



# **EISA PRE-ELECTION ASSESSMENT MISSION REPORT**



**REPUBLIC OF MALAWI**

**10-15 MARCH 2014**

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## LIST OF ABBREVIATIONS

AU	African Union
AFORD	Alliance for Democracy
BCP	Basutoland Congress Party
CCJP	Catholic Commission for Justice and Peace
CCP	Chipani Cha Pfuko
CE	Civic Education
CMD	Centre for Multiparty Democracy
COPs	Camera Operators
CROs	Constituency Returning Officers
CSOs	Civil Society Organisations
DFID	Department for International Development
DPP	Democratic Progressive party
EISA	Electoral Institute for Sustainable Democracy in Africa
EMB	Election management Body
EU	European Union
FBOs	Faith Based Organisations
FPTP	First Past the Post
IPI	Institute for Policy Interaction
LCD	Lesotho Congress for Democracy
MAFUNDE	Malawi Forum for Development
MBC	Malawi Broadcasting Corporation
MCP	Malawi Congress Party
MEC	Malawi Electoral Commission
MISA	Media Institute of Southern Africa
MK	Malawi Kwacha
MPLCs	Multiparty Liaison Committees
MP	Member of Parliament
MTV	Malawi Television
NARC	New Rainbow Coalition
NASAF	National Salvation Front
NECOF	National Elections Consultative Forum
NICE	National Initiative for Civic Education
NIMD	Netherlands Institute for Multiparty Democracy

NLP	New Labour Party
PAC	Public Affairs Committee
PAM	Pre-election Assessment Mission
PETRA	Peoples Transformation Party
PPM	People's Progressive Movement
PP	Peoples party
QCMs	Quality Control managers
RP	Republican Party
SADC	Southern African Development Community
SMS	Short Messaging System
UDF	United Democratic Front
UIP	United Independence Party
UNDP	United Nations Development Programme
UP	Umodzi Party
USAID	United State Agency for International Development
VE	Voter Education
VR	Voter Registration

## 1. EXECUTIVE SUMMARY

Pursuant to its mission of promoting credible elections, citizen participation and strengthening political institutions for sustainable democracy in Africa, EISA deployed a Pre-Election Assessment Mission (PAM) to Malawi from 10<sup>th</sup> to 15<sup>th</sup> March 2014. The Mission was conducted by Dr. Victor Shale, Country Director, EISA Zimbabwe and Miss Magdalena Kieti, Programme Officer, EISA Kenya.

The overall objective of the Pre-Election Assessment Mission was to assess the state of readiness of the Malawi Electoral Commission (MEC), political parties, CSOs and other stakeholders for the forthcoming 20<sup>th</sup> May 2014 Tripartite elections. The Pre-Election Assessment Mission also assessed the overall political context to ascertain whether conducive conditions exist for the conduct of credible elections.

In fulfilment of its mandate, the Pre-Election Assessment Mission met with key stakeholders in the electoral process based in the Capital city Lilongwe as well as in Blantyre (See appendix 1).

The Pre-Election Assessment Mission noted that the 2014 tripartite elections take place against the backdrop of the sudden death of President Mutharika and the ascendency of President Banda who was not at the time a member of the ruling party. The elections are expected to be keenly contested between four main presidential contestants none of whom is tipped to have a clear win. This said, the Mission notes that the electoral system does not provide for the president to be elected by absolute majority, this may again lead to the election of a president who may not receive the popular vote.

The pre-election context is also impacted by the recent corruptions scandal allegations which have impacted negatively on the image of the country, and have also become a campaign issue for opposition parties that also accuse the President of abusing state resources. The mission also notes that the legal framework finance is quite limited in regulating campaign finance as it does not provide expenditure ceilings nor does it provide for mandatory disclosure.

On the state of preparedness for the conduct of the 2014 elections which will be the first tripartite elections<sup>1</sup> in Malawi, the Mission gathered that the Malawi Electoral Commission (MEC) is adequately prepared. The Mission was also informed that the MEC enjoys good

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<sup>1</sup> Presidential, parliamentary and local council elections will be held on the same day. Note that local government elections have not been held since 2000.

working relations with relevant electoral stakeholders. Stakeholders raised concerns about the setback experienced by MEC in its preparations for the elections, especially, delayed funding from the treasury and delays owing to legal challenges by disqualified candidates. There have also been allegations and indications of mistrust on some aspects of the electoral process such as the voter registration process. For instance, opposition political parties believe that voter registration figures have been inflated in favour of the ruling party.

The Mission also noted that women's representation in parliament may be reduced following the 20 May 2014 elections as only 20% of the candidates in the parliamentary elections are women.

In view of the above findings, the Pre-Election Assessment Mission recommended a number of legal reforms which will only be possible after the 2014 elections. With regard to immediate actions required before the elections, the Mission recommends that the MEC and its partners should undertake intensive voter education to enlighten voters on the procedures for the tripartite elections which is the first of its kind in Malawi. The mission also calls on the MEC to release the preliminary voters register for public inspection and verification to dispel the allegations of a bloated voter register. MEC is also encouraged to enforce the electoral code of conduct to dissuade the abuse of state resources and other violations of the electoral code of conduct. Finally, it is recommended that the MEC investigate reported cases of abuse of voters' cards including vote buying and that it should publish the voters roll for public inspection timeously.

## **2. HISTORICAL BACKGROUND AND CONTEXT OF THE 2014 ELECTIONS**

Malawi gained independence from British colonial rule in 1964. After 30 years (1964-1994) of as a one-party state under President Kamuzu Banda of the Malawi Congress Party (MCP). Four multi-party elections have held since the return to multi-party democracy, these were in 1994, 1995, 2004 and 2009 respectively.

Malawi's multiparty dispensation has been characterised by political instability related to interpretation of the constitution, choice of successors within political parties, choice of running mates by presidential candidates and a factionalised party system.

Malawi's post-1994 political history can be considered in three phases that form a background to the 2014 elections. These are (a) the 2004 elections and floor crossing, (b) the

2009 Elections and their aftermath, (c) the death of President Bingu Wa Mutharika and Joyce Banda's ascendency to power.

After two terms of Dr. Bakili Muluzi's presidency (1994-1999) and his failed attempt to amend the constitution to allow him contest for a third term, his party, the United Democratic Front (UDF) won the 2004 elections with President Binguwa Mutherika as its candidate. It is important to mention that President Muluzi by-passed his Vice President Mr Justin Malewezi to anoint Mutherika as the UDF presidential candidate due to inter-personal conflicts between him and the Vice President. Though the Vice President was isolated by the UDF, he remained Vice President till the end of the Muluzi tenure and he contested as an independent candidate in the 2004 elections.

President Mutherika was faced with intra-party conflicts that led to his isolation; he decamped from his party to form the Democratic Progressive Party (DPP) in 2005. In order to consolidate its grip to and also become a majority party in the National Assembly, the DPP lured Members of Parliament (MPs) from the UDF and other parties. This action effectively reduced the UDF which was elected through the ballot to an opposition party.

The co-optation of MPs from other parties in parliament meant that they had effectively crossed the floor. Yet, none of the floor crossers vacated their seats as mandated in Section 65 of the Constitution. This led to political tensions between the DPP on the one hand and the UDF and other opposition parties on the other. The new ruling party was accused of violating Section 65 (1) of the Constitution<sup>2</sup>.

The Pre-Election Assessment Mission noted that article 65 remains unchanged in the Constitution of Malawi and it has never been enforced even in the run up to the 2014 elections.

The 2009 elections were the first test of the strength of the DPP. It is important to mention the attempt by the UDF to have the former President Bakili Muluzi as its presidential candidate in 2009 on the basis that the Constitutional presidential term limit is only relevant for two consecutive presidential terms. The Malawi Electoral Commission (MEC) passed a judgement barring Muluzi's candidature and the its decision was upheld by the Constitutional Court after an appeal by Muluzi. This case gave a clear interpretation to the constitutionally provided limits on presidential tenure.

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<sup>2</sup> Article 65 (1) provides that *'The Speaker shall declare vacant the seat of any member of the National Assembly who was, at the time of his or her election, a member of one political party represented in the National Assembly, other than by that member alone but who has voluntarily ceased to be a member of that party or has joined another political party represented in the National Assembly, or has joined any other political party, or association or organisation whose objectives or activities are political in nature'*.

President Bingu Wa Mutharika won a second term with 66.7% of the votes in the 2009 elections. In the parliamentary elections, the DPP's strength was further demonstrated when it secured 58.85%, independent candidates got 16.67%, MCP 14.06%, UDF 8.85%, AFORD 0.52%, Malawi Forum for Development (MAFUNDE) 0.52% and Malawi People's Party 0.52%.<sup>3</sup>

**Table 1: The 2009 Presidential election results**

Candidate	Party	Votes	% of votes
Dr Bingu Wa Mutharika	Democratic Progressive Party (DPP)	2 963 820	66.17
John Tembo	Malawi Congress Party (MCP)	1 365 672	30.49
Kamuzu Chibambo	People's Transformation Party (PETRA)	35 358	0.79
Stanley Masauli	Republican Party (RP)	33 982	0.76
Loveness Gondwe	New Rainbow Coalition (NARC)	32 432	0.72
<u>James Nyondo</u>	Independent	27 460	0.61
Dindi Gowa Nyasulu	Alliance For Democracy (AFORD)	20 150	0.45
<b>Total</b>		<b>4 478 874</b>	<b>99.99</b>

Source EISA EOM report: 2009

President Mutharika's second term was characterised by decline in economic development and widespread human rights violations such as clamp down on press freedom and other civil liberties. The Parliament during this period also passed a number of laws that have been criticised as repressive such as the Police Bill 2009, the Local Government Amendment Bill 2010 and the amendment to Section 46 of the Penal Code in 2011 which empowered the Minister of Information to ban any media house which was deemed to be publishing offending material.

