time.

### **1.5.2 Duties and responsibilities of political party/independent candidate representatives during voting [PPLGEA s.68(2)]**

Political party/independent candidates’ representatives have the following duties and responsibilities during the voting process:

- i. to act conscientiously and objectively in the exercise of their rights;
- ii. to co-operate with polling station officers in the operations relating to the casting and counting of votes;
- iii. to refrain from interfering unjustifiably and in bad faith with the duties of the polling station officers so as not to disturb the process of casting and counting the votes;
- iv. to maintain the secrecy of the ballot.

## **2.0 ELECTION OBSERVERS**

### **2.1 Who are they? (PPLGEA s.108)**

These are International organizations, international and local non-governmental organizations, foreign governments, and foreign and local personalities who are duly accredited to conduct verification of elections at various stages. Election observers serve as impartial watchdogs who can assess whether the results of an election truly reflect the will of the people.

For purposes of recognition under this Act, observers shall be categorized as follows:

- i. Observers from the United Nations Organization and its agencies, the African Union and its agencies, the Commonwealth Secretariat and other international organizations.
- ii. Observers from non-governmental organizations constituted and operating in any foreign country.
- iii. Observers from non-governmental organizations constituted and operating in Malawi.
- iv. Observers from foreign governments.
- v. Individual observers

### **2.2 Requirements of Election Observers (PPLGEA s.103).**

The law provides that any person may apply to the Commission, in the prescribed manner, for accreditation to observe an election. The requirements as provided under the law include:

- I. Accredited by Malawi Electoral Commission.
- II. Should be impartial and independent of any political party or candidate contesting in the election;
- III. Should be competent and professional in observing the election.
- IV. To subscribe to a code of conduct governing observers issued by the Commission under PPLGEA.

### **2.3 Rights of Election Observers (PPLGEA s.111).**

When observing the electoral process, Election Observers shall have the following rights:

- i. Obtain a multiple entry visa to enter Malawi for the duration of the period of observation as specified in section 105 of PPLGEA.
- ii. Have unimpeded access to all election events and to observe all aspects of the civic and voter education programmes, the registration of voters, the

nomination of candidates, the campaign, the voting and the counting of votes at all stages.

- iii. Enjoy freedom of movement throughout Malawi.
- iv. Seek and obtain information on the official organizations involved in the conduct of an election and regarding the election itself.
- v. Communicate freely with any candidate and with any organization or person.
- vi. Have access to information transmitted by or to the Commission and its officers.
- vii. Have access to complaints and responses about any occurrence or matter relating to the conduct of the elections.
- viii. Open offices within Malawi for the performance of their functions.
- ix. Communicate any specific concerns, they may have to members and officers of the Commission.
- x. Communicate to the local and international media.

### **2.3 Obligation of Election Observers (PPLGEA s.112).**

When observing the electoral process, Election Observers shall have the following obligations:

- i. Exercise their role with impartiality, independence and objectivity.
- ii. Respect the Constitution and the laws of Malawi.
- iii. Not to interfere in, or to impede, the normal course.
- iv. Maintain the secrecy of the ballot.
- v. Provide to the Commission copies of written information and statements which they have produced.
- vi. Return the identity cards, the badges and any other identification materials issued to them by the Commission after the end of their mission as observers.

## **PART B: MONITORING AND OBSERVATION**

### **3.0 MONITORING AND OBSERVATION OF THE REGISTRATION PROCESS**

#### **3.1 Why monitor and observe voter registration?**

All stages of an election process, including voter registration, warrant monitoring and observation to reduce human error, deter manipulation, enhance transparency and build confidence in the process.

#### **3.2 Importance of monitoring and observation of the voter registration process:**

##### **i. Safeguarding the rights of citizens to vote**

In Malawi, eligible citizens need to register to be allowed to vote. This requires that names of voters be on the Voters Register in order to cast a ballot.

