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# EISA ELECTION OBSERVER MISSION REPORT

# MALAWI



PARLIAMENTARY  
AND PRESIDENTIAL ELECTIONS  
20 MAY 2004

EISA ELECTION OBSERVER MISSION REPORT No 15

MALAWI PARLIAMENTARY  
AND PRESIDENTIAL ELECTIONS  
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EISA ELECTION  
OBSERVER MISSION  
REPORT

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REPORT



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EISA is a non-partisan organisation which seeks to promote democratic principles, free and fair elections, a strong civil society and good governance at all levels of Southern African society.

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## EXECUTIVE SUMMARY

The Electoral Institute of Southern Africa (EISA) deployed a regional mission to observe the Malawi parliamentary and presidential elections which were held on 20 May 2004. This is the mission's report. The report covers the assessment of the electoral process in all its phases from the pre-election period through to the voting phase and up to the post-election phase, which includes the announcement of the results.

The mission comprised 36 members drawn from electoral commissions, civil society organisations (CSOs) and scholars from nine Southern African Development Community (SADC) countries, namely: Angola, Botswana, the Democratic Republic of Congo, Lesotho, Mozambique, Namibia, South Africa, Tanzania and Zimbabwe. The mission also included delegates from beyond the SADC region. Former President of the Republic of Botswana and Patron of EISA, Sir Ketumile Masire, led the mission. The deputy mission leader was EISA Executive Director Denis Kadima.

Between 15 and 21 May 2004, the mission deployed 10 teams to the three regions of Malawi as follows:

- Two teams in the Northern Region, covering selected rural and urban areas of Mzuzu, Nzimba North and Nkhata Bay.
- Five teams in the Central Region, covering Lilongwe City, Lilongwe North, Mchinji, Salima and Dowa.
- Three teams in the Southern Region observing the process in selected areas of Blantyre, Limbe, Zomba, Thyolo, Mulanje and Mangochi.

On voting day, mission members visited 181 voting stations in urban and rural areas throughout the country.

The mission assessed the Malawi parliamentary and presidential elections on the basis of the benchmarks recommended in the Principles for Election Management, Monitoring and Observation in the SADC Region (PEMMO).

PEMMO was developed by EISA and the Election Commissions Forum of SADC countries (ECF).

This report describes the main findings of the mission and makes recommendations to the relevant election stakeholders in Malawi for future improvements. The report will be shared with the Malawi Electoral Commission (MEC), political parties and candidates that contested the elections, CSOs in Malawi as well as with government authorities, election management bodies and CSOs across the region so that lessons can be learnt.

The main conclusion of the mission is that the Malawi parliamentary and presidential elections were substantially free in that they took place in an environment where there were no major legal, political or other impediments, including political intimidation, for the free exercise of the constitutional right of people to participate in the electoral process. The playing field was, however, not level, making it difficult for opposition parties and candidates to have equitable access to public resources, including the state media. Hence, the mission considers that the fairness of the process was deeply affected.

The integrity and credibility of the process was further compromised by the lack of an accurate voters' roll, the inability of the MEC to manage critical aspects of the process, as well as the perceived lack of independence of the MEC and the delay in the announcement of the results. The mission is, however, impressed with the peaceful and orderly manner in which the people of Malawi participated in the elections.

## ACKNOWLEDGEMENTS

The EISA mission would not have been as successful without the assistance and cooperation of many people and institutions. The mission would like to express its gratitude to all those who directly or indirectly contributed to the success of our work.

We would like to express our special thanks to the MEC not only for inviting EISA to observe the elections but also for accepting to meet with and to furnish critical information on the process to the mission on various occasions. Those meetings proved to be of great importance to the mission's understanding of the complex issues involved in the election process.

Our special thanks also go to political parties and CSOs, such as the Malawi Election Support Network, which met with the mission to exchange information on the electoral process.

The mission is indebted to the people of Malawi for their willingness to share their experiences, thoughts, opinions and views on the electoral process and the broad democratisation process in the country. The hospitality and support extended to the mission is greatly appreciated.

We are grateful to the United States Agency for International Development's Regional Centre for Southern Africa (USAID/RCSA), as well as to the Belgian and Norwegian governments for their generous funding which made the deployment of the mission possible. USAID/RCSA funding was channelled through DAI/ACCORD, and the mission extends its appreciation to ACCORD for its cooperation.

We thank EISA and its staff for their remarkable and professional coordination of the mission. Finally, the mission is grateful to EISA Programme Officer, Martinho Chachiua, for compiling this report.

## TERMS OF REFERENCE

Following an invitation extended by the Malawi Electoral Commission (MEC) dated 15 March 2004, the Electoral Institute of Southern Africa (EISA) established a mission to observe the Malawi 2004 parliamentary and presidential elections. The terms of reference of the mission were to assess whether:

- the conditions existed for the conduct of elections that reflected the will of the people of Malawi;
- the elections were conducted in accordance with the electoral legislative framework of Malawi; and
- the elections met the benchmarks set out in the Principles for Election Management, Monitoring and Observation (PEMMO), developed under the auspices of EISA and the Electoral Commissions Forum of SADC countries (ECF).

In order to achieve the above, the mission sought to undertake the following activities, namely, to:

- obtain information on the electoral process from the MEC;
- meet with political parties, CSOs and other stakeholders to acquaint itself with the electoral environment;
- report accurately on its observations and refer any irregularities to the authorities;
- observe all aspects of the election in the areas it visited;
- assess if all registered voters had easy access to voting stations and whether or not they were able to exercise their vote in freedom and secrecy;
- assess the logistical arrangements to confirm if all necessary material was available for voting and counting to take place efficiently; and
- find out if all the competing parties and candidates were given equal opportunity to participate in the elections.

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## THE EISA APPROACH TO ELECTION OBSERVATION

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EISA seeks to realise effective and sustainable democratic governance in Africa through strengthening electoral processes, good governance, human rights and democratic values. In this regard EISA undertakes applied research, capacity building, advocacy and other targeted interventions. It is within this broad context that EISA fields observer missions to assess the context and conduct of elections in the SADC region.

In assessing the May 2004 parliamentary and presidential elections in Malawi, the EISA Observer Mission conducted various activities covering the pre-election, election and post-election phases. These activities included:

### **Election Update**

Due to limited financial resources it was not possible for the mission to undertake long-term observation. EISA, however, developed an innovative method of information gathering and sharing that would ensure that members of the mission and other interested parties were kept abreast of the events which took place during the electoral process. Malawi-based researchers were contracted to gather information on critical election-related matters.

This information was published fortnightly in the *Election Update* series, which was widely distributed electronically and in print. Much of the pre-election information contained in this report is drawn from *Election Update*.

### **Stakeholder meetings and political party rallies**

Over a period of more than a week prior to polling day, members of the mission held meetings with various electoral stakeholders, including representatives of the MEC, political parties, CSOs, the media and scholars. The mission also met with domestic observer groups as well as with other international observer teams. Meetings were held at both national and regional levels and provided first-hand information on the different stakeholders' assessments of the process as well as their preparedness for the elections.

Our teams also attended political party rallies. After the High Court ordered the postponement of the polling, the mission had an opportunity to observe the voters' roll inspection process that took place between 14 and 19 May 2004.

### **Observation of voting and counting**

Members of the mission were deployed in the field from 16 May 2004 where they held further meetings with election stakeholders before observing the voting and counting on 20 May 2004.

The mission released its interim statement on 22 May 2004 (see Appendix 3) containing its preliminary conclusions. EISA continued to follow the post-election developments, including the announcement of results as well as the swearing in of the elected members of parliament (MPs) and the president.

# 1

# Historical Overview



- The period before 1999



- The 1999 national and provincial elections



- Political developments after 1999

## 1.1 THE PERIOD BEFORE 1999

After 30 years of single-party rule under the late Dr Kamuzu Banda's Malawi Congress Party (MCP) pressure from domestic opposition groups, compounded by the changing regional and global geopolitical landscape, led to the advent of multiparty democracy in 1994. Indeed, underground movements that emerged in the late 1980s later developed into political parties. The Catholic Church is reported to have played a pivotal role in mobilising its followers for the transition process. In 1993, on the verge of collapse, a reluctant Dr Banda was forced to call for a referendum on the introduction of multiparty democracy: the overwhelming majority (63%) that voted for a multiparty democracy not only set the stage for the first multiparty elections, but also sent a strong signal to the regime as to what the results of those elections would be.

In preparation for the elections, a national consultative council comprising representatives of all political parties was set up with the mandate of making recommendations to parliament on new electoral laws and procedures, the delimitation of constituencies and the drafting of a new constitution that would come into force immediately after the elections. In fact, the Consultative Council was a parallel administration meant to steer the transitional process forward. Within this framework, several pieces of legislation were passed including the law on political parties and the

Parliamentary and Presidential Elections Act of 1993; an interim constitution was adopted a few weeks before the 1994 elections.