As President Mutharika moved closer to the end of his presidency, the question of a suitable successor became one of the prominent issues in the run-up to the 2014 elections prior to his death. The source of contention was the President's attempts to pick his Brother Peter Mutharika (then the Foreign Minister) as the DPP presidential candidate for the 2014 elections instead of the country's Vice President, Mrs Joyce Banda. The latter's objection to the President's move led to her expulsion from the DPP in 2010. Similar to Justin Malewezi's

<sup>3</sup> Source: Malawi Electoral Commission 2009

experience during the Muluzi regime, Joyce Banda remained Vice President of Malawi but was effectively ostracised by the President. This led the Vice President to leave the ruling party to form another party, the Peoples' Party (PP) in 2011.

The country's economy was on a downward spiral characterised by soaring food and fuel prices. This triggered demonstrations across the country in 2011 as scores of Malawians from civil society organisations and student movements coalesced to form the 'Concerned Citizens' Movement and organised the public demonstrations. Police reacted to the demonstrations in a heavy handed manner killing about 20 demonstrators and injuring many more in what was one of the biggest uprisings in post-independence Malawi. The tensions between government and organised civil society formations lasted for most of 2011 thus creating political instability as the government struggled to bring things under control. Besides threatening the organisers of the revolts, the President also fired his whole cabinet as he sought to deal with the crisis. The relationship between the President and his Vice President was further strained by her support for the 20<sup>th</sup> July 2011 demonstrations against economic hardship.

**Context of the 2014 elections:**

The most notable development which put Malawi's democratic credentials to test was the Constitutional crisis triggered by the passing away of President Bingu Wa Mutharika on 5<sup>th</sup> April 2012. His death sparked political tensions as the Vice President had been isolated by the late President and there were attempts to conceal his death by some of his political allies as part of an unconstitutional succession plan. After interventions from within and outside Malawi, President Joyce Banda was sworn into office as mandated by the Constitution. Her ascension to power meant that a new ruling party had come into the political space. Similar to the situation after the 2004 elections, again the new ruling party sort to establish itself by luring members of parliament to decamp from other parties, again Article 65 of the Constitution was not enforced. The 2014 elections will therefore be the first test of the PP. President Banda will be contesting against the former President's brother, Dr Peter Mutharika of the DPP which still considers itself as the ruling party.

The Pre-Election Assessment Mission noted that the 2014 elections are critical in Malawi's history as these elections will be keenly contested. There are 17 Presidential candidates and out of these, only four are touted by all stakeholders consulted by the Pre-Election

Assessment Mission as having an almost equal chance of victory. Below is a list of candidates in alphabetical order<sup>4</sup>:

**Table 2: list of top 4 presidential candidates**

<b>Candidate</b>	<b>Political Party</b>
Mr. Atupele Muluzi	United Democratic Front (UDF)
Mrs. Joyce Banda	Peoples Party (PP)
Rev. Dr. Lazarus Chakwera	Malawi Congress Party (MCP)
Dr. Peter Mutharika	Democratic Progressive Party (DPP)

*Compiled from MEC website*

The 2014 elections also take place within a context of economic decline, heavy donor dependence and corruption scandals—the popular among them being the twin “gates” known as the “cashgate”<sup>5</sup> and the “Jetgate”<sup>6</sup>. These scandals have been widely reported in the media and there is a threat by donors to cut back on aid to the already weak Malawian economy.

The Pre-Election Assessment Mission also gathered that Parliament has not convened since December 2013, this has been interpreted as an attempt by the ruling party to avoid a probe of the corruption scandals by Parliament. Some political parties consulted by the Mission were of the opinion that the Parliament may not convene until its dissolution at the end of March 2014.

### **3. ELECTORAL FRAMEWORK**

#### **3.1 The Constitutional and legal framework**

The Constitution of Malawi provides for guarantees of civil liberties and locates the source of power to govern in the people as manifested through the universal adult suffrage in elections. The Article 67 (1) of the Constitution is unambiguously clear on the holding of regular elections by universal adult suffrage.

The Constitution also provides for the establishment of an institutional framework for the management of elections and resolution of election disputes. Besides these Constitutional

<sup>4</sup>Details of candidate nominations are provided under section 2.3 of this report

<sup>5</sup>It has been reported that in one incident, a government official was caught with about \$300,000 cash in his car and this triggered investigation which has since exposed collusion in corruption by serving and former civil servants as well as between some ministers and the business sector.

<sup>6</sup>There has also been an allegation of the ambiguous sale of the presidential jet. The Pre-Election Assessment Mission was however informed by some stakeholders that it was sold at the initiation of the President who considered it an unnecessary luxury in a struggling economy.

provisions and, in conformity with international best practices, a number of laws and regulations guide the election management and administration. These are:

- **The Electoral Commission Act:** This Act makes provision for the appointment of members of the Malawi Electoral Commission; for the establishment of a Secretariat for the Electoral Commission; and for matters incidental to the electoral process. The Act also takes a leaf from the constitution and reaffirms the independence of the MEC.
- **The Parliamentary and Presidential Elections Act:** This Act makes provision for the conduct of election of Members of Parliament and the President. As the principal law on elections, the Parliamentary and Presidential Elections Act regulates the entire electoral process from the registration of voters, nomination of candidates, campaigns, election observation, voting procedures, election results management and election petitions.
- **The Local Government Elections Act:** similar to the Parliamentary and Presidential Elections Act, this Act makes provision for the conduct of the election of local councillors. The Pre-Election Assessment Mission noted that Local Government Elections have not been held in Malawi since 2000 mainly due to political reasons.

The legal framework for elections provides for resolution of electoral disputes by the Electoral Commission and the High Court. However, there is no clear timeline for resolution or determination of the electoral disputes.

### **3.2 The electoral system:**

Malawi operates a first-past-the-post (FPTP) electoral system for the presidential, parliamentary and local government elections. Under the FPTP electoral system the candidates who receive the most number of votes will be declared winners. In Malawi, unlike other countries where the FPTP system is operational, elections are won by a simple majority, thus there is no provision for a second round. Therefore a candidate can win presidential elections with a minority vote. For instance, in the 2004 Presidential elections, Bingu wa Mutharika won the elections with only 38.5% of the valid votes cast.

### **3.3 Party and campaign finance:**

In line with international standards, an effective system of regulation of party and campaign finance requires a system of disclosure, limits on expenditure and monitoring of campaign and party finance.

There is no state funding of candidates and campaigns in Malawi but the Constitution provides for state funding of parliamentary parties that won on-tenth of the national votes in the election<sup>7</sup>.

The Pre-Election Assessment Mission noted that while this is a welcome provision by political parties, parties perceive the pre-requisite 10 % threshold of the seats in parliament or of the total number of votes to access the public funds as too high and may lead to the weakening of smaller political parties.

The mission noted the following gaps in the legal framework in Malawi:

- there is no ceiling on campaign finance,
- there are no provisions for mandatory public disclosure of sources of funding and campaign expenditure
- the Electoral Commission is not mandated to audit party finances.

Campaign funding is not provided to political parties nor to candidates in Malawi. The Pre-Election Assessment Mission noted that these gaps in the legal framework leave the electoral process open to the influence of political entrepreneurs.

In its consultation with MEC, the Mission gathered that notwithstanding the absence of a provision for campaign funding in the legal framework, the Commission will provide campaign airtime. It will provide media airtime to all political parties to run campaign messages, jingles etc.

### **3.4 Election management:**

The Malawi Electoral Commission (MEC) is constitutionally empowered to manage elections. It is established through Chapter VII of the Constitution of Malawi and operationalised through the Electoral Commission Act. Articles 75 and 76 of the Constitution provide for the composition, powers and functions of the Electoral Commission. The Electoral Commission Act on the other hand bestows on the MEC the responsibility of exercising general direction and supervision over the conduct of every election and also has specific functions, to:

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<sup>7</sup> Article 40(2) of the constitution provides that “*State shall provide funds so as to ensure that, during the life of any parliament, any political party which has secured more than one-tenth of the national vote in elections to that parliament has sufficient funds to continue to represent its constituency.*”

- Determine the number of constituencies for the purposes of elections;
- Undertake or supervise the demarcation of boundaries of constituencies;
- Undertake or supervise the demarcation of wards for the purposes of local government elections;
- Organise and direct the registration of voters;
- Devise and establish voter registers and ballot papers;
- Print, distribute and take charge of ballot papers;
- Approve and procure ballot boxes;
- Establish and operate polling stations
- Establish security conditions necessary for the conduct of every election;
- Promote public awareness of electoral matters through the media and other means and;
- Take measures and do such other things as are necessary for conducting free and fair elections

Consistent with regional practices in Southern Africa, the Constitution provides that the Electoral Commission Chairperson shall be a Judge. Other members of the Commission (no less than six in number) are appointed in terms of the Electoral Commission Act (Section 4 (1) of the Act<sup>8</sup>). The independence of the MEC is unambiguously guaranteed in Section 76 (4) of the Constitution that mandates it to exercise its functions without interference.