Monitoring voter registration by political parties/independent candidates representatives is essential in increasing political participation and guarantee and safeguard that voters have the opportunity to exercise their right to vote.

Civil Society Organizations that seek to protect the public interest have a responsibility to help ensure that those who are eligible and who wish to participate in the electoral process have an equal and fair chance to do so.

##### **ii. Building confidence in the voter registration process**

Monitoring and observation of voter registration by political parties/independent candidate representatives provide an opportunity to

build confidence of contesting parties, their supporters and the broader public in the electoral process.

Confidence and trust in the Commission is built when efforts of the Commission show that the voter registration process is being conducted properly, and when the Commission acts quickly and effectively to correct identified shortcomings in the voter registration process.

### **iii. Preparation for polling day**

Political parties/independent candidate representatives monitoring of voter registration assists in preparation for activities that are similar to those they conduct as part of their election day monitoring efforts. The lessons learnt during the monitoring of the voter registration exercise can serve to enhance their monitoring of voting, counting and tabulation of results.

### **iv. Building stakeholders' capacity**

To ensure successful monitoring efforts political party/independent candidate have to be made aware of the different requirements and stages in the electoral processes including applicable electoral laws, regulations, guidelines, election materials and equipment.

## **3.3 Issues to look out for during registration of voters.**

Political party/independent candidate representatives will have the responsibility to check the following anomalies:

- i. should ensure that those that are being registered are only those that will have attained the age of 18 years or will provide proof that on or before the polling day, he or she shall have attained the age 18 years [PPLGEA s.3 (b)];
- ii. a person does not obtain registration by giving false information;
- iii. ineligible persons are not being registered as voters like the under-aged or a foreigner;
- iv. eligible voters are not being prevented from registering as voters knowing that that person is eligible for registration;
- v. that the register is not falsified by the registration staff;
- vi. a person fraudulently modifies or substitutes a voters registration certificate;
- vii. a person obstructing the detection of incorrect voter registration or the verification of the voters register;
- viii. registration of foreigners;
- ix. a voter registration official arriving late at the registration center or leaving the center before closing time;
- x. voter registration procedures not followed in proper order.
- xi. voter registration staff rejects are not rejecting application without sufficient reason;
- xii. a voter registration official refusing or ignoring to receive complaints of a political party/independent candidate representative.

## **4.0 MONITORING AND OBSERVATION OF THE VOTING PROCESS**

### **4.1 Why monitor and observe voting?**

To ensure the integrity of the voting process, political parties, independent candidates and observers need to monitor and observe the voting process for the following reasons:

## **4.2 Importance of monitoring and observation of voting**

### **i. Ensuring adherence of polling procedures**

Political party/candidate representatives have a responsibility of ensuring that polling station officers/staff are observing the polling procedures and that any deviations are corrected.

### **ii. Ensuring the credibility of the voting process**

Political party/independent candidate representatives have a responsibility of checking malpractices such as, eligible voters being denied the vote; some voters attempting to vote twice; unregistered voters trying to vote and reporting them to the Presiding Officer of the polling station.

### **iii. Ensuring that only registered voters cast their vote**

The right to vote is available only to those who are eligible to vote at a particular polling station and are found in the voter register of that particular polling station. Political party/independent candidate representatives have a crucial responsibility of ensuring that only eligible registered voters can cast their vote.

## **4.3 Issues to look out for during voting**

Political party/independent candidate representatives will have the duty to check the following at a polling station:

- i. an unauthorized person or not registered voter presenting himself/herself at a polling station;
- ii. a person knowing, he/she is not eligible to vote casts a vote at any polling station;

- iii. a person using an identity of another person in order to exercise the right to vote;
- iv. a person voting more than once;
- v. a polling officer consciously allowing an ineligible person to vote;
- vi. a person accompanying a person with disability to vote fraudulently and faithlessly expresses a vote not according to his or her wish;
- vii. a person lingering within the polling station after he/she has voted;
- viii. a person campaigning within the radius of 200 metres of the polling station;
- ix. Presiding Officer failing to display a ballot box in accordance with the electoral law;
- x. Presiding Officer illicitly introducing ballot papers in a ballot box before, during and after voting;
- xi. a Presiding Officer fraudulently takes possession or conceals a ballot box with uncounted ballot paper or removes an uncounted ballot paper from the box.