This transitional arrangement came to an end with the 1994 elections. The elections were characterised by a large voter turnout: of the 3,775,256 registered voters, 3,004,835 (80.54%) cast their votes. Bakili Muluzi won the presidential elections with 47.16% of the votes while his party, the United Democratic Front (UDF), received 85 of the 177 parliamentary seats, or 48%. The electoral process was declared free and fair by all international and domestic observer groups.

**Table 1**  
**1994 Presidential election results**

Candidate	Total votes	% of votes
H. K. Banda	996 353	33.45
C. Chihana	562 862	18.90
B. Muluzi	1 404 754	47.16

Source: EISA *Election Update 2004: Malawi*, No. 1, 28 April 2004, p. 7.

The results of the 1994 parliamentary elections contained the seeds of the current features of Malawian politics in two ways. First, the results showed a clear split of votes on regional lines. The three main parties – the UDF, MCP and the Alliance for Democracy (AFORD) – won, respectively, the south, centre and north of the country. Second, the results underlined the degree of fragmentation of the electorate in the sense that none of the political parties was able to win an outright majority to form a government on its own, prompting the prevailing coalition politics.

Although the UDF won the elections, it fell short of an outright majority. In order to govern it had to form a coalition with AFORD, and AFORD leader Chafukwa Chihana was made second vice-president. Owing to deep disagreements between the two parties, however, the coalition did not survive the full term of office. AFORD decided to leave government but the UDF-led government survived thanks to AFORD cabinet ministers who

defied the party's decision to leave the governing coalition. Subsequently AFORD formed an alliance with the MCP, the official opposition. The MCP-AFORD alliance remained in place until the 1999 elections.

**Table 2**  
**1994 Parliamentary elections – regional distribution of seats**

REGION	POLITICAL PARTIES				
	MCP	UDF	AFORD	Independent	Total
North	0	0	33	0	33
Centre	51	14	3	0	68
South	5	71	0	0	76
<b>Total</b>	56	58	36	0	177

Source: EISA *Election Update 2004: Malawi*, No. 1, 28 April 2004, p. 8.

## **1.2 THE 1999 PARLIAMENTARY AND PRESIDENTIAL ELECTIONS**

The 1999 parliamentary and presidential elections were postponed twice, underscoring the problems surrounding preparations for the poll. The preparation process was described as having been marred by many logistical, technical and political shortcomings. Due to lack of material, the voter registration process was described as inadequate. Several allegations were made that the MEC had not only been incompetent but also partisan in the way it discharged its mandate. For example, the MEC was accused of having favoured the south of the country (generally regarded as the government's stronghold) during the delimitation of constituencies. Mounting controversies regarding the impartiality and conduct of the MEC led to the resignation of its chairman a few weeks before the poll. The electoral campaign was also marred by reports of violence and intimidation, reflecting more heat than light on the issues.

Notwithstanding all these problems, the elections were held on 15 June 1999. Five candidates contested the presidential elections: Dr Bakili Muluzi from the UDF; Gwanda Chakwamba from MCP-AFORD; Kamlepo Kalua from the Malawi Democratic Party (MDP); Bishop Daniel Mkhumbwe from the Congress for National Unity (CONU); and Bingu wa Mutharika from

the United Party (UP). A total of 630 candidates contested the 193 parliamentary seats. These candidates were fielded by a total of eight parties and there were 118 independent candidates. The high number of candidates reflected the general public enthusiasm, which was also demonstrated by an impressively high voter turnout: of the 5,071,822 registered voters, 4,755,422 (or 93.76%) actually voted.

Despite widespread claims of corruption and mismanagement against the incumbent UDF government – including allegations of possible election rigging – Dr Bakili Muluzi was declared the winner with 51.37% of the presidential poll against the 44.3% of his immediate rival, Gwanda Chakwamba. Chakwamba filed a complaint alleging that Muluzi had rigged the elections: nearly two years after the elections the High Court ruled against the complaint.

**Table 3**  
**1999 Presidential election results**

Candidate	Political party	No. of votes*	% of the total
Bakili Muluzi	UDF	2 442 685	51.37
Gwanda Chakwamba	MCP	2 106 790	44.3
Kamlepo Kalua	MDP	67 856	1.43
Bishop D. Mkhumbwe	CONU	24 347	0.51
Bingu Wa Mutharika	UP	22 073	0.46

Source: EISA *Election Update Malawi 2004*, No. 1, April 2004, p. 8, and T Lodge, D Kadima & D Pottie (eds), *Compendium of Elections in Southern Africa*, EISA, 2002, p. 153.

\*Data obtained from [http://www.sdn.org.mw/elect99/presidential\\_results.html](http://www.sdn.org.mw/elect99/presidential_results.html)

As for the legislative elections, the ruling party (UDF) won 94 seats falling short of an outright majority in parliament, while the MCP-AFORD alliance received 95 seats. Four constituencies elected independent candidates. This situation only changed after the UDF enlisted the support of four independent MPs and subsequently won three seats in by-elections.

In the end, two main aspects seem to have marked the process: first, the results confirmed once again the regional voting patterns as the three main

political parties won their strongholds almost unopposed. Second, the controversies around the shortcomings of the election administration as well as the widespread cases of abuse of public resources, including the media, by the incumbent government led to post-election popular demonstrations by MCP-AFRORD coalition supporters in the capital city, Blantyre. The eruption of sporadic violence in the north was another sign of dissatisfaction with the results. This affected the credibility of the whole process in the eyes of both the people of Malawi and international observers.

**Table 4**  
**Regional breakdown of the 1999 parliamentary election results**

Region	Political Parties				
	AFORD	MCP	UDF	Independents	Total
North	28	4	1	0	33
Centre	1	54	16	1	72
South	0	8	77	3	88
Total	29	66	94	4	193

Source: T Lodge, D Kadima & D Pottie (eds), *Compendium of Elections in Southern Africa*, EISA, 2002, Table 2, p. 136.

Therefore, while domestic and international observers declared that an environment existed for voters to exercise their right to choose freely their leaders, they registered serious concerns over what they saw as the chaotic logistical and administrative conditions under which preparations for the poll had taken place – particularly the voter registration process – as well as the partisan media coverage that had characterised the campaigning period.

### **1.3 POST-1999 POLITICAL DEVELOPMENTS**

The political landscape after the 1999 elections came to be characterised by two main aspects, namely: the frequent formation and splitting of party coalitions across the whole political spectrum; and President Muluzi's 'third term' campaign.

### **Formation and split of party coalitions**

Party politics in Malawi has been characterised by deep internal infights leading to splits, the formation of new parties or the formation of unstable coalitions. Analysts have attributed this to a number of factors ranging from ‘personality cults’<sup>1</sup> – many problems are precipitated by disagreements among top leadership – to weak institutional capacity, and from lack of intra-party democracy to an apparent failure in articulating a clear ideological foundation which would differentiate one party from another.

Indeed, in early 2001 disagreements within the ruling UDF over the open term bill saw a leading member of the party, Brown Mpinganjira, forming a pressure group to campaign against the bill. After his expulsion from the party, the pressure group became the National Democratic Alliance (NDA). Desertions continued throughout the 1999–2004 UDF term of government. In the run up to the 2004 elections, several members of the ruling party left the party to contest the elections as independent candidates, including Dr Muluzi’s vice-president, Justin Malewezi.

Infighting between top MCP leaders – John Tembo, Gwanda Chakwamba and Dr Hetheriwick Ntaba – led to the split in 2003 which saw Chakwamba forming the Republican Party and Ntaba, the New Congress for Democracy (NCD). The third largest party, AFORD, also experienced internal squabbles. Chihana’s decision to support the open term bill brought the party to the brink of a break up and led to the formation of the splinter Movement for Genuine Democracy (MGODE). The internal squabbles within political parties and the formation of splinter parties are complemented by the formation of party coalitions. In the 1999 elections, AFORD entered into a coalition with the MCP. This coalition came to an end during the open term controversy where AFORD supported the bill while the MCP opposed it. AFORD then signed an agreement with the UDF which provided for a coalition in the 2004 elections.

### **The third-term campaign**

Also known as the presidential open term bill, the third-term campaign was an attempt to have section 83(3) of the constitution amended to allow

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<sup>1</sup> See N Patel, EISA Malawi Election Update 2004, No. 1, April 2004, pp. 15-19

President Muluzi to run for a third term. This campaign, believed to have been started by President Muluzi's allies, created an unprecedented national outcry cutting across party political lines. The opinions within political parties were divided, including within the UDF itself. On the side of civil society, non-governmental organisations (NGOs) and religious groups placed the issue in war footing and the public outrage against the move could not be ignored. As a result, parliament rejected the bill. Analysts believe that as a response to the defeat President Muluzi imposed his hand-picked presidential candidate on the party, Dr Bingu wa Mutarika. This is reported to have created discontent in the ruling coalition.