The current MEC was appointed in 2012 after a long period of transition during which the previous Commission was disbanded by the former President. The Commission is currently headed by Justice Maxon Mbendela, who is supported by nine Commissioners. Mr. Willie Kalonga, is the Chief Electoral Officer (CEO) who heads the secretariat, he was also appointed in 2012. The Mission noted that the current MEC enjoys a good level of public trust.

The EMB is funded by the government of Malawi and international community. The Pre-Election Assessment Mission gathered that the overall budget for the 2014 tripartite elections is MK 18.4 Million. At least 60% of this budget is funded by the government while up to 40% of the funds come from donor contributions. The donor contribution is channelled

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<sup>8</sup>“The President shall, subject to the Constitution and in consultation with the leaders of the political parties represented in the national Assembly, appoint suitably qualified persons to be members of the Commission on such terms and conditions as the Public Appointments Committee of parliament shall determine.”

through the United Nations Development Programme (UNDP) managed joint-donor basket fund.

## 4. KEY FINDINGS ON THE PRE-ELECTION PHASE

### 4.1. Constituency delimitation<sup>9</sup>

Article 76 (2) of the constitution mandates the MEC to undertake demarcation of constituency boundaries as one of its functions. It also mandates the Commission to demarcate the boundaries of local Councils and Wards (article 148). The Pre-Election Assessment Mission noted that for the 2014 parliamentary and presidential elections the MEC has retained the 193 existing constituencies from the 2009 elections. For the local government elections, the MEC has demarcated boundaries resulting in 35 Local Councils. The Commission also delimited 462 wards and 4445 registration centres. None of the consulted stakeholders raised reservations about the constituency boundaries.

### 4.2 Voter registration

The legal framework provides for a continuous voter registration system in Malawi. According to Section 15 of the Parliamentary and Presidential Elections Act, every citizen from the age of 18 years is eligible to register to vote. The MEC is for registering voters and maintaining the voter register.

The Pre-Election Assessment Mission gathered that the MEC initially intended to adopt the use of a biometric voter registration system for the 2014 process but could not implement it due to stakeholder concerns. A new registration exercise was undertaken from 22<sup>nd</sup> July to 18<sup>th</sup> December 2013 using the Optical Mark Recognition (OMR) system. This system entails the manual capture of voters' details on paper forms and capturing their photographs, to be later entered into a central database. The exercise was conducted in 9 phases consisting of 14 days per phase. A 3-day transition period was allowed in-between places to allow for the transportation of the registration materials and personnel. The MEC began registration in inaccessible areas as the process started shortly before the rainy season.

The MEC had set itself a target of registering 8, 009,734 but it was able to register a total of 7, 537 548 voters at the end of the exercise translating into 94.1% of their target. There are 3, 481 365 male registered voters while registered female voters amount to 4, 056 183 of the total registered voters<sup>10</sup>.

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<sup>9</sup> Also called demarcation

<sup>10</sup> See MEC website for voter registration statistics [www.mec.org.mw](http://www.mec.org.mw)

Stakeholders consulted by the EISA Mission were of the opinion that the process was generally well-conducted with equal access given to all voters in the process. Some stakeholders raised concerns about the accuracy of the total registration figures of 7, 537 548 released by the MEC. Opposition parties have argued this figure is too high given the country's total of a voting population of Malawi. There were also concerns about alleged connivance between the ruling party and MEC to rig elections with the help of an Israeli company NIGUV and the Zimbabwe Electoral Commission (ZEC) which they accused of having used the same company in the July 2013 Harmonised elections in Zimbabwe.<sup>11</sup>

At the time of the Pre-Election Assessment Mission's visit to Malawi, the MEC was finalising the voters roll and it was expected to be released on 21<sup>st</sup> March 2014 for inspection by the public and political parties. It is hoped that this exercise will help MEC to rebut some or all the suspicion regarding the voter registration. Voters will have the opportunity to also request transfer of their registration. The Pre-Election Assessment Mission was informed that voters roll verification will be done either by visiting MEC offices, via short message system (SMS) and online via MEC official website.

### **4.3 Political party registration and candidate nomination**

Political parties in Malawi are regulated by the Political Parties Registration and Regulation Act of 1993. Political parties are required to register with the Registrar-General in the Ministry of Justice. Once fully registered the parties become eligible for participating in all elections. The nomination of candidates is done in terms of Section 37 of the Parliamentary and Presidential Elections Act. Pursuant to this provision, MEC provided 5 days within which presidential, parliamentary and local council aspirants were to submit documentation for their candidature. Presidential and parliamentary candidates were required to submit their names to the Malawi Electoral Commission while candidates for the Local Councils were to submit theirs to the Constituency Returning Officers (CROs).

A total of 12 presidential candidature application submissions were received by MEC and one out of these was declared by the MEC as ineligible to contest. The Mission noted the controversy over the interpretation of article 80 (7) (e) of the constitution which provides that a person will not be eligible for nomination in a presidential election if he/she "*is a holder of a*

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<sup>11</sup> The perception is created by the fact that MEC has borrowed gas lamps and tents from ZEC and the parties think there is much more going on than lighting equipment. The mission notes that sharing of equipment such as tents and lamps is a common practice among Election Management Bodies in the region (EMBs) due to financial constraints.

*public office or a member of Parliament, unless that person first resigns.*” On the basis of this provision, the MEC rejected the nomination of Professor John Chisi of the Umodzi Party (UP) because he had not resigned from the university but had taken a leave without pay which in the view of the MEC is not the same as resignation. The Pre-Election Assessment Mission noted that the MEC also rejected the nomination of 15 candidates for the parliamentary election. These disqualified individuals had contested the MEC decision in the courts of law and the decision on the matter had not yet been made during the time the Pre-Election Assessment Mission was in Malawi. At the time of the Mission, the MEC was still busy with the candidate list for the Local Government Elections. Statistics released by the MEC shows that there are 1,290 contestants for parliamentary elections in all the 193 constituencies. The mission noted that the choice of running mates for presidential elections was influenced by two factors: regional affiliation and age. This is highlighted in the table below. One final point to note about the nomination process is the fact that history seems to be repeating itself again as the incumbent president has again by-passed the vice-president to choose a younger candidate as her running mate. This has been the case twice in the past.

**Table 3: Presidential candidates & Running mates**

Political party	Candidate & Running Mate	Region of origin	Gender	Age
DDP	Dr. Peter Mutharika	Southern	M	74
	Saulos Chilima	Central	M	41
MCP	Rev. Dr. Lazarus Chakwera	Central	M	59
	Richard Msowoya	Northern	M	52
PP	Dr. Joyce Banda	Southern (married in the North)	F	64
	Mr. Sosthenes Gwengwe	Central	M	37
UDF	Mr. Atupele Muluzi	Southern	M	36
	Dr. Godfrey Chapola	Central Region	M	64

#### **4.4 The media**

Malawi has experienced a proliferation of media houses since the advent of democracy in 1994. There are about seventy (70) media houses consisting of both national and community

broadcasters with the majority of these being privately-owned. The activities of the media are regulated through the media code of conduct which is enforced by the Media Council. There is also another code of conduct jointly developed by MEC and the media houses in Malawi. Although not legally binding, all media houses have signed a pledge to adhere to this code of conduct. Besides the usual classification of the media as either public or private print and electronic media, there is an emergent category of social media which, unlike the conventional media is more difficult to be regulated by the Media Council.

The Pre-Election Assessment Mission gathered that the public media (Malawi Broadcasting Corporation and Malawi Television) is perceived as providing unlimited coverage to the ruling party while some private stations are perceived as providing balanced coverage. In particular, a privately-owned radio station recently hosted Malawi's first ever Presidential Running mates debate.

The Pre-Election Assessment Mission was also informed of a rising trend of media ownership by political actors who use such media houses to pursue their political ambitions. This has therefore contributed to the lop-sided coverage of election issues. These are:

#### **4.5 Civil society**

The Pre-Election Assessment Mission noted that civil society organisations have been at the forefront of the campaigns for reforms during the 2011/12 protests discussed in earlier in this report and they have continued to be actively involved in the electoral process ahead of the 2014 elections. Civil society involvement in the 2014 electoral process includes civic and voter education, election observation and advocacy for reforms.

Since the current regime took office, stakeholders noted an improvement in the protection of citizens' rights and freedom. The MEC also demonstrated its commitment to the transparency of the electoral process by accepting the proposal of CSOs to undertake a parallel vote tabulation (PVT).

The MEC had not yet released an invitation to CSOs to apply for accreditation as observers at the time of the Mission

#### **4.6. Women's representation**

A look at the statistics shows that Malawi is yet to meet commitments to women's representation as provided in regional and international protocols. For instance, in the National Assembly women constituted 5.65% in 1994, 9.38% in 1999, 14.44% in 2004 and 20.83% in 2009 (EISA 2009).

In the 2014 elections, only 20% of the candidates contesting in the parliamentary elections are women<sup>12</sup> and only 4 of the 22 candidates and running mates contesting the presidential elections are women<sup>13</sup>. With only 20% representation of women as parliamentary candidates, women representation in the next parliament may not be expected to improve. The mission notes that this limited representation of women could be attributed to the electoral system and non-provision of quotas for women. .