#### **4.4 Observation of tallying of results by political party/independent candidate representatives**

Political party/independent candidate representatives have the right to observe compilation of results proceedings (PPLGEA s.93 to s.95):

- i. at the Constituency Tally Centre as established by the Commission,
- ii. at District Tally Centre as designated by the office of the District Commissioner or the Chief Executive Officer and
- iii. at National Tally Centre as established by the Commission where determination and announcement of the national result of an election takes place.

The Commission will determine the number of representatives of political parties and independent candidates to be permitted to observe compilation of results at the Constituency and District Tally Centres as well as the determination and announcement of result of an election at the National Tally Centre.

#### **4.5 Procedure for submitting complaints (PPLGEA s.99)**

##### **i. Responsibility for submission of complaints**

If irregularities are observed at any stage of the electoral process, political party/independent candidate representatives have a responsibility to submit complaints in writing.

During registration of voters, political party/independent candidate representatives have the right to submit to the Commission, through the registration supervisor, complaints or appeals about any irregularity in the registration of voters.

During polling, political party/independent candidate representatives and any voter present at the polling station may present in writing a complaint relating to voting at the polling station.

A Registration Supervisor or Polling Station Officer shall not refuse to receive a complaint presented during registration of voters or polling. any irregularity at any stage, if not satisfactorily resolved at a registration centre or polling station, shall be examined, and decided on by the Commission.

##### **ii. Procedure for submission of complaints**

There is a procedure that needs to be followed when submitting a complaint at each level of the election process including at the voter registration centre, polling station, constituency, district and national tally centres. Relevant forms for submission and recording of complaints will be available including challenge, appeal, and incident report forms. These will be in the custody of the voter registration centre supervisor, presiding officer, constituency returning officer, district returning officer, and the Commission as the case may be.

Political party/independent candidate representatives who are submitting complaints at a voter registration centre, polling station, constituency, district, and national tally centres will be required to request for and complete the challenge or appeal form as necessary. The following information should be entered in the forms:

- i. full particulars of the person lodging a complaint, i.e. name, address, designation and organization/party;
- ii. particulars of the person or official being complained about;
- iii. particulars of any witnesses present;
- iv. full details of the nature of the complaint.

Once the forms have been completed, distribution of the forms should be as follows:

- i. The Voter Registration Centre Supervisor/Presiding Officer as the case may be;
- ii. Political party/independent candidate representative or complainant
- iii. Constituency Returning Officer (CRO);
- iv. District Returning Officer (DRO);

- v. The Commission.

It is important and necessary for the political party/independent candidate representatives to follow the right procedure for effective and efficient resolution of complaints.

## **PART C. OFFENCES AND PENALTIES DURING ELECTORAL PROCESSES**

### **5.1 Offences in relation to registration of voters**

A person commits an offence if he/she:

- (i) obtains his or her registration by giving false information;
- (ii) obtains registration in more than one registration area;
- (iii) registers another person knowing that that person is not eligible for registration;
- (iv) prevents the registration of another person knowing that that person is eligible for registration;
- (v) having the authority to do so, does not delete a registration which he or she knows to be incorrect;
- (vi) falsifies a register;
- (vii) with fraudulent intent, modifies or substitutes a voter's registration certificate;
- (viii) through violence, threat or fraud, prevents the registration of another person; or
- (ix) knowingly obstructs the detection of incorrect registration or the verification of the voters' roll;
- (x) registers as a voter in the name of another person whether living, dead or fictitious.