# 2

# Electoral Framework



- The legal Framework



- The Malawi Electoral Commission



## 2.1 THE LEGAL FRAMEWORK

Malawi is a unitary state based on the British common law. The current constitution was approved in 1994 and took provisional effect for one year, during which period it was subject to review. The final version came into force in May 1995. This constitution provides for the protection of basic human rights and freedoms, including the freedom of association, expression, assembly and the press. The constitution also contains the main principles to ensure the holding of periodic, regular and competitive elections, as well as the separation of powers between the executive, legislative and judicial branches of government.

Insofar as universal suffrage is concerned, Chapter I (6) of the constitution provides that:

Save otherwise provided in the constitution, the authority to govern derives from the people of Malawi as expressed through universal and equal suffrage in elections held in accordance with this constitution and in a manner prescribed by an act of parliament.

Presidential and parliamentary elections are held simultaneously. MPs are elected according to the single member plurality electoral system for a five-year term. The constitution is particularly detailed on when the elections

should be held by providing, in its section 64(1), that ‘parliament stands dissolved on 20 March in the fifth year after its election and general election for the next National Assembly must take place on the Tuesday of the third week of May that year’.

Finally, the constitution (Chapter VII) establishes an independent electoral commission with powers and functions to deliver the electoral process as described below.

The mission concluded that overall the constitutional framework in Malawi creates a favourable legislative environment for successful elections to take place, and largely complies with the recommendations enshrined in the Principles for Election Management, Monitoring and Observation in the SADC region (PEMMO).

## **2.2 THE MALAWI ELECTORAL COMMISSION**

### **Functions**

Section 75(1) of the Constitution of Malawi establishes an electoral commission which must be chaired by a judge nominated by the Judicial Service Commission and other members, not less than six, appointed in accordance with an act of parliament. The functions of the Malawi Electoral Commission (MEC) as provided in section 75 of the constitution as well as by the Electoral Commission Act of 1998 include, *inter alia*, to:

- determine constituency boundaries in an impartial manner on the basis of ensuring approximately equal numbers of eligible voters;
- exercise general direction and supervision over the conduct of every election;
- determine electoral petitions and complaints related to the conduct of any election;
- organise and direct voter registration;
- print, distribute and take charge of ballot papers and voters’ registers;
- establish and operate polling stations;
- ensure security conditions necessary for the conduct of elections;
- promote public awareness of electoral matters through the media and other appropriate and effective means and conduct civic education on such matters; and

- adjudicate disputes that may arise from the organisation, administration and conduct of elections.

Furthermore, the Electoral Law provides that the MEC shall discharge its functions and duties independently of the direction or interference from any organ of government, political party, candidate, person or organisation whatsoever.

The legal provision that allows funding of the commission to be decided by parliament is precisely intended to ensure such independence. However, the fact that the MEC reports to the president compromises the very independence the law seeks to ensure.

### **Composition of the MEC**

MEC commissioners are appointed by the president in consultation with the political parties represented in parliament and in accordance with terms and conditions as may be determined by the Public Appointments Committee of parliament. A term of office is four years and commissioners can be reappointed for a second term. On the recommendation of the Public Appointments Committee, the president can remove a member of the MEC based on reasons of incapacity or incompetence for the office.

The MEC is currently composed of nine members, including the chairperson. As a result of the appointment criteria outlined above the composition of the commission follows the pattern of party representation in parliament, allowing a 75% representation of the UDF-led governing coalition. The mission notes with concern that this fact has contributed to a situation whereby the commission is perceived to be partisan.

For the day-to-day management of the commission's affairs, it appoints a chief electoral officer who serves as chief executive officer of the commission. The chief electoral officer is in turn responsible for setting up all the operational mechanisms, including the appointment and deployment of presiding officers and all electoral staff necessary for the conduct of elections.

The MEC has three regional offices in the north, centre and south of the country but does not maintain permanent structures at district level.

## **Funding**

The Electoral Commission Act (section 15(1)) provides that the MEC's funds will be constituted by public funds as appropriated by parliament as well as grants, subsidies, gifts and donations from foreign governments, international agencies or other external bodies. As an independent statutory body, such funds are also to be under the exclusive control of the commission. The MEC's accounts are subject to annual auditing by the auditor general and are submitted to the minister of finance. The mission notes, however, that in contrast to the spirit of these provisions, the MEC's funds are, de facto, under the control of the minister of finance who disburses such funds at his discretion. This seems to support allegations made by the MEC that it has failed in most of its obligations because of either lack of funds or delays in their disbursement.

According to the MEC, its budget for the 2004 elections was \$14 million, \$9.3 million of which was provided by the Government of Malawi and \$5.1 million by the donor community through a trust fund administered by United Nations Development Programme (UNDP). The MEC lamented the inadequacy of this budget to conduct a proper electoral process; this figure was reached after both the government and donors had rejected the first MEC budget of over \$26 million. Although it was widely held that the initial MEC budget figures were an overestimation, the EISA Election Observer Mission recommends greater financial independence of the MEC through, *inter alia*, adequate funding and being accountable only to parliament.

## **Independence**

After assessing the information collected regarding the conduct of the MEC, the mission concludes that although the constitution and the electoral laws provide enough legal tools and powers, including mechanisms to ensure independence, the MEC failed not only to enforce those laws but also to maintain some degree of independence *vis-à-vis* the government and the UDF.

# 3

## The Pre-Election Phase

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- Delimitation of constituencies



- Voter registration



- Party registration and candidate nomination

- Voter education and information

- The electoral campaign

- Media coverage of the electoral process

- The court ruling and postponement of the poll

### 3.1 DELIMITATION OF CONSTITUENCIES

Authority for the delimitation of constituencies in Malawi is vested in the MEC. Section 76 of the constitution provides that the MEC shall:

impartially determine constituency boundaries on the basis that each constituency contains an approximately equal number of voters who are eligible to register, subject only to the considerations of population density, ease of communication, geographical features and existing administrative areas.

Following the introduction of multiparty democracy, the MEC has conducted two demarcations, the last of which was in 1998 and determined the current 193 constituencies. For a host of reasons – including the inherited administrative and traditional structures of Malawi society – the efforts have resulted in a situation where the size of constituencies has differed grossly: for example, the smallest constituency (Nkhata Bay East) has 3,407 voters while the biggest (Mchinga North) has 59,494 voters.

The mission notes that the MEC did not conduct constituency demarcation for the 2004 elections. The main reason given by the MEC was lack of resources. As a result, the 2004 elections took place on the basis of the constituencies determined in 1999. This time around, the difference between the smallest and the largest constituencies have widened. Indeed, according to the MEC's breakdown of registration figures, Lilongwe City Central has 88,469 voters while Ntchisi North-East has 11,166.<sup>2</sup> The mission is concerned that lack of demarcation has compromised the core principle of equality of the vote since sections of the population are over-represented while others are grossly under-represented.

## 3.2 VOTER REGISTRATION

### Legal provisions

Section 77 of the Constitution sets out the criteria for eligibility to register and to vote. These criteria include that the person:

- must be a citizen of Malawi, or if not a citizen, have been ordinarily residing in the country for seven years;
- must have attained the age of 18 years; and
- is ordinarily resident in the constituency, or was born there, or is employed or carries on a business there.

Once a person meets the criteria to vote, he/she is required to register in order to be able to cast a ballot in a given election. The MEC is responsible for registering eligible voters, compiling and/or updating the voters' roll and issuing a voter registration certificate to identify registered voters. According to the Parliamentary and Presidential Elections Act each voter must register once in the constituency and voting centre he/she is expected to vote at.

The law prescribes that the period for voter registration be determined by the MEC, provided it is not less than 14 days ending no later than 21 days before the first polling day (Section 29). Thereafter the voters' register must be open for inspection by voters as well as by political parties and candidates. The law is silent on how long the period for inspection of the voters' roll should be.

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<sup>2</sup> The picture is much worse if one includes the Lokoma Island constituency with 5,553 voters

For the 2004 parliamentary and presidential elections in Malawi, the MEC scheduled voter registration to take place over the period between 5 and 18 January 2004. Due to technical and logistical hiccups this period was extended by a week to end on 23 January. During this period the commission was meant to update the 1999 voters' register by adding new entries, deleting the names of deceased voters and effecting voters' transfers.

### **Assessing the registration process**

By law, voter registration in Malawi can take as short a period as 14 days; for the 2004 elections the process took 21 days. The short period of time provided for registration, compounded with the weak technical capacity of the MEC as well as poor logistical management of the process, resulted in voter registration becoming the most chaotic aspect of the electoral process. The commission was unable to compile and publish an accurate voters' roll on time for inspections to take place.