**Table 4: Full List of presidential candidates & running Mates**

Political Party	Candidates & Running Mates	Gender	
Chipani Cha Pfuko (CCP)	Aaron Davies Chester Katsonga		M
	Godfrey Matenganya		M
Democratic Progressive Party (DPP)	Prof. Peter Mutharika		M
	Saulosi Klaus Chilima		M
Malawi Forum for Unity and Development (MAFUNDE)	George Nnesa		M
	Sylvester Chabuka		M
Malawi Congress party (MCP)	Dr Lazarus McCarthy Chakwera		M
	Mr. Richard Msowoya		M
National Salvation Front (NASAF)	James Mbowe Nyondo		M
	Ethel Peter Changa	F	
New Labour Party (NLP)	Friday Anderson Jumbe		M
	Joseph Petro Kubwalo		M
People's Transformation Party (PETRA)	Kamuzu Walter Chibambo		M
	White Millen Scander		M
Peoples Party (PP)	Dr. Joyce Banda	F	
	Mr. Sosten Alfred Gwengwe		M
People's Progressive Movement (PPM)	Mark Katsonga Phiri		M
	Prof Jacob Fojamuheni Crossan Mbunge		M
United Democratic Front (UDF)	Atupele Muluzi		M
	Dr Godfrey Moses Chapola		M

<sup>12</sup> Statistics show that only 257 of the 1,290 candidates for parliamentary elections are women.

<sup>13</sup> These figures could change if the courts rule in favour of the disqualified candidates. This would however not bring significant change to one sided gender representation.

United Independence Party (UIP)	Abusa Helen Singh	F	
	Chrissy Ndhlwase Tembo	F	
Umodzi Party (UP) <sup>14</sup>	Professor John Chisi		M
<b>TOTAL</b>		4	19

The Mission noted that the MEC granted concessions to female candidates with regard to nomination fees. This was a gesture to encourage female candidates to contest in the elections, this made minimal impact. The table below shows the required nomination fees.

**Table 5: nomination fees structure for female candidates**

<b>Election</b>	<b>Male</b>	<b>Female</b>
Local Government	K20,000	K15,000
Member of Parliament	K200,000	K150,000
Presidential	K1,000,000	K1,000,000

Source: MEC 2014

#### **4.7 Civic and voter education**

The MEC developed a civic and voter education strategy for the 2014 tripartite elections with a view to rectify weaknesses experienced in the previous elections. In its meeting with the Pre-Election Assessment Mission, the MEC indicated that during the four phases of voter registration it carried out civic and voter education. 193 Civic and Voter Education Assistants (CCVEAs) were recruited for this purpose. The Commission adopted a number of outreach strategies to ensure that all communities were reached. These included radio and TV programmes, jingles, public meetings with chiefs, distribution of pamphlets and leaflets, drama, road shows, door to door and loud hailers.

The MEC informed the Mission that it had accredited 107 civic and voter education providers (mostly CSOs) for the tripartite elections. In selecting these providers, the MEC prioritised national coverage, though there is a challenge of funding of these providers.

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<sup>14</sup> Disqualified by MEC

#### **4.8 Security**

The Pre-Election Assessment Mission was encouraged to learn that the security sector is not interfering with the electoral process. None of the stakeholders met by the Mission expressed concerns over the role of the security forces in the elections.

#### **4.9 Campaigns**

Section 57 of the Act provides that campaigning period shall be two months closing 48 hours before polling day. The Parliamentary and Presidential Elections Act guarantees the right of parties and independent candidates to campaign, equal treatment, freedom of expression and information, equal treatment and freedom of assembly. The law however requires all parties and individual candidates to notify the District Commissioner and the Police in writing before holding a campaign rally.

Election campaigning had started in earnest during the EISA Mission's visit though parliament was yet to be dissolved according to law. The campaigns should officially commence on 21<sup>st</sup> March 2014 (a day after the dissolution of Parliament) and end on 18<sup>th</sup> May 2014.

Conduct of political campaigns is guided by a code of conduct which was jointly developed by the MEC and all registered political parties. The code of conduct obliges political parties to ensure that their members comply. It implores parties to ensure that their candidates know their rights, cooperate with the District Commissioners and police, accept election results and refrain from use of foul language nor engage in violent behaviour. The code further commits parties to ensuring that their members do not deface or destroy posters of other parties, aid intimidation of others, influence voters to vote for their parties by buying paying them (vote buying), publish false allegations or discriminate against others on grounds of race sex disability or religion.

On issue that has remained a bone of contention is the question of what the proceeds of the sales of the presidential jet has been used for. opposition parties have accused the ruling party of using the funds for the President's campaigns. There have also been allegations of abuse of state resources by the incumbent who has been seen distributing food items as part of her campaigns though the procurement of these items is believed to be from the state coffers.

#### **4.10 Preparedness of the EMB**

The Pre-Election Assessment Mission noted that the MEC was advanced in preparations for the 2014 elections. though planning is underway and progressive, there have been delays with

the budget approval process which has slowed down some aspects of the Commission's planning.

Besides the various roles mentioned throughout this report, the preparedness of the MEC can be summed up as follows:

**Campaigns:** The MEC will monitor campaigning of parties and independent candidates and will enforce the code of conduct accordingly in the event of violations.

**Polling procedures:** The MEC has determined that there will be polling streams at each of the polling stations. Each polling stream will have up to but not exceeding 800 voters. On the basis of the total number of registered voters, the MEC has established 4,445 polling stations and 11, 624 streams across the country. Counting of the ballots will be done in each stream and the results will be aggregated for the polling station. Signed copies of the results will be given to monitors and then a copy will also be posted outside the polling station. Same results will be forwarded to the collation centre where the same procedure as in the polling station will be followed in announcing results.

The Constituency Returning Officers (CROs) will transmit the collated results electronically to the National Tally Centre (NTC) then deliver them physically to the District Elections Coordinator (DEC). For the Presidential results the DEC will compile district results and then transmit to the NTC with copies of the same pasted outside the district centre.

**Stakeholder engagement and conflict Management:** The MEC informed the Mission that it consulted with all stakeholders in the entire process through the National Elections Consultative Forum (NECOF). NECOF has been a vehicle for consultation and a conflict management tool, the MEC has in collaboration with stakeholders adequately dealt with all complications that arose in the preparations for the elections. At the grass-roots level the MEC established Multiparty Liaison Committees (MPLCs) which are made up of all the contesting parties and supported by institutions which have a stake in elections. MPLCs have been key in dealing with all election related disputes and violation of the electoral code of conduct.

The MEC operates from three regional offices, namely Lilongwe, Blantyre and Mzuzu. None of the stakeholders consulted had reservations regarding the independence and hence the effectiveness of the MEC in conducting the elections.

In summary, the Pre-Election Assessment Mission found a number of pre-election challenges which largely resonate with the ones raised by the MEC. These are presented in the box below:

## RECOMMENDATIONS

Based on the findings highlighted above, the Pre-Election Assessment Mission makes the following recommendations for post-2014 electoral reforms

- **Legal framework:** The current framework for regulating campaign should be revised to provide ceilings on expenditure; mandate disclosure of sources of funding and mandate disclosure of audited financial reports. This will curb the influence of money in politics.
- **Women's representation:** while the choice of an electoral system according is at the discretion of each country in line with its historical and political background, the mission notes that the current electoral system should be reconsidered to make provisions for women. Specifically, the provision of a special quota for women in parliament will further improve women's representation in parliament.
- **Budget:** There is a need for the executive and the legislature to speed up the election budget allocations so as to enable the MEC to fulfil its mandate in line with the electoral cycle.
- **Media and Election Reporting:** In a country characterised by inter-party conflicts, it is important that the media is properly equipped with requisite skills to report in a non-partisan manner during election time.
- **Civic and voter education:** The MEC should intensify its voter education outreach to enlighten Malawian voters who will be voting in a tripartite election for the first time on voting procedures. While the mission notes that the current electoral commission was recently constituted, it recommends that MEC should develop a sustained civic and voter education strategy that will cover the full electoral cycle.
- **Abuse of state Resources:** The Pre-Election Assessment Mission noted concerns of incumbency and abuse of state resources and therefore recommends that the MEC should enforce the electoral code of conduct to dissuade this practice.
- **Voter Registration and voters roll:** It is recommended that the MEC investigates reported cases of abuse of voters' cards and including buying of these cards by some

parties to influence people to vote them into power. It is further recommended that the MEC publishes the voters roll in good time for inspection to dispel the rumours of an inflated register

## APPENDICES

### Appendix 1: List of stakeholders consulted

Organisation	Name of representative/s	Designation
Malawi Electoral Commission (MEC)	Dr. Wellington Nakanga	Commissioner
	Mr. Harris Potani	Deputy Chief Elections Officer-Operations
	Mr. Lellie Longwe	Deputy Chief Elections Officer-Finance
United Nations Development Programme (UNDP)	Mr. Clemence Alfazema	Programme Analyst-Governance
	Ms. Annettie M'buka-Massa	Programme Analyst-Governance
<b>Media</b>		
Media Institute of Southern Africa (MISA)	Anton Kasunda	MISA President
The Nation Newspaper	Mr. Wisdom Chingwede	Investigative Journalist
<b>CSOs</b>		
Netherlands Institute for Multiparty Democracy (NIMD)	Dr. Augustine Magolowondo	Regional Director East and Southern Africa
Centre for Multiparty Democracy (CMD)		
Public Affairs Committee (PAC)	Mr. Robert Phiri	Executive Director
National Initiative for Civic Education (NICE)		
Catholic Commission for Justice and Peace (CCJP)	Ms. Tafadzwa Muropa	Capacity Building and Advocacy Advisor
Institute for Policy Interaction	Dr. Nandini Patel	Director
<b>Political parties</b>		
Democratic Progressive Party (DPP)	Dr. Jeane Kalirani	Secretary General
Malawi Congress Party (MCP)	Dr. Jessie Kwabila	Publicity Secretary
	Mr. Gustav Kaliwo	Secretary General
	Mr. Felix Jumbe	Campaigns Director
	Mr. Max Thyolera	Deputy Director of Political Affairs
Peoples Party (PP)	Mr. Kenneth Chitatata Nsonda	Acting National Publicity Secretary
United Democratic Front (UDF)	Mr. Kandi Padambo	Secretary General