## 5.2 Offences in relation to campaigning for elections

A person commits an offence if he/she:

- (i) holds a public meeting contrary to section 50;
- (ii) prevents the holding, or interrupts the proceedings of a public meeting authorized under section 50;
- (iii) campaigns or causes another person to campaign within forty-eight hours before opening of the poll or on the polling;
- (iv) denies any political party equal treatment with any other political party;
- (v) destroys, defaces, tears or in any manner causes to be totally or partially useless or illegible any campaign material displayed in an authorized place or space or superimposes thereon any other material concealing the earlier material;
- (vi) being entrusted, by virtue of his or her office or functions, with displaying or depositing in an authorized place or space any campaign material, fails to display or deposit such campaign material, or misplaces, steals, removes or destroys such material;
- (vii) Convening a public gathering for purposes of campaigning for an election at or within prohibited places of campaigning (PPLGEA s.56);
- (viii) for the reason that 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 from continuing in any gainful occupation or applies or threatens to apply any sanction to that other person.

### **5.3 Offences in relation to nomination**

A person commits an offence if he/she uses or threatens to use any force or restraint to induce or compel another person to sign or refrain from signing any nomination paper.

### **5.4 Offences in relation to voting**

A person commits an offence if he/she:

- (i) not being otherwise authorized to be present or not being a registered voter, knowingly presents himself or herself at a polling station;
- (ii) knowing that he or she is not eligible to vote, casts a vote at any polling station;
- (iii) fraudulently uses the identity of another person in order to exercise the right to vote;
- (iv) consciously allows that the right to vote 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 meters of a polling station, reveals his or her vote or procures another person by force or deceit to reveal that other person's vote;
- (viii) uses or threatens violence or uses false information or other fraudulent means to coerce or induce another person to vote for or against a particular candidate or a candidate of a particular political party or to abstain from voting;

- (ix) being a public officer, uses his or her office to coerce or induce another person to vote for or against a particular political party or candidate or abstain from voting;
- (x) directly or indirectly, dismisses or threatens to dismiss another person from any employment or other gainful occupation or prevents or threatens to prevent another person from obtaining any employment or other gainful occupation or from continuing in any gainful occupation or applies or threatens to apply any sanction whatsoever to another person in order to induce that other person to vote for, or because that other person voted for, a particular candidate or a candidate of a particular political party or because that other person abstained from voting;
- (xi) being a presiding officer of a polling station, fails to display a ballot box in accordance with the requirements of the PPLGEA;
- (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 papers or removes, without lawful authority, an uncounted ballot paper from a ballot box;
- (xiv) being a polling station officer, purposely neglects his or her 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 or her 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 a police establishment 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 or her duties; or
- (xx) bars any election representative, observer or any person who has been duly accredited or authorized by the Commission to be at a polling station, constituency tally centre, district tally centre, or national tally centre;
- (xxi) Interferes with a voter after the voter has received a ballot paper and before the voter has placed the ballot paper in the ballot box;
- (xxii) Attempts to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or voted for;
- (xxiii) does not maintain or does not aid in maintaining the secrecy of the vote;
- (xxiv) at any election, requests for a ballot paper in the name of another person, whether living, dead or fictitious.

## **5.5 Other offences**

A person commits an offence if he/she:

- i. in any manner, fraudulently spoils, substitutes, conceals, destroys, amends or falsifies any document relating to an election;
- ii. in bad faith, submits a complaint, or a response to a complaint or challenges or questions the decisions thereon by a competent person or body; or

- iii. without justification, neglects to fulfil obligations imposed on him or her by or under the PPLGEA;
- iv. Impersonates a representative of a political party/candidate, a candidate in an election, a member, employee or other officer of the Commission, or a person appointed by an accredited observer or an accredited voter education provider.

## **5.6 Penalties**

A person convicted of an offence under the PPLGEA shall be liable to a fine of K10,000,000 and to imprisonment for five years. Additionally, the court may make other appropriate orders.



**YOUR VOTE**

**YOUR RIGHT**

**YOUR CHOICE**



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