The commission initially announced that the voters' roll had 6,673,023 entries. This figure was met with strong contestation based on the argument that with an estimated total population around 12 million, Malawi could not have 6.6 million, or over half its population, over 18 years of age. Under mounting pressure from political parties and CSOs, the MEC contracted Computer Storage Inc., a South African information technology company, to clean up the register – this resulted in an electronic voters' roll containing 5,745,455 voters. While the clean up had brought some of the deficiencies – such as double registration, unprocessed transfers and even undeleted names of deceased voters – out into the open, the resulting register contained other deficiencies, including the omission of names and photographs. In order to deal with this problem, the MEC used three reference documents to identify eligible voters during the voting process, namely: the computerised voters' roll; the manual voters' roll of 1999; and record and transfer cards. This, however, caused confusion, delays and the possible disenfranchisement of voters, as well as making it impossible to determine the proportion of voters who voted against the number of registered voters. In turn, this highlights the degree of vulnerability for abuse to which the process was exposed. The matter led to the Republican Party filing a court case against the MEC, the ruling UDF and the attorney general, which resulted in the postponement of polling day by two days. The mission concludes that the degree of

inadequacy of the registration process greatly affected the integrity and credibility of the electoral process.

### 3.3 PARTY REGISTRATION AND CANDIDATE NOMINATION

Following the introduction of multiparty democracy in the early 1990s, political parties have mushroomed in Malawi. According to the MEC, political parties are required to register before they can contest an election. There are over 30 registered political parties but only 15 contested the 2004 parliamentary elections. Political parties in Malawi are generally described as being weak; as a result elections are mainly contested in coalitions. The 15 parties contested the 2004 parliamentary elections under two main coalitions: one formed around the ruling UDF; and the other formed by the opposition under Mgwirizano.

**Table 5**  
**List of parties contesting the 2004 elections**

Political party	Abbreviation
Alliance for Democracy	AFORD*
Congress for National Unity	CONU
Malawi Forum for Unity and Development	MAFUNDE**
Malawi Congress Party	MCP
Malawi Democratic Party	MDP**
Movement for Genuine Democracy	MGODE**
New Congress for Democracy	NCD
National Democratic Alliance	NDA
National Solidarity Movement	NSM
National Unity Party	NUP**
Pamodzi Freedom Party	PFP
People's Transformation Party	PTM
People Progressive Movement	PPM**
Republican Party	RP**
United Democratic Front	UDF

\* Ruling coalition

\*\* Opposition Mgwirizano coalition

**The nomination of candidates**

Sections 51 and 80(6) of the constitution set out general guidelines of eligibility for a person to be a candidate for parliamentary and presidential elections respectively. The Parliamentary and Presidential Elections Act further provides that candidates must be nominated by 10 registered voters in the constituency where they are standing for elections, while a presidential candidate must be nominated by 10 voters from each district. Candidates must also meet the following requirements: be Malawian citizens, be able to speak and read English well enough to take active part in the proceedings and have registered as a voter.

Political parties, however, have their own mechanisms to select candidates during the primaries. Owing to a general lack of intra-party democracy, the primaries in Malawi were marred by disagreements regarding party candidates. Claims of imposition of candidates by the top leadership of political parties resulted in defections of members who then contested as independents. In fact, 373 candidates out of a total of 1,268 candidates for the parliamentary elections (or 29.4%) contested the elections as independents. In addition, the mission notes with concern that there were only 154 women candidates, representing a mere 12% of total contestants.

While the right to field candidates remains with political parties themselves, it is critical that political parties follow democratic principles and make an effort to ensure equitable gender representation among their nominated candidates along the lines recommended by the SADC Declaration on Gender and Development of 1997, which advocates that countries should strive to achieve at least 30% gender representation in decision-making structures.

**3.4 VOTER EDUCATION AND INFORMATION**

The Electoral Act provides that the responsibility for voter education and information rests with the MEC. According to the MEC, voter education for the 2004 elections comprised media campaigns as well as the issuing of leaflets. The mission learned that the MEC printed and distributed about 2.2 million leaflets. The MEC acknowledged, however, that the campaign drive it conducted was inadequate due to lack of resources. Civic and voter education was also conducted by CSOs and political parties.

A number of CSOs and networks of NGOs such as the National Initiative for Civic Education (NICE), the Public Affairs Committee (PAC), the Justice and Peace Commission of the Catholic Church (CCJP) and the Malawi Election Support Network (MESN) were actively involved in civic and voter education and information. The effectiveness and outreach of the CSOs' efforts were hampered by two main factors, namely: lack of funding; and poor relations with the commission. CSOs intending to conduct civic education are required to be accredited by the MEC. The mission learned that although many organisations had intended to conduct civic and voter education and information, only a few were actually accredited. Additionally, lack of funding meant that those organisations that were accredited could not conduct as comprehensive and effective a civic and voter education and information programme as they would have liked. Reportedly, UNDP promises of providing basket funding were never fulfilled.

Overall, the mission concludes that civic and voter education and information in Malawi was inadequate. This seems to have affected voter turn out as well as the effectiveness of the voting process.

### **3.5 THE ELECTORAL CAMPAIGN**

#### **Rules governing canvassing**

Sections 56 to 66 of the Parliamentary and Presidential Elections Act prescribe the rules governing the political campaigning of political parties and candidates. The Act also provides for the MEC to come up with a code of conduct that commits political parties and their agents to non-coercive campaigning; this includes a prohibition on parties preventing others' access to voters. The legislation also compels parties to refrain from using language that can incite violence and intimidate voters or other political parties, including any inducement to voters through means other than political appeal. Non-compliance or breach of the code is punishable through a range of penalties to be enforced either by the normal court system or by the electoral court.

#### **The campaign**

Although political rallies seemed to dominate the campaign, political parties and candidates employed all campaigning techniques including posters,

political advertisements (in the electronic and print media), door-to-door canvassing and motorcades.

It became apparent that the more expensive techniques of canvassing, such as billboards and T-shirts, were used mostly by the ruling UDF and its candidates. The political rallies of the out-going president and his successor were usually yellow-coloured and the most visible, suggesting that the party might have spent relatively large amounts of money compared to other political parties and candidates. In addition, the mission noted and received information indicating that candidates were dishing out money during the campaign in violation of the law which prohibits vote buying. Although allegations of vote buying were widespread, the MEC failed to investigate.

Second to the ruling party in terms of visibility was the Mgwirizano Coalition. Other political parties and candidates conducted a less vigorous campaign. Many observers have attributed this to lack of resources. Overall, however, the visibility of political parties increased as polling day loomed closer.

As indicated above, Malawian political parties appeared to be weak in articulating their ideological standpoints. This seems to have influenced their ability to craft a coherent electioneering message. Many hardly had any election manifesto. As a result, the campaigning messages focused on personality and regional issues or on local day-to-day problems as opposed to a national vision. Consequently, all political parties promised to tackle food security and poverty through either free provision or subsidising agricultural inputs, but none seemed to explain how it would finance such a programme.

### **Violence and intimidation**

All election stakeholders that the mission had the opportunity to meet with indicated that the campaign had taken place in a peaceful environment. All incidents of violence were described as isolated and of a criminal nature that did not affect in any substantial way the freedom of the electoral process. The mission is, however, concerned with the focus on personalities and the use of insulting language. The mission received unconfirmed reports alleging violence and political intimidation during the primaries.

### **Use of public resources**

Opposition political parties and CSOs complained that the government and ruling party candidates were allegedly using state resources, such as vehicles and parastatal funds, for political campaigning. The MEC failed to investigate and address such complaints and instead forwarded them to the President's Office. Following a court case filed by the opposition Republican Party, the High Court (Constitutional Division) ruling of 14 May stated that:

by not dealing with the allegation of public resources for campaign purposes by the UDF and the President, the Commission abdicated its wide responsibilities and mandate under section 76(2) of the Constitution ... The Commission ought to have asked for further particulars of the allegation of abuse from the complainants rather than refer the matter to the office of the president.

The Supreme Court, to which the case had been referred following the MEC's appeal, withheld the ruling and yet the commission failed to act. This has further affected the perception of independence and impartiality of the commission in the eyes of the main election stakeholders. The mission deplored the MEC's unwillingness to address election-related complaints.

### **3.6 MEDIA COVERAGE OF THE ELECTORAL PROCESS**

Following the advent of multiparty democracy in 1994, the media in Malawi witnessed the emergence of private and independent print, press and radio stations. The Nations Publications Ltd, a private newspaper, stands at the forefront of such media houses in the country. However, the Malawi Broadcasting Corporation (MBC), the state-owned radio and television company, remains the only radio medium with wide coverage: it is believed that more than 80% of the people in Malawi rely on the MBC for news and information.

As a result, section 63 of the Parliamentary and Presidential Elections Act prescribes the use of the public media, and particularly the MBC, by political parties and candidates for campaign purposes. In order to ensure equitable access the law vests the MEC with monitoring, supervisory, regulatory and enforcement powers. It is reported that for both the 1994 and 1999 elections,

the MEC issued guidelines governing the equitable use of radio and Malawi Television (TVM) through the allocation of time slots to political parties and candidates. Unfortunately, no such guidelines existed for the 2004 elections.