# **EISA PRE-ELECTION ASSESSMENT MISSION REPORT**



**REPUBLIC OF MALAWI**

**10-15 MARCH 2014**

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## LIST OF ABBREVIATIONS

AU	African Union
AFORD	Alliance for Democracy
BCP	Basutoland Congress Party
CCJP	Catholic Commission for Justice and Peace
CCP	Chipani Cha Pfuko
CE	Civic Education
CMD	Centre for Multiparty Democracy
COPs	Camera Operators
CROs	Constituency Returning Officers
CSOs	Civil Society Organisations
DFID	Department for International Development
DPP	Democratic Progressive party
EISA	Electoral Institute for Sustainable Democracy in Africa
EMB	Election management Body
EU	European Union
FBOs	Faith Based Organisations
FPTP	First Past the Post
IPI	Institute for Policy Interaction
LCD	Lesotho Congress for Democracy
MAFUNDE	Malawi Forum for Development
MBC	Malawi Broadcasting Corporation
MCP	Malawi Congress Party
MEC	Malawi Electoral Commission
MISA	Media Institute of Southern Africa
MK	Malawi Kwacha
MPLCs	Multiparty Liaison Committees
MP	Member of Parliament
MTV	Malawi Television
NARC	New Rainbow Coalition
NASAF	National Salvation Front
NECOF	National Elections Consultative Forum
NICE	National Initiative for Civic Education
NIMD	Netherlands Institute for Multiparty Democracy

NLP	New Labour Party
PAC	Public Affairs Committee
PAM	Pre-election Assessment Mission
PETRA	Peoples Transformation Party
PPM	People's Progressive Movement
PP	Peoples party
QCMs	Quality Control managers
RP	Republican Party
SADC	Southern African Development Community
SMS	Short Messaging System
UDF	United Democratic Front
UIP	United Independence Party
UNDP	United Nations Development Programme
UP	Umodzi Party
USAID	United State Agency for International Development
VE	Voter Education
VR	Voter Registration

## 1. EXECUTIVE SUMMARY

Pursuant to its mission of promoting credible elections, citizen participation and strengthening political institutions for sustainable democracy in Africa, EISA deployed a Pre-Election Assessment Mission (PAM) to Malawi from 10<sup>th</sup> to 15<sup>th</sup> March 2014. The Mission was conducted by Dr. Victor Shale, Country Director, EISA Zimbabwe and Miss Magdalena Kieti, Programme Officer, EISA Kenya.

The overall objective of the Pre-Election Assessment Mission was to assess the state of readiness of the Malawi Electoral Commission (MEC), political parties, CSOs and other stakeholders for the forthcoming 20<sup>th</sup> May 2014 Tripartite elections. The Pre-Election Assessment Mission also assessed the overall political context to ascertain whether conducive conditions exist for the conduct of credible elections.

In fulfilment of its mandate, the Pre-Election Assessment Mission met with key stakeholders in the electoral process based in the Capital city Lilongwe as well as in Blantyre (See appendix 1).

The Pre-Election Assessment Mission noted that the 2014 tripartite elections take place against the backdrop of the sudden death of President Mutharika and the ascendency of President Banda who was not at the time a member of the ruling party. The elections are expected to be keenly contested between four main presidential contestants none of whom is tipped to have a clear win. This said, the Mission notes that the electoral system does not provide for the president to be elected by absolute majority, this may again lead to the election of a president who may not receive the popular vote.

The pre-election context is also impacted by the recent corruptions scandal allegations which have impacted negatively on the image of the country, and have also become a campaign issue for opposition parties that also accuse the President of abusing state resources. The mission also notes that the legal framework finance is quite limited in regulating campaign finance as it does not provide expenditure ceilings nor does it provide for mandatory disclosure.

On the state of preparedness for the conduct of the 2014 elections which will be the first tripartite elections<sup>1</sup> in Malawi, the Mission gathered that the Malawi Electoral Commission (MEC) is adequately prepared. The Mission was also informed that the MEC enjoys good

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<sup>1</sup> Presidential, parliamentary and local council elections will be held on the same day. Note that local government elections have not been held since 2000.

working relations with relevant electoral stakeholders. Stakeholders raised concerns about the setback experienced by MEC in its preparations for the elections, especially, delayed funding from the treasury and delays owing to legal challenges by disqualified candidates. There have also been allegations and indications of mistrust on some aspects of the electoral process such as the voter registration process. For instance, opposition political parties believe that voter registration figures have been inflated in favour of the ruling party.

The Mission also noted that women's representation in parliament may be reduced following the 20 May 2014 elections as only 20% of the candidates in the parliamentary elections are women.

In view of the above findings, the Pre-Election Assessment Mission recommended a number of legal reforms which will only be possible after the 2014 elections. With regard to immediate actions required before the elections, the Mission recommends that the MEC and its partners should undertake intensive voter education to enlighten voters on the procedures for the tripartite elections which is the first of its kind in Malawi. The mission also calls on the MEC to release the preliminary voters register for public inspection and verification to dispel the allegations of a bloated voter register. MEC is also encouraged to enforce the electoral code of conduct to dissuade the abuse of state resources and other violations of the electoral code of conduct. Finally, it is recommended that the MEC investigate reported cases of abuse of voters' cards including vote buying and that it should publish the voters roll for public inspection timeously.

## **2. HISTORICAL BACKGROUND AND CONTEXT OF THE 2014 ELECTIONS**

Malawi gained independence from British colonial rule in 1964. After 30 years (1964-1994) of as a one-party state under President Kamuzu Banda of the Malawi Congress Party (MCP). Four multi-party elections have held since the return to multi-party democracy, these were in 1994, 1995, 2004 and 2009 respectively.

Malawi's multiparty dispensation has been characterised by political instability related to interpretation of the constitution, choice of successors within political parties, choice of running mates by presidential candidates and a factionalised party system.

Malawi's post-1994 political history can be considered in three phases that form a background to the 2014 elections. These are (a) the 2004 elections and floor crossing, (b) the

2009 Elections and their aftermath, (c) the death of President Bingu Wa Mutharika and Joyce Banda's ascendency to power.

After two terms of Dr. Bakili Muluzi's presidency (1994-1999) and his failed attempt to amend the constitution to allow him contest for a third term, his party, the United Democratic Front (UDF) won the 2004 elections with President Binguwa Mutherika as its candidate. It is important to mention that President Muluzi by-passed his Vice President Mr Justin Malewezi to anoint Mutherika as the UDF presidential candidate due to inter-personal conflicts between him and the Vice President. Though the Vice President was isolated by the UDF, he remained Vice President till the end of the Muluzi tenure and he contested as an independent candidate in the 2004 elections.

President Mutherika was faced with intra-party conflicts that led to his isolation; he decamped from his party to form the Democratic Progressive Party (DPP) in 2005. In order to consolidate its grip to and also become a majority party in the National Assembly, the DPP lured Members of Parliament (MPs) from the UDF and other parties. This action effectively reduced the UDF which was elected through the ballot to an opposition party.

The co-optation of MPs from other parties in parliament meant that they had effectively crossed the floor. Yet, none of the floor crossers vacated their seats as mandated in Section 65 of the Constitution. This led to political tensions between the DPP on the one hand and the UDF and other opposition parties on the other. The new ruling party was accused of violating Section 65 (1) of the Constitution<sup>2</sup>.

The Pre-Election Assessment Mission noted that article 65 remains unchanged in the Constitution of Malawi and it has never been enforced even in the run up to the 2014 elections.

The 2009 elections were the first test of the strength of the DPP. It is important to mention the attempt by the UDF to have the former President Bakili Muluzi as its presidential candidate in 2009 on the basis that the Constitutional presidential term limit is only relevant for two consecutive presidential terms. The Malawi Electoral Commission (MEC) passed a judgement barring Muluzi's candidature and the its decision was upheld by the Constitutional Court after an appeal by Muluzi. This case gave a clear interpretation to the constitutionally provided limits on presidential tenure.

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<sup>2</sup> Article 65 (1) provides that *'The Speaker shall declare vacant the seat of any member of the National Assembly who was, at the time of his or her election, a member of one political party represented in the National Assembly, other than by that member alone but who has voluntarily ceased to be a member of that party or has joined another political party represented in the National Assembly, or has joined any other political party, or association or organisation whose objectives or activities are political in nature'*.

President Bingu Wa Mutharika won a second term with 66.7% of the votes in the 2009 elections. In the parliamentary elections, the DPP's strength was further demonstrated when it secured 58.85%, independent candidates got 16.67%, MCP 14.06%, UDF 8.85%, AFORD 0.52%, Malawi Forum for Development (MAFUNDE) 0.52% and Malawi People's Party 0.52%.<sup>3</sup>

**Table 1: The 2009 Presidential election results**

Candidate	Party	Votes	% of votes
Dr Bingu Wa Mutharika	Democratic Progressive Party (DPP)	2 963 820	66.17
John Tembo	Malawi Congress Party (MCP)	1 365 672	30.49
Kamuzu Chibambo	People's Transformation Party (PETRA)	35 358	0.79
Stanley Masauli	Republican Party (RP)	33 982	0.76
Loveness Gondwe	New Rainbow Coalition (NARC)	32 432	0.72
<u>James Nyondo</u>	Independent	27 460	0.61
Dindi Gowa Nyasulu	Alliance For Democracy (AFORD)	20 150	0.45
<b>Total</b>		<b>4 478 874</b>	<b>99.99</b>

Source EISA EOM report: 2009

President Mutharika's second term was characterised by decline in economic development and widespread human rights violations such as clamp down on press freedom and other civil liberties. The Parliament during this period also passed a number of laws that have been criticised as repressive such as the Police Bill 2009, the Local Government Amendment Bill 2010 and the amendment to Section 46 of the Penal Code in 2011 which empowered the Minister of Information to ban any media house which was deemed to be publishing offending material.

As President Mutharika moved closer to the end of his presidency, the question of a suitable successor became one of the prominent issues in the run-up to the 2014 elections prior to his death. The source of contention was the President's attempts to pick his Brother Peter Mutharika (then the Foreign Minister) as the DPP presidential candidate for the 2014 elections instead of the country's Vice President, Mrs Joyce Banda. The latter's objection to the President's move led to her expulsion from the DPP in 2010. Similar to Justin Malewezi's

<sup>3</sup> Source: Malawi Electoral Commission 2009

experience during the Muluzi regime, Joyce Banda remained Vice President of Malawi but was effectively ostracised by the President. This led the Vice President to leave the ruling party to form another party, the Peoples' Party (PP) in 2011.

The country's economy was on a downward spiral characterised by soaring food and fuel prices. This triggered demonstrations across the country in 2011 as scores of Malawians from civil society organisations and student movements coalesced to form the 'Concerned Citizens' Movement and organised the public demonstrations. Police reacted to the demonstrations in a heavy handed manner killing about 20 demonstrators and injuring many more in what was one of the biggest uprisings in post-independence Malawi. The tensions between government and organised civil society formations lasted for most of 2011 thus creating political instability as the government struggled to bring things under control. Besides threatening the organisers of the revolts, the President also fired his whole cabinet as he sought to deal with the crisis. The relationship between the President and his Vice President was further strained by her support for the 20<sup>th</sup> July 2011 demonstrations against economic hardship.

**Context of the 2014 elections:**

The most notable development which put Malawi's democratic credentials to test was the Constitutional crisis triggered by the passing away of President Bingu Wa Mutharika on 5<sup>th</sup> April 2012. His death sparked political tensions as the Vice President had been isolated by the late President and there were attempts to conceal his death by some of his political allies as part of an unconstitutional succession plan. After interventions from within and outside Malawi, President Joyce Banda was sworn into office as mandated by the Constitution. Her ascension to power meant that a new ruling party had come into the political space. Similar to the situation after the 2004 elections, again the new ruling party sort to establish itself by luring members of parliament to decamp from other parties, again Article 65 of the Constitution was not enforced. The 2014 elections will therefore be the first test of the PP. President Banda will be contesting against the former President's brother, Dr Peter Mutharika of the DPP which still considers itself as the ruling party.

The Pre-Election Assessment Mission noted that the 2014 elections are critical in Malawi's history as these elections will be keenly contested. There are 17 Presidential candidates and out of these, only four are touted by all stakeholders consulted by the Pre-Election

Assessment Mission as having an almost equal chance of victory. Below is a list of candidates in alphabetical order<sup>4</sup>:

**Table 2: list of top 4 presidential candidates**

Candidate	Political Party
Mr. Atupele Muluzi	United Democratic Front (UDF)
Mrs. Joyce Banda	Peoples Party (PP)
Rev. Dr. Lazarus Chakwera	Malawi Congress Party (MCP)
Dr. Peter Mutharika	Democratic Progressive Party (DPP)

*Compiled from MEC website*

The 2014 elections also take place within a context of economic decline, heavy donor dependence and corruption scandals—the popular among them being the twin “gates” known as the “cashgate”<sup>5</sup> and the “Jetgate”<sup>6</sup>. These scandals have been widely reported in the media and there is a threat by donors to cut back on aid to the already weak Malawian economy.

The Pre-Election Assessment Mission also gathered that Parliament has not convened since December 2013, this has been interpreted as an attempt by the ruling party to avoid a probe of the corruption scandals by Parliament. Some political parties consulted by the Mission were of the opinion that the Parliament may not convene until its dissolution at the end of March 2014.

### **3. ELECTORAL FRAMEWORK**

#### **3.1 The Constitutional and legal framework**

The Constitution of Malawi provides for guarantees of civil liberties and locates the source of power to govern in the people as manifested through the universal adult suffrage in elections. The Article 67 (1) of the Constitution is unambiguously clear on the holding of regular elections by universal adult suffrage.

The Constitution also provides for the establishment of an institutional framework for the management of elections and resolution of election disputes. Besides these Constitutional

<sup>4</sup>Details of candidate nominations are provided under section 2.3 of this report

<sup>5</sup>It has been reported that in one incident, a government official was caught with about \$300,000 cash in his car and this triggered investigation which has since exposed collusion in corruption by serving and former civil servants as well as between some ministers and the business sector.

<sup>6</sup>There has also been an allegation of the ambiguous sale of the presidential jet. The Pre-Election Assessment Mission was however informed by some stakeholders that it was sold at the initiation of the President who considered it an unnecessary luxury in a struggling economy.

provisions and, in conformity with international best practices, a number of laws and regulations guide the election management and administration. These are:

- **The Electoral Commission Act:** This Act makes provision for the appointment of members of the Malawi Electoral Commission; for the establishment of a Secretariat for the Electoral Commission; and for matters incidental to the electoral process. The Act also takes a leaf from the constitution and reaffirms the independence of the MEC.
- **The Parliamentary and Presidential Elections Act:** This Act makes provision for the conduct of election of Members of Parliament and the President. As the principal law on elections, the Parliamentary and Presidential Elections Act regulates the entire electoral process from the registration of voters, nomination of candidates, campaigns, election observation, voting procedures, election results management and election petitions.
- **The Local Government Elections Act:** similar to the Parliamentary and Presidential Elections Act, this Act makes provision for the conduct of the election of local councillors. The Pre-Election Assessment Mission noted that Local Government Elections have not been held in Malawi since 2000 mainly due to political reasons.

The legal framework for elections provides for resolution of electoral disputes by the Electoral Commission and the High Court. However, there is no clear timeline for resolution or determination of the electoral disputes.

### **3.2 The electoral system:**

Malawi operates a first-past-the-post (FPTP) electoral system for the presidential, parliamentary and local government elections. Under the FPTP electoral system the candidates who receive the most number of votes will be declared winners. In Malawi, unlike other countries where the FPTP system is operational, elections are won by a simple majority, thus there is no provision for a second round. Therefore a candidate can win presidential elections with a minority vote. For instance, in the 2004 Presidential elections, Bingu wa Mutharika won the elections with only 38.5% of the valid votes cast.

### **3.3 Party and campaign finance:**

In line with international standards, an effective system of regulation of party and campaign finance requires a system of disclosure, limits on expenditure and monitoring of campaign and party finance.

There is no state funding of candidates and campaigns in Malawi but the Constitution provides for state funding of parliamentary parties that won on-tenth of the national votes in the election<sup>7</sup>.

The Pre-Election Assessment Mission noted that while this is a welcome provision by political parties, parties perceive the pre-requisite 10 % threshold of the seats in parliament or of the total number of votes to access the public funds as too high and may lead to the weakening of smaller political parties.

The mission noted the following gaps in the legal framework in Malawi:

- there is no ceiling on campaign finance,
- there are no provisions for mandatory public disclosure of sources of funding and campaign expenditure
- the Electoral Commission is not mandated to audit party finances.

Campaign funding is not provided to political parties nor to candidates in Malawi. The Pre-Election Assessment Mission noted that these gaps in the legal framework leave the electoral process open to the influence of political entrepreneurs.

In its consultation with MEC, the Mission gathered that notwithstanding the absence of a provision for campaign funding in the legal framework, the Commission will provide campaign airtime. It will provide media airtime to all political parties to run campaign messages, jingles etc.

### **3.4 Election management:**

The Malawi Electoral Commission (MEC) is constitutionally empowered to manage elections. It is established through Chapter VII of the Constitution of Malawi and operationalised through the Electoral Commission Act. Articles 75 and 76 of the Constitution provide for the composition, powers and functions of the Electoral Commission. The Electoral Commission Act on the other hand bestows on the MEC the responsibility of exercising general direction and supervision over the conduct of every election and also has specific functions, to:

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<sup>7</sup> Article 40(2) of the constitution provides that “*State shall provide funds so as to ensure that, during the life of any parliament, any political party which has secured more than one-tenth of the national vote in elections to that parliament has sufficient funds to continue to represent its constituency.*”

- Determine the number of constituencies for the purposes of elections;
- Undertake or supervise the demarcation of boundaries of constituencies;
- Undertake or supervise the demarcation of wards for the purposes of local government elections;
- Organise and direct the registration of voters;
- Devise and establish voter registers and ballot papers;
- Print, distribute and take charge of ballot papers;
- Approve and procure ballot boxes;
- Establish and operate polling stations
- Establish security conditions necessary for the conduct of every election;
- Promote public awareness of electoral matters through the media and other means and;
- Take measures and do such other things as are necessary for conducting free and fair elections

Consistent with regional practices in Southern Africa, the Constitution provides that the Electoral Commission Chairperson shall be a Judge. Other members of the Commission (no less than six in number) are appointed in terms of the Electoral Commission Act (Section 4 (1) of the Act<sup>8</sup>). The independence of the MEC is unambiguously guaranteed in Section 76 (4) of the Constitution that mandates it to exercise its functions without interference.