The mission also found that although section 63(1)(a) of the Parliamentary and Presidential Elections Act clearly states that 'no political party or candidate shall be entitled to make commercial advertisement for its campaign' in the MBC, all political parties either placed commercial political advertisements with the MBC or complained of a lack of financial resources to do so. Neither the MBC management nor the political parties seemed to be aware of the law in this regard.

All the election stakeholders contacted in Malawi, bar the government and the ruling party, raised concern over the unfair use of the state media (the MBC and TVM) by the ruling party. Members of the mission were also struck by the fact that during the period the mission was in Malawi, both radio and TVM hardly covered opposition parties' political activities. These sentiments coincided with the conclusions of a Civil Society media monitoring project. According to Report 7 of the media monitoring project, one week before the elections the ruling coalition presidential candidate had received an average of 60% of MBC's positive coverage of the electoral process, while his opponents received the remaining 40%. In addition, the UDF/AFORD/NCD coalition received an average of 57% against an average ranging between 0 and 5% received by other political parties and candidates.<sup>3</sup> The MEC confirmed the unbalanced way in which the MBC and TVM covered the campaign and argued that it had no powers to sanction the public media.

The mission is concerned by the unbalanced coverage of the elections by the public media in favour of the ruling party. It notes that although the electoral law provides for the enforcement of media guidelines by the MEC, the commission failed to ensure fair media coverage for all parties and candidates. This fact remains one of the critical aspects that has jeopardised the fairness of the electoral process.

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<sup>3</sup> See Civil Society Media Watch, Report on Media Coverage of Official Campaign in malawi, Report 7, 7-13 May 2004.

### **3.7 THE COURT RULING AND THE POSTPONEMENT OF THE POLL**

Of the complaints that reached the courts, the most important related to the failure of the MEC to publish the voters' roll on time for verification. The Mgwirizano Coalition filed a complaint with the High Court, which ruled in favour by ordering the commission to postpone the poll in order to allow a proper inspection to take place. The ruling forced the MEC to delay the polling from 18 to 20 May 2004. While applauding the attitude of the court in ruling the way it did, the mission believes that due to the extent of the problems with the voters' register, a two-day postponement was not enough for redress. Hence, as much as the mission understands the value of the ruling, especially in re-emphasising the principle of the rule of law, it regrets the fact that the ruling had no practical effect on the problems it was meant to address.

Even with the additional two days for verification of the voters' roll, many registration centres visited by the mission had not received the computerised voters' roll for inspection. Information regarding the need for presiding officers to proactively display the voters' roll had not been appropriately communicated. In some centres the voters' roll was not even available for the inspection to take place. Moreover, no consistent mechanism was in place through which errors could be corrected within the available time.

# 4

# The Election



- Voting Process
- Opening of voting stations and election material
- Voters' roll
- Voting stations
- Voter turnout
- Voting staff, party agents and security personnel
- Observers

## 4.1 THE VOTING PROCESS

Sections 74 to 89 of the Electoral Act set out the procedures to be followed for the voting process. These procedures include the fact that each voter must, in secret, cast his/her vote personally, once, and in the polling station located at the registration centre where the voter is registered. The Act also describes the order of voting and the various steps to be followed in casting a vote. These steps include the following:

- a) On arrival the voter must report and hand his/her registration certificate to a polling officer who will verify the voter's identity;
- b) after ascertaining the identity of the voter, the polling officer marks the registration certificate and notes the number;
- c) the right index finger of the voter is dipped into indelible ink;
- d) a ballot paper for the parliamentary election is issued;
- e) the voter is directed to the voting booth; and
- f) the voter casts his/her vote by depositing the ballot paper into the ballot box for parliamentary elections.

This procedure is repeated for the presidential elections, with the exception that in step c) the **left** index finger will be dipped into indelible ink.

#### **4.2 OPENING OF VOTING STATIONS AND ELECTION MATERIAL**

The Electoral Act defines that voting must take place, uninterrupted, between 6 am and 6 pm. The procedures for the opening of the polling station are prescribed by law and require that the presiding officer, together with other polling staff and representatives of political parties and candidates, verify that there are no irregularities with the voting booth and other voting material. The presiding officer, in front of all present, must specifically exhibit the ballot box to verify that it is empty; thereafter the ballot box is closed and sealed.

The mission was satisfied with the degree of compliance with the law regarding opening procedures. In fact, at all voting stations where the mission teams observed the opening, the presiding officers followed the opening procedures strictly.

In general, the polling stations opened on time and had no shortage of essential election material or election staff. A few polling stations experienced negligible delays due mainly to delays in setting up the polling station and other polling staff organisational procedures. Lack of other voting material was mentioned in very few cases. Voting for parliamentary candidates was postponed in six constituencies after problems were noted, including candidates missing on ballot papers. By-elections will be called in those constituencies.

Notwithstanding the re-scheduling of the distribution of voting material occasioned by the postponement and logistical difficulties, the process was described as orderly. The mission was impressed with the level of commitment shown by district commissioners, returning officers and election officers in ensuring that the process ran smoothly.

#### **4.3 VOTERS' ROLL**

As pointed out above, voter registration was the most chaotic aspect of the 2004 Malawi parliamentary and presidential elections. The commission was unable to compile and publish an accurate single voters' register. As a result

of the controversies around the voters' roll, there were three reference documents to identify eligible voters during the voting process, namely: the computerised voters' roll; the 1999 manual voters' roll; and record and transfer cards. This led to confusion, delays and the possible disenfranchisement of voters. Moreover, the mission considers that the existence of three reference documents made the system vulnerable to abuse, including the potential of multiple voting. The mission believes that the problems with the registration process greatly affected the integrity and credibility of the electoral process.

#### **4.4 VOTING STATIONS**

The MEC established 3,884 polling centres comprising 8,235 polling stations. The mission found that the polling stations were well laid out, allowing a smooth flow through for voting as well as ensuring the secrecy of the ballot. Overall, the polling stations were well managed and the atmosphere was peaceful and orderly throughout the voting process. The mission was satisfied that the MEC established enough polling stations to give voters easy access to the poll and congratulated the polling staff and the people of Malawi for the peaceful, orderly and civilised manner in which they conducted themselves during the voting process.

#### **4.5 VOTER TURNOUT**

The mission observed long queues during the first few hours of the morning which had given an impression that voter turnout would be high. By mid-day, however, the queues had died down and did not pick up again. In all polling stations where the mission observed the accounting, voter turnout hardly reached the 45% mark if compared with the computerised voters' roll.

Given the confusion around the register, even if the number of voters that had actually cast their votes were to be high in absolute terms, it would be impossible to determine the level of popular participation in the electoral process because of lack of a unique reference document. This aspect has also contributed to questions regarding the credibility of the process. The mission recommends that the MEC should make sure that voter registration is done properly and that an accurate voters' roll is compiled for future elections. This should include the provision of enough time for inspection and

correction of any errors that might be identified. The mission notes that the legal provision for voter registration is inadequate as it limits the time for voter registration. It would be advisable to introduce a reform that allows voter registration to be an on-going process, as recommended in the PEMMO.

#### **4.6 VOTING STAFF, PARTY AGENTS AND SECURITY PERSONNEL**

Polling staff in Malawi are drawn mainly from the civil service and particularly from among teachers. Each polling station was manned by seven election staff, including one presiding officer. According to the MEC, polling station staff received a one-day training session two days before the poll. While the mission is generally satisfied with the performance of the election staff, it is concerned that the period provided for training was inadequate.

Party/candidate agents were present at all polling stations visited by the mission, though not all contesting parties were represented at every polling station. The mission notes that parties tended to field party agents where they had strong support. In general all party/candidate agents did not explicitly attempt to unduly influence voters at the polling stations. Party agents did not carry party propaganda material to the polling stations.

The mission notes that the security arrangements at all polling and counting stations visited were adequate. All 181 voting stations visited had security officers. In none of the polling stations could the security forces present be regarded as intimidating or interfering with the voting process. The mission therefore believes that the security arrangements were effective and contributed to the peaceful, orderly and free atmosphere in which the elections took place.

#### **4.7 OBSERVERS**

##### **International observers**

According to MEC, 366 international observers from 18 observer groups were accredited to observe the 2004 parliamentary and presidential elections. The observer groups included five main categories, namely:

- international organisations;
- regional organisations;
- diplomatic missions and development agencies accredited in Malawi;

- electoral commissions; and
- international NGOs (see Appendix 5 for full list).

The main observer groups were the European Union (EU) which fielded 78 short- and long-term observers, followed by the SADC Parliamentary Forum with 39, EISA with 36 and the African Union with nine observers. All the observer groups, with the exception of the EU, deployed short-term observers who spent an average of two weeks in the country. In the run up to voting day these groups exchanged information on their observations as well as their deployment plans. Their conclusions around the critical aspects of the process as contained in their interim reports are, by and large, similar.