The current MEC was appointed in 2012 after a long period of transition during which the previous Commission was disbanded by the former President. The Commission is currently headed by Justice Maxon Mbendela, who is supported by nine Commissioners. Mr. Willie Kalonga, is the Chief Electoral Officer (CEO) who heads the secretariat, he was also appointed in 2012. The Mission noted that the current MEC enjoys a good level of public trust.

The EMB is funded by the government of Malawi and international community. The Pre-Election Assessment Mission gathered that the overall budget for the 2014 tripartite elections is MK 18.4 Million. At least 60% of this budget is funded by the government while up to 40% of the funds come from donor contributions. The donor contribution is channelled

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<sup>8</sup>“The President shall, subject to the Constitution and in consultation with the leaders of the political parties represented in the national Assembly, appoint suitably qualified persons to be members of the Commission on such terms and conditions as the Public Appointments Committee of parliament shall determine.”

through the United Nations Development Programme (UNDP) managed joint-donor basket fund.

## 4. KEY FINDINGS ON THE PRE-ELECTION PHASE

### 4.1. Constituency delimitation<sup>9</sup>

Article 76 (2) of the constitution mandates the MEC to undertake demarcation of constituency boundaries as one of its functions. It also mandates the Commission to demarcate the boundaries of local Councils and Wards (article 148). The Pre-Election Assessment Mission noted that for the 2014 parliamentary and presidential elections the MEC has retained the 193 existing constituencies from the 2009 elections. For the local government elections, the MEC has demarcated boundaries resulting in 35 Local Councils. The Commission also delimited 462 wards and 4445 registration centres. None of the consulted stakeholders raised reservations about the constituency boundaries.

### 4.2 Voter registration

The legal framework provides for a continuous voter registration system in Malawi. According to Section 15 of the Parliamentary and Presidential Elections Act, every citizen from the age of 18 years is eligible to register to vote. The MEC is for registering voters and maintaining the voter register.

The Pre-Election Assessment Mission gathered that the MEC initially intended to adopt the use of a biometric voter registration system for the 2014 process but could not implement it due to stakeholder concerns. A new registration exercise was undertaken from 22<sup>nd</sup> July to 18<sup>th</sup> December 2013 using the Optical Mark Recognition (OMR) system. This system entails the manual capture of voters' details on paper forms and capturing their photographs, to be later entered into a central database. The exercise was conducted in 9 phases consisting of 14 days per phase. A 3-day transition period was allowed in-between places to allow for the transportation of the registration materials and personnel. The MEC began registration in inaccessible areas as the process started shortly before the rainy season.

The MEC had set itself a target of registering 8, 009,734 but it was able to register a total of 7, 537 548 voters at the end of the exercise translating into 94.1% of their target. There are 3, 481 365 male registered voters while registered female voters amount to 4, 056 183 of the total registered voters<sup>10</sup>.

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<sup>9</sup> Also called demarcation

<sup>10</sup> See MEC website for voter registration statistics [www.mec.org.mw](http://www.mec.org.mw)

Stakeholders consulted by the EISA Mission were of the opinion that the process was generally well-conducted with equal access given to all voters in the process. Some stakeholders raised concerns about the accuracy of the total registration figures of 7, 537 548 released by the MEC. Opposition parties have argued this figure is too high given the country's total of a voting population of Malawi. There were also concerns about alleged connivance between the ruling party and MEC to rig elections with the help of an Israeli company NIGUV and the Zimbabwe Electoral Commission (ZEC) which they accused of having used the same company in the July 2013 Harmonised elections in Zimbabwe.<sup>11</sup>

At the time of the Pre-Election Assessment Mission's visit to Malawi, the MEC was finalising the voters roll and it was expected to be released on 21<sup>st</sup> March 2014 for inspection by the public and political parties. It is hoped that this exercise will help MEC to rebut some or all the suspicion regarding the voter registration. Voters will have the opportunity to also request transfer of their registration. The Pre-Election Assessment Mission was informed that voters roll verification will be done either by visiting MEC offices, via short message system (SMS) and online via MEC official website.

### **4.3 Political party registration and candidate nomination**

Political parties in Malawi are regulated by the Political Parties Registration and Regulation Act of 1993. Political parties are required to register with the Registrar-General in the Ministry of Justice. Once fully registered the parties become eligible for participating in all elections. The nomination of candidates is done in terms of Section 37 of the Parliamentary and Presidential Elections Act. Pursuant to this provision, MEC provided 5 days within which presidential, parliamentary and local council aspirants were to submit documentation for their candidature. Presidential and parliamentary candidates were required to submit their names to the Malawi Electoral Commission while candidates for the Local Councils were to submit theirs to the Constituency Returning Officers (CROs).

A total of 12 presidential candidature application submissions were received by MEC and one out of these was declared by the MEC as ineligible to contest. The Mission noted the controversy over the interpretation of article 80 (7) (e) of the constitution which provides that a person will not be eligible for nomination in a presidential election if he/she "*is a holder of a*

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<sup>11</sup> The perception is created by the fact that MEC has borrowed gas lamps and tents from ZEC and the parties think there is much more going on than lighting equipment. The mission notes that sharing of equipment such as tents and lamps is a common practice among Election Management Bodies in the region (EMBs) due to financial constraints.

*public office or a member of Parliament, unless that person first resigns.”* On the basis of this provision, the MEC rejected the nomination of Professor John Chisi of the Umodzi Party (UP) because he had not resigned from the university but had taken a leave without pay which in the view of the MEC is not the same as resignation. The Pre-Election Assessment Mission noted that the MEC also rejected the nomination of 15 candidates for the parliamentary election. These disqualified individuals had contested the MEC decision in the courts of law and the decision on the matter had not yet been made during the time the Pre-Election Assessment Mission was in Malawi. At the time of the Mission, the MEC was still busy with the candidate list for the Local Government Elections. Statistics released by the MEC shows that there are 1,290 contestants for parliamentary elections in all the 193 constituencies. The mission noted that the choice of running mates for presidential elections was influenced by two factors: regional affiliation and age. This is highlighted in the table below. One final point to note about the nomination process is the fact that history seems to be repeating itself again as the incumbent president has again by-passed the vice-president to choose a younger candidate as her running mate. This has been the case twice in the past.

**Table 3: Presidential candidates & Running mates**

Political party	Candidate & Running Mate	Region of origin	Gender	Age
DDP	Dr. Peter Mutharika	Southern	M	74
	Saulos Chilima	Central	M	41
MCP	Rev. Dr. Lazarus Chakwera	Central	M	59
	Richard Msowoya	Northern	M	52
PP	Dr. Joyce Banda	Southern (married in the North)	F	64
	Mr. Sosthenes Gwengwe	Central	M	37
UDF	Mr. Atupele Muluzi	Southern	M	36
	Dr. Godfrey Chapola	Central Region	M	64

#### **4.4 The media**

Malawi has experienced a proliferation of media houses since the advent of democracy in 1994. There are about seventy (70) media houses consisting of both national and community

broadcasters with the majority of these being privately-owned. The activities of the media are regulated through the media code of conduct which is enforced by the Media Council. There is also another code of conduct jointly developed by MEC and the media houses in Malawi. Although not legally binding, all media houses have signed a pledge to adhere to this code of conduct. Besides the usual classification of the media as either public or private print and electronic media, there is an emergent category of social media which, unlike the conventional media is more difficult to be regulated by the Media Council.

The Pre-Election Assessment Mission gathered that the public media (Malawi Broadcasting Corporation and Malawi Television) is perceived as providing unlimited coverage to the ruling party while some private stations are perceived as providing balanced coverage. In particular, a privately-owned radio station recently hosted Malawi's first ever Presidential Running mates debate.

The Pre-Election Assessment Mission was also informed of a rising trend of media ownership by political actors who use such media houses to pursue their political ambitions. This has therefore contributed to the lop-sided coverage of election issues. These are:

#### **4.5 Civil society**

The Pre-Election Assessment Mission noted that civil society organisations have been at the forefront of the campaigns for reforms during the 2011/12 protests discussed in earlier in this report and they have continued to be actively involved in the electoral process ahead of the 2014 elections. Civil society involvement in the 2014 electoral process includes civic and voter education, election observation and advocacy for reforms.

Since the current regime took office, stakeholders noted an improvement in the protection of citizens' rights and freedom. The MEC also demonstrated its commitment to the transparency of the electoral process by accepting the proposal of CSOs to undertake a parallel vote tabulation (PVT).

The MEC had not yet released an invitation to CSOs to apply for accreditation as observers at the time of the Mission

#### **4.6. Women's representation**

A look at the statistics shows that Malawi is yet to meet commitments to women's representation as provided in regional and international protocols. For instance, in the National Assembly women constituted 5.65% in 1994, 9.38% in 1999, 14.44% in 2004 and 20.83% in 2009 (EISA 2009).

In the 2014 elections, only 20% of the candidates contesting in the parliamentary elections are women<sup>12</sup> and only 4 of the 22 candidates and running mates contesting the presidential elections are women<sup>13</sup>. With only 20% representation of women as parliamentary candidates, women representation in the next parliament may not be expected to improve. The mission notes that this limited representation of women could be attributed to the electoral system and non-provision of quotas for women. .