### **Domestic election monitors**

Although the relationship between the MEC and CSOs was described as non-cooperative, the commission is reported to have accredited over 11,000 domestic monitors. These monitors were fielded by 15 domestic observer groups (see Appendix 6). Most domestic observer groups are members of the civil society Malawi Election Support Network (MESN). Like elsewhere in the SADC region, domestic observation lacks sufficient funding in order to make a real difference.

The mission is impressed with the positive work undertaken by the domestic observer groups. Indeed, notwithstanding limited funding, the domestic monitors were involved throughout the process. In the absence of strong party machineries, domestic observers have served as real watchdogs of the process. They were instrumental in denouncing irregularities in the registration process; an issue picked up later by political parties. The MESN conducted a parallel vote tabulation aimed at ensuring the accuracy and credibility of the election results.

Furthermore, as already mentioned, CSOs took it upon themselves to monitor media coverage of the electoral campaign. The reports of this monitoring exercise strengthened the political parties' case against the MEC in this regard.

The mission is therefore satisfied with the proactive role played by CSOs during the elections and encourages them to continue to participate actively in addressing the challenges facing democratic governance in Malawi.

#### **4.8 COUNTING**

The Parliamentary and Presidential Elections Act provides for votes to be counted at each polling station immediately after it has closed. Sections 90 to 99 of the Act describe in detail the procedures to be followed for the counting and transmission of results. These procedures include the fact that once the votes are sorted out according to each candidate and counted, the presiding officer must fill out a results form. The results form must then be signed by all voting station staff and party agents present. Each party agent is entitled to a copy of the results form and another must be displayed outside the voting station. The presiding officer must then hand over the form to the district commissioner who, on receipt of all results forms from all voting stations, must compile a district results form. The district commissioner transmits the district results form to the chief electoral officer who compiles and announces the national results.

Although there were instances where presiding officers failed to follow strictly the prescribed procedures – such as ensuring that only authorised persons were present or reconciling used ballot papers and unused ballot papers – the counting generally occurred within the prescribed norms. All party agents and election observers were allowed to observe, making the process overt and transparent.

The mission notes, however, that the counting process was slow. While this was partly due to the inefficiency of staff, in most instances lack of appropriate lighting – in particular in rural and semi-urban settings where candles, lamps and torches were used – greatly affected the process. The mission therefore believes that voting hours should be reduced in order to avoid counting taking place too late when staff are exhausted and lighting conditions are inadequate.

# 5

## The Post-Election Phase



- Transmission of results



- Result centres



- The results

### 5.1 TRANSMISSION OF RESULTS

The transmission of results from the polling station through returning officers to the chief electoral officer stationed at the results centre in Blantyre was very slow. By noon of 21 May when the team stationed in Blantyre left for Lilongwe, no results had reached the results centre. This raised suspicion around the results process and led to an unnecessary public outcry, which contributed to further questioning of the credibility of the process.

Logistical difficulties associated with lack of transport seem to be an acceptable justification for the delays in transmitting results from the presiding officers to the district commissioners. However, the main reason for the delays affecting transmissions from returning officers to the national results centre seems to be the legal requirement that district commissioners only transmit results after receiving the results forms from all constituencies in a district. The arrival of foreign guests for the inauguration of the president-elect before the results were announced caused much agitation among Malawi election stakeholders.

### 5.2 RESULTS CENTRE

Finally, while applauding the establishment of the results centre as a positive step insofar as ensuring transparency in the result process, the mission is concerned that the delay in the transmission of results cancelled out the intended effects of the concept of a results centre. The mission therefore recommends that the MEC should look into ways of enhancing the efficiency

of results transmission and tabulation, both by looking into the legal requirements and ensuring that logistical arrangements allowing for speedy transmission are in place during this crucial phase of the electoral process.

### 5.3 THE RESULTS

The MEC announced the results on 23 May – three days after the poll. By the time the results were announced tension had built up to boiling point. Indeed, four people were reported dead as a result of the violent protests that followed the announcement of the results. The results were as follows:

**Table 6**  
**Results of the presidential election**

Candidate	Political party	No. of votes	% of the votes
Bingu Wa Mutharika	UDF	1 119 738	35.8
John Tembo	MCP	846 457	27.0
Gwanda Chakuamba	Mgwirizano	802 386	26.0
Brown Mpinganjira	NDA	272 172	08.7
Justin Malewezi	Independent	78 892	02.5
<b>Total</b>		<b>3 119 645</b>	<b>100.0</b>

Source: Malawi Electoral Commission

**Table 7**  
**Results of the parliamentary election**

Political party	No. of seats	% of the total
Malawi Congress Party	59	30.5
United Democratic Front	49	25.3
Mgwirizano Coalition	27	13.9
Independents	38	19.6
Other political parties	14	7.2
Seats not contested yet	6	3.1
<b>Total</b>	<b>193</b>	<b>100.00</b>

Source: Malawi Electoral Commission

# 6

# Conclusions and Recommendations



## **6. CONCLUSIONS AND RECOMMENDATIONS**

In the preceding sections we have provided a detailed account of our observations of critical areas regarding the conduct of the 2004 Malawi parliamentary and presidential elections. It should be recalled that these observations are based on guidelines enshrined in the ECF/EISA PEMMO. As indicated in our interim statement issued on 22 May, the overall conclusion of the mission is that the elections in Malawi were substantially free.

The playing field was, however, not level, making it difficult for opposition parties and candidates to have equitable access to public resources, including the state media.

The mission concludes that there were no major legal, political or other impediments to the free exercise of the constitutional right of people to participate in the electoral process. The electoral process took place in a peaceful and orderly environment and no explicit acts of intimidation that could have affected the freedom of the process were brought to the attention of the mission.

However, concerns over the use of public resources by the incumbent government, including the nearly exclusive use of the public media for the ruling coalition's campaign, were such that the mission concludes that the playing field was not level and hence the fairness of the process was deeply compromised.

The integrity and credibility of the process was further compromised by the lack of an accurate voters' roll, the inability of the MEC to manage critical aspects of the process, the MEC's perceived lack of independence and the delay in the announcement of the results. The mission is, however, impressed with the peaceful and orderly manner in which the people of Malawi participated in the elections.

Finally, with all these observations in mind, the mission would like to make the following recommendations:

- **Delimitation of constituencies:** The lack of delimitation of constituencies has resulted in a situation where some constituencies are substantially over-represented while others are under-represented. This compromises the principle of equal sized constituencies as recommended by the PEMMO. The mission therefore recommends that the MEC spares no effort in ensuring that constituency boundaries are demarcated in accordance with the principles contained in the PEMMO.
- **Voter registration and the voters' roll:** The voter registration process was deficient and chaotic. Three reference documents were used to identify eligible voters during the voting process, namely: the computerised voters' roll; the manual voters' roll of 1999; and record cards. This caused confusion, delays and the possible disenfranchisement of voters. The degree of inaccuracy of the registration process greatly affected the integrity and credibility of the electoral process. The mission believes that the problem with the voters' roll in Malawi was largely due to the MEC's technical incapacity as well as to the amount of time provided for the exercise. The mission therefore recommends that the MEC consolidate all the voters' rolls and documents in order to produce one accurate and reliable register of voters. In addition, the MEC should consider having a continuous voter registration process.
- **The Malawi Electoral Commission:** The MEC is constitutionally vested with enough power and legal instruments to manage and deliver democratic, free and fair elections. However, due to a number

of shortcomings – including the way in which commissioners are appointed, lack of technical capacity and inadequate funding – the MEC has largely failed to perform its basic duties. The mission therefore recommends that electoral stakeholders in Malawi consider electoral reforms which would provide a mechanism for appointing commissioners that could guarantee the independence of the commission *vis-à-vis* the incumbent, political parties and other electoral stakeholders. For greater financial independence, the MEC should be adequately funded and accountable solely to parliament.

- **Use of public resources by the incumbent government:** The mission received many complaints that the ruling party took advantage of its incumbency to campaign for its candidates using public resources, compromising the concept of a level playing field. The mission therefore recommends that electoral stakeholders should agree on an appropriate framework to ensure equitable access to public resources by all contesting political parties and candidates.
- **Media coverage:** Unbalanced election coverage by the public media in favour of the ruling party and the MEC's failure to enforce media guidelines are matters of concern. The mission therefore recommends that the commission should put in place the necessary mechanisms to enforce media regulations pertaining to the electoral process so as to ensure equitable access to the public media for all political parties and candidates.
- **Intra-party democracy and gender representation:** The mission is concerned with reports regarding the lack of intra-party democracy, mainly as pertains to the selection of candidates, and is also deeply troubled with the low participation of women as candidates. The mission therefore recommends that political parties adopt clear democratic principles in line with the PEMMO in the selection of their election candidates. These principles should include provisions for gender balance in the spirit of the 1997 SADC Declaration on Gender and Development.
- **Voter education and information:** The mission believes that civic and voter education and information in Malawi was inadequate. In order

to ensure consistency in the provision of voter education the mission recommends that the MEC should provide overall guidance and supervision to all those involved in voter education. The MEC should also cooperate closely with CSOs to ensure better outreach of voter education and information programmes.

## APPENDICES

### Appendix 1 Composition of the EISA Observer Mission

	Name	Gender	Country
1.	Fatima Aguiar	F	Angola
2.	Luisa Rogeiro	F	Angola
3.	Sir Ketumile Masire, Mission Leader	M	Botswana
4.	Gilbert Motsemme	M	Botswana
5.	B. Thani	M	Botswana
6.	O. Tselapedi	M	Botswana
7.	Martha J. Sayed	F	Botswana
8.	Segametsi Modisaotsile	F	Botswana
9.	Denis Kadima	M	DRC
10.	Etienne Ungeyowun	M	DRC
11.	Yonatan Fisseha	M	Ethiopia
12.	Vincent Tohbi	M	Ivory Coast
13.	Waris Attiya	F	Kenya
14.	Limakhatso Mokhothu	F	Lesotho
15.	Seabata Motsamai	M	Lesotho
16.	Martinho Chachiuua	M	Mozambique
17.	Armando John	M	Mozambique
18.	Notemba Tjipueja	F	Namibia
19.	Daphne De Klerk	F	Namibia
20.	Lalaine Stormorken	F	Philippines
21.	Bongani Finca	M	South Africa
22.	Claude Kabemba	M	South Africa
23.	Irene Mathenjwa	F	South Africa
24.	Morne Van Der Linde	M	South Africa
25.	Sa Ngidi	F	South Africa
26.	Susan Booysen	F	South Africa
27.	Sydney Letsholo	M	South Africa
28.	Titi Pitso	F	South Africa
29.	Zahira Seedat	F	South Africa
30.	Zingisa Zibonti	F	South Africa
31.	Hillary Mkatte	M	Tanzania
32.	Henry Mwebe	M	Uganda
33.	Saliame Namusobyia	F	Uganda
34.	Drake Orurach	M	Uganda
35.	Belinda Musanhu	F	Zimbabwe
36.	Rindai Chipfunde	M	Zimbabwe

## APPENDIX 2

### EISA Mission arrival press release



### PRESS RELEASE: EISA REGIONAL OBSERVER MISSION TO THE MALAWI 2004 GENERAL ELECTION

The Electoral Institute of Southern Africa (EISA) hereby launches its Regional Election Observer Mission for the upcoming general elections due to be held in Malawi on 18 May 2004. Leading the delegation is the former President of the Republic of Botswana and EISA Patron, Sir Ketumile Masire. The mission will comprise 37 members drawn from civil society organisations (CSOs), election management bodies and academic institutions from various SADC countries, namely Angola, Botswana, Democratic Republic of Congo, Lesotho, Mozambique, Namibia, South Africa, Tanzania and Zimbabwe.

The Malawi Election will be the second electoral process where the assessment of the election will be based on the recently adopted Electoral Commissions Forum of SADC Countries (ECF/EISA) Principles on Election Management, Monitoring and Observation in the SADC Region (PEMMO). It should be recalled that these principles were adopted in November 2003 and were drafted in consultation with all Electoral Commissions in the SADC region as well as with CSOs that work in the elections field. PEMMO gives the region an objective basis in terms of which to conduct and assess elections.

The mission is expected to arrive in Malawi on 9 May 2004 in order to hold a series of meetings with election stakeholders, including the Malawi Electoral Commission (MEC), political parties, CSOs and academics, ahead of election day. The mission will remain in the country until 22 May 2004 after observing the voting and counting processes as well as post-polling activities. The mission will cover selected rural and urban areas in the northern, southern and central regions of Malawi.

EISA is a regional non-governmental organisation established in 1996, based in Johannesburg, South Africa. Its mission is to strengthen electoral processes, good governance, human rights and democratic values in the SADC region and beyond through research, capacity building, advocacy and other targeted interventions. The Institute services governments, electoral commissions, political parties, CSOs and other institutions operating in the democracy and governance fields in the SADC region and beyond.

ISSUED BY THE ELECTORAL INSTITUTE OF SOUTHERN AFRICA  
*Mission Leader, Sir Ketumile Masire*

### APPENDIX 3

## INTERIM STATEMENT BY THE EISA ELECTION OBSERVER MISSION: MALAWI PARLIAMENTARY AND PRESIDENTIAL ELECTIONS MAY 20, 2004



### I. INTRODUCTION

At the invitation of the Malawi Electoral Commission (MEC), the Electoral Institute of Southern Africa (EISA) deployed a mission to observe the Malawi 2004 Parliamentary and Presidential Elections. This is the mission's preliminary assessment of the elections. The assessment covers the pre-polling, polling, counting and the early stage of the tabulation of results. The mission cannot make any pronouncement on the overall post-election phase at this stage. However, EISA will continue to follow the process so that the final report can provide a comprehensive assessment of the electoral process, including the announcement of the results.

#### I.1 About EISA

EISA is a regional organisation which seeks to strengthen and promote electoral processes, good governance and democratic values through research, capacity building and advocacy. The head office is located in Johannesburg and the scope of its work covers the entire SADC region and extends beyond.

## **1.2 Mission composition**

The mission was composed of 36 members drawn from electoral commissions, civil society organisations and scholars from nine SADC countries namely Angola, Botswana, Democratic Republic of Congo, Lesotho, Mozambique, Namibia, South Africa, Tanzania, and Zimbabwe. The mission also included a few delegates from beyond the SADC region.

Sir Ketumile Masire, former President of the Republic of Botswana and Patron of EISA, led the mission. The Deputy Mission Leader was Mr Denis Kadima, the Executive Director of EISA.

Members of the EISA mission started arriving in Malawi on May 9, 2004. The mission met various Malawian election stakeholders and observed events until May 21, 2004. The entire mission will have left the country by May 24, 2004.

## **1.3 Deployment**

The mission deployed ten teams to the three regions of Malawi as follows: (a) two teams in the Northern Region, covering selected rural and urban areas namely Mzuzu, Nzimba North and Nkhata Bay; (b) five teams in the Central Region, covering Lilongwe City, Lilongwe North, Mchinji, Salima and Dowa; and (c) three teams in the Southern Region observing the process in selected areas of Blantyre, Limbe, Zomba, Thyolo, Mulanje and Mangochi. The mission visited 181 voting stations in urban and rural areas throughout the country.

## **1.4 Method of work**

In order to assess the 2004 Parliamentary and Presidential Elections in Malawi, EISA conducted various activities covering the pre-election phase, the polling phase and will continue to follow post-election developments. These activities included:

### *Election Update*

Due to limited financial resources available, it was not possible for the mission to undertake long-term observation. EISA developed an innovative method of information gathering and sharing that would ensure that members of

the mission and other interested parties were kept abreast of the events which took place during the electoral process. Malawi-based researchers were contracted to gather information on critical election-related matters. This information was published fortnightly in the *Election Update* series, which was widely distributed electronically and in print.

### *Stakeholder meetings and political party rallies*

Members of the mission held meetings with various electoral stakeholders, including representatives of the Malawi Electoral Commission (MEC), political parties, civil society organisations, the media and scholars. The mission also met domestic observer groups as well as other international observer teams. Meetings were held at both national and regional levels. These meetings provided firsthand information on the different stakeholders' assessments of the process.

Our teams also attended political party rallies. After the High Court ordered the postponement of the polling, the mission had an opportunity to observe the voters' roll inspection process that took place between May 14 and 19.

### *Observation of voting and counting*

The members of the mission were deployed in the field from May 16, 2004 where they held further meetings with election stakeholders before observing the voting and counting on May 20, 2004.

## **1.5 Principles for Election Management, Monitoring and Observation in the SADC Region**

The EISA Observer Mission's assessment of the Malawi 2004 elections is based on the Principles for Election Management, Monitoring and Observation in the SADC Region (PEMMO). PEMMO is a set of guidelines against which an election can be measured to assess whether it is credible and legitimate and if the outcome reflects the will of those who cast their ballots. PEMMO was developed by EISA in partnership with the Election Commissions Forum of SADC Countries (ECF), which comprises all the electoral management bodies in the SADC region. These principles are the result of a region-wide consultation process with electoral stakeholders, in

particular electoral management bodies and civil society organisations for whom election observation is a core activity. The principles contained in the PEMMO are compatible with the legal framework governing elections in Malawi.

The principles cover the whole electoral process including the period before, during and after the poll. They provide an objective standard against which an election can be measured. Furthermore, they constitute a useful tool in the post-election review and for electoral reforms. For the observer, PEMMO also serves as guidelines for how to conduct oneself as an observer during the electoral process.

After the April 2004 national and provincial elections in South Africa, the Malawi 2004 Parliamentary and Presidential Elections are the second elections where EISA has used PEMMO as the basis of its assessment.

## **2 FINDINGS OF THE MISSION**

The EISA Election Observer Mission, basing itself on the PEMMO as a guideline, made the following findings.

### **2.1 Voter registration and the voters' roll**

By all accounts, the voter registration process was deficient, resulting in inflated voter registration figures. The cleaning process resulted in a computerised voters' roll which contained other deficiencies including omission of names and photographs. In order to deal with this problem, the MEC used three reference documents to identify eligible voters during the voting process namely, the computerised voters' roll, manual voters' roll of 1999, and record cards. This caused confusion, delays and possible disenfranchisement of voters.

In addition, complaints by voters whose names did not appear in the roll were not addressed in a consistent manner in the various polling centres and no corrections seemed to have been made in spite of the extension of the inspection period.

### **2.2 Media coverage**

The mission was concerned by reports of unbalanced coverage of the elections

by the public media in favour of the ruling party. Although the electoral law provides for the enforcement of media guidelines by the MEC, the commission seems to have failed to ensure fair media coverage for all parties and candidates.

### **2.3. The Malawi Electoral Commission**

The Malawi Electoral Commission is constitutionally empowered to supervise and deliver credible, free and fair elections. However, the composition and procedure of appointment of the commissioners along party lines has resulted in the current situation whereby the commission is largely perceived as partisan. As a result, what could be genuine administrative and logistical shortcomings of the MEC can be interpreted as deliberate attempts to manipulate the electoral process. The mission noted that the direct dependence of the MEC on the government for its funding has the potential to further compromise its independence *vis-à-vis* the incumbent government. It was also noted that the Electoral Commission appeared to be unwilling to fully exercise the powers vested in it by the constitution and the electoral laws (i.e. access to public media). Furthermore, the commission seemed to lack the institutional capacity to organise and manage some crucial aspects of the electoral process such as the compilation of the voters' roll.

### **2.4 Use of public resources by the incumbent government**

The mission received many complaints that the ruling party took advantage of its incumbency to campaign for its candidates using public resources.

### **2.5 Constitutional and legal framework**

The constitutional and legal framework in Malawi guarantees fundamental freedoms and human rights. In addition, the Electoral Law provides for mechanisms to address conflict in the electoral process. If fully implemented, this framework would further contribute to creating an environment conducive to free and fair democratic elections.

The mission applauds the role played by the judiciary during this electoral process by its timely adjudication of election-related court cases.

### **2.6 Electoral system and representation of women**

Malawi has adopted the single member plurality electoral system. The

mission noted that whilst the system appears to have allowed independent candidates to contest the elections, it has failed to promote meaningful participation of women as candidates. The mission was concerned by the fact that only 154 out of 1,268 candidates were women (12%). It should be recalled that the SADC Blantyre Declaration on Gender and Development advocates a minimum 30% representation of women in decision-making positions.

### **2.7 Voting atmosphere**

The mission commends the people of Malawi for their commitment to democracy as demonstrated by their peacefulness, patience and enthusiasm during the voting.

### **2.8 Voting stations**

The mission was satisfied that the MEC established enough polling stations to give voters easy access to the poll. In addition, the layout of the polling station allowed a smooth flow of the voting process as well as ensuring the secrecy of the ballot.

### **2.9 Intra-party democracy**

The mission received reports and information that the selection of candidates by political parties was not conducted in a democratic manner.

## **3 RECOMMENDATIONS**

The EISA mission encourages electoral stakeholders in Malawi to build on the positive experiences of these elections.

At the same time, the EISA mission calls upon all the electoral stakeholders to conduct a thorough post-electoral review which would help the country improve on the conduct of future electoral processes.

Specifically we recommend the following:

- The Electoral Commission should consolidate all the voters' rolls and documents in order to produce one accurate and reliable register of voters which would be updated continuously. In addition the commission should consider having a continuous voter registration process.

- The electoral stakeholders should agree on an appropriate framework to ensure equitable access to public resources by all contesting political parties and candidates.
- The commission should put in place the necessary mechanisms to enforce media regulations pertaining to the electoral process so as to ensure equitable access to the public media for all political parties and candidates.
- For greater financial independence, the MEC should be adequately funded and accountable to parliament.
- The mission recommends that the political parties adopt clear democratic principles in line with the PEMMO in the selection of their election candidates. These principles should include provisions for gender balance.
- In order to ensure consistency in the provision of voter education, the MEC should provide overall guidance and supervision of all role players in voter education.

#### **4 CONCLUSION**

Basing itself on the guidelines enshrined in the ECF / EISA PEMMO, the EISA Election Observer Mission concludes that the elections in Malawi were substantially free. The mission notes, however, that the playing field was not level, which made it difficult for opposition parties and candidates to have equitable access to public resources including the state media.

The mission will issue a final report within the next two months which will be distributed to a wide range of electoral stakeholders in Malawi and abroad.

Finally, the mission wishes to congratulate the people of Malawi for their peaceful and orderly participation in the elections.

*Sir Ketumile Masire, Mission Leader and  
Mr Denis Kadima, Deputy Mission Leader*

## APPENDIX 4

### Schedule of briefing meetings

EISA ELECTION OBSERVER MISSION TO MALAWI  
BRIEFING MEETINGS  
Lilongwe, 14 MAY 2004

#### PROGRAMME

<b>SESSION 1</b>	<b>WELCOME AND INTRODUCTIONS</b>
08h00-08h15	OPENING REMARKS <i>Denis Kadima: Deputy Mission Leader and Executive Director: EISA</i>
08h15-08h45	INTRODUCTIONS
<b>SESSION 2</b>	<b>THE OBSERVATION PROCESS</b>
08h45-09h15	PROGRAMME OUTLINE This session will give a general overview of the observation process <i>Denis Kadima</i>
09h15-09h35	ASSESSING ELECTIONS IN ACCORDANCE WITH PEMMO The Principles for Election Management, Monitoring and Observation will provide a toll against which the election will be assessed. What are the main features of PEMMO? Have we adapted our checklist to be in line with PEMMO? <i>Belinda Musanhu; Field Office Coordinator, EISA/Lilongwe</i>
<b>SESSION 3</b>	<b>THE POLITICAL CONTEXT</b>
09h35-10h05	POLITICAL AND HISTORICAL CONTEXT AND ASSESSMENT <i>Dr Nandini Patel: Department of Political Science, Chancellor College, Zomba</i>

10h05-10h20	COFFEE/TEA BREAK
10h20-10h50	THE ROLE OF CIVIL SOCIETY IN THE ELECTORAL PROCESS: ASSESSMENT OF THE 2004 ELECTIONS UP TO DATE <i>Moses Mkandawire: Chairperson, Malawi Election Support Network (MESN)</i>
10h50-11h20	READINESS OF THE MALAWI ELECTORAL COMMISSION: PREPARATIONS THUS FAR
11h20-11h50	DISCUSSIONS
<b>SESSION 4</b>	<b>THE PERSPECTIVES OF POLITICAL PARTIES</b>
11h50-12h20	UDF
12h20-12h50	MCP
12H50-14H00	LUNCH
14h00-14h30	AFORD
14h30-15h00	NDA
<b>SESSION 5</b>	<b>DEPLOYMENT PLAN</b>
15h00-16h30	Belinda Musanhu and Denis Kadima
18h00-19h00	PRESS CONFERENCE
19h00-20h30	COCKTAIL PARTY

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**APPENDIX 5**  
**List of international observer groups**

1. The Electoral Institute of Southern Africa (EISA)
2. The African Union (AU)
3. The Commonwealth
4. The SADC Parliamentary Forum (SADC-PF)
5. The SADC Organ on Politics, Defence and Security Cooperation
6. The European Union (EU)
7. The Dan Aid Church
8. The American Embassy
9. The German Embassy / GTZ
10. The Royal Norwegian Embassy
11. The South African High Commission
12. Canadian International Development Agency
13. The Japanese Embassy
14. The Netherlands Consulate
15. Electoral Commission of Bangladesh
16. The Electoral Commission of Mozambique
17. National Electoral Commission of Rwanda
18. National Electoral Commission of Zimbabwe

**APPENDIX 6****List of domestic observer groups**

1. Pan African Civic Education
2. Centre for Social Research (University of Malawi)
3. Church and Society Blantyre Synod
4. Church and Society Livingstonia Synod
5. Public Affairs Committee (Malawi)
6. Episcopal Conference of Malawi
7. Malawi Foundation for Civic Education
8. Council for Non-Governmental of Evangelical Association of Malawi
9. Malawi CARER
10. Civil Liberties Committee
11. Association of Progressive Women
12. Civil Rights Advocacy Centre
13. International Group Association
14. Rural Education Support and Rehabilitation
15. Malawi Electoral Support Network