**Table 4: Full List of presidential candidates & running Mates**

Political Party	Candidates & Running Mates	Gender	
Chipani Cha Pfuko (CCP)	Aaron Davies Chester Katsonga		M
	Godfrey Matenganya		M
Democratic Progressive Party (DPP)	Prof. Peter Mutharika		M
	Saulosi Klaus Chilima		M
Malawi Forum for Unity and Development (MAFUNDE)	George Nnesa		M
	Sylvester Chabuka		M
Malawi Congress party (MCP)	Dr Lazarus McCarthy Chakwera		M
	Mr. Richard Msowoya		M
National Salvation Front (NASAF)	James Mbowe Nyondo		M
	Ethel Peter Changa	F	
New Labour Party (NLP)	Friday Anderson Jumbe		M
	Joseph Petro Kubwalo		M
People's Transformation Party (PETRA)	Kamuzu Walter Chibambo		M
	White Millen Scander		M
Peoples Party (PP)	Dr. Joyce Banda	F	
	Mr. Sosten Alfred Gwengwe		M
People's Progressive Movement (PPM)	Mark Katsonga Phiri		M
	Prof Jacob Fojamuheni Crossan Mbunge		M
United Democratic Front (UDF)	Atupele Muluzi		M
	Dr Godfrey Moses Chapola		M

<sup>12</sup> Statistics show that only 257 of the 1,290 candidates for parliamentary elections are women.

<sup>13</sup> These figures could change if the courts rule in favour of the disqualified candidates. This would however not bring significant change to one sided gender representation.

United Independence Party (UIP)	Abusa Helen Singh	F	
	Chrissy Ndhlwase Tembo	F	
Umodzi Party (UP) <sup>14</sup>	Professor John Chisi		M
<b>TOTAL</b>		4	19

The Mission noted that the MEC granted concessions to female candidates with regard to nomination fees. This was a gesture to encourage female candidates to contest in the elections, this made minimal impact. The table below shows the required nomination fees.

**Table 5: nomination fees structure for female candidates**

<b>Election</b>	<b>Male</b>	<b>Female</b>
Local Government	K20,000	K15,000
Member of Parliament	K200,000	K150,000
Presidential	K1,000,000	K1,000,000

Source: MEC 2014

#### **4.7 Civic and voter education**

The MEC developed a civic and voter education strategy for the 2014 tripartite elections with a view to rectify weaknesses experienced in the previous elections. In its meeting with the Pre-Election Assessment Mission, the MEC indicated that during the four phases of voter registration it carried out civic and voter education. 193 Civic and Voter Education Assistants (CCVEAs) were recruited for this purpose. The Commission adopted a number of outreach strategies to ensure that all communities were reached. These included radio and TV programmes, jingles, public meetings with chiefs, distribution of pamphlets and leaflets, drama, road shows, door to door and loud hailers.

The MEC informed the Mission that it had accredited 107 civic and voter education providers (mostly CSOs) for the tripartite elections. In selecting these providers, the MEC prioritised national coverage, though there is a challenge of funding of these providers.

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<sup>14</sup> Disqualified by MEC

#### **4.8 Security**

The Pre-Election Assessment Mission was encouraged to learn that the security sector is not interfering with the electoral process. None of the stakeholders met by the Mission expressed concerns over the role of the security forces in the elections.

#### **4.9 Campaigns**

Section 57 of the Act provides that campaigning period shall be two months closing 48 hours before polling day. The Parliamentary and Presidential Elections Act guarantees the right of parties and independent candidates to campaign, equal treatment, freedom of expression and information, equal treatment and freedom of assembly. The law however requires all parties and individual candidates to notify the District Commissioner and the Police in writing before holding a campaign rally.

Election campaigning had started in earnest during the EISA Mission's visit though parliament was yet to be dissolved according to law. The campaigns should officially commence on 21<sup>st</sup> March 2014 (a day after the dissolution of Parliament) and end on 18<sup>th</sup> May 2014.

Conduct of political campaigns is guided by a code of conduct which was jointly developed by the MEC and all registered political parties. The code of conduct obliges political parties to ensure that their members comply. It implores parties to ensure that their candidates know their rights, cooperate with the District Commissioners and police, accept election results and refrain from use of foul language nor engage in violent behaviour. The code further commits parties to ensuring that their members do not deface or destroy posters of other parties, aid intimidation of others, influence voters to vote for their parties by buying paying them (vote buying), publish false allegations or discriminate against others on grounds of race sex disability or religion.

On issue that has remained a bone of contention is the question of what the proceeds of the sales of the presidential jet has been used for. opposition parties have accused the ruling party of using the funds for the President's campaigns. There have also been allegations of abuse of state resources by the incumbent who has been seen distributing food items as part of her campaigns though the procurement of these items is believed to be from the state coffers.

#### **4.10 Preparedness of the EMB**

The Pre-Election Assessment Mission noted that the MEC was advanced in preparations for the 2014 elections. though planning is underway and progressive, there have been delays with

the budget approval process which has slowed down some aspects of the Commission's planning.

Besides the various roles mentioned throughout this report, the preparedness of the MEC can be summed up as follows:

**Campaigns:** The MEC will monitor campaigning of parties and independent candidates and will enforce the code of conduct accordingly in the event of violations.

**Polling procedures:** The MEC has determined that there will be polling streams at each of the polling stations. Each polling stream will have up to but not exceeding 800 voters. On the basis of the total number of registered voters, the MEC has established 4,445 polling stations and 11, 624 streams across the country. Counting of the ballots will be done in each stream and the results will be aggregated for the polling station. Signed copies of the results will be given to monitors and then a copy will also be posted outside the polling station. Same results will be forwarded to the collation centre where the same procedure as in the polling station will be followed in announcing results.

The Constituency Returning Officers (CROs) will transmit the collated results electronically to the National Tally Centre (NTC) then deliver them physically to the District Elections Coordinator (DEC). For the Presidential results the DEC will compile district results and then transmit to the NTC with copies of the same pasted outside the district centre.

**Stakeholder engagement and conflict Management:** The MEC informed the Mission that it consulted with all stakeholders in the entire process through the National Elections Consultative Forum (NECOF). NECOF has been a vehicle for consultation and a conflict management tool, the MEC has in collaboration with stakeholders adequately dealt with all complications that arose in the preparations for the elections. At the grass-roots level the MEC established Multiparty Liaison Committees (MPLCs) which are made up of all the contesting parties and supported by institutions which have a stake in elections. MPLCs have been key in dealing with all election related disputes and violation of the electoral code of conduct.

The MEC operates from three regional offices, namely Lilongwe, Blantyre and Mzuzu. None of the stakeholders consulted had reservations regarding the independence and hence the effectiveness of the MEC in conducting the elections.

In summary, the Pre-Election Assessment Mission found a number of pre-election challenges which largely resonate with the ones raised by the MEC. These are presented in the box below:

## RECOMMENDATIONS

Based on the findings highlighted above, the Pre-Election Assessment Mission makes the following recommendations for post-2014 electoral reforms

- **Legal framework:** The current framework for regulating campaign should be revised to provide ceilings on expenditure; mandate disclosure of sources of funding and mandate disclosure of audited financial reports. This will curb the influence of money in politics.
- **Women's representation:** while the choice of an electoral system according is at the discretion of each country in line with its historical and political background, the mission notes that the current electoral system should be reconsidered to make provisions for women. Specifically, the provision of a special quota for women in parliament will further improve women's representation in parliament.
- **Budget:** There is a need for the executive and the legislature to speed up the election budget allocations so as to enable the MEC to fulfil its mandate in line with the electoral cycle.
- **Media and Election Reporting:** In a country characterised by inter-party conflicts, it is important that the media is properly equipped with requisite skills to report in a non-partisan manner during election time.
- **Civic and voter education:** The MEC should intensify its voter education outreach to enlighten Malawian voters who will be voting in a tripartite election for the first time on voting procedures. While the mission notes that the current electoral commission was recently constituted, it recommends that MEC should develop a sustained civic and voter education strategy that will cover the full electoral cycle.
- **Abuse of state Resources:** The Pre-Election Assessment Mission noted concerns of incumbency and abuse of state resources and therefore recommends that the MEC should enforce the electoral code of conduct to dissuade this practice.
- **Voter Registration and voters roll:** It is recommended that the MEC investigates reported cases of abuse of voters' cards and including buying of these cards by some

parties to influence people to vote them into power. It is further recommended that the MEC publishes the voters roll in good time for inspection to dispel the rumours of an inflated register

## APPENDICES

### Appendix 1: List of stakeholders consulted

Organisation	Name of representative/s	Designation
Malawi Electoral Commission (MEC)	Dr. Wellington Nakanga	Commissioner
	Mr. Harris Potani	Deputy Chief Elections Officer-Operations
	Mr. Lellie Longwe	Deputy Chief Elections Officer-Finance
United Nations Development Programme (UNDP)	Mr. Clemence Alfazema	Programme Analyst-Governance
	Ms. Annettie M'buka-Massa	Programme Analyst-Governance
<b>Media</b>		
Media Institute of Southern Africa (MISA)	Anton Kasunda	MISA President
The Nation Newspaper	Mr. Wisdom Chingwede	Investigative Journalist
<b>CSOs</b>		
Netherlands Institute for Multiparty Democracy (NIMD)	Dr. Augustine Magolowondo	Regional Director East and Southern Africa
Centre for Multiparty Democracy (CMD)		
Public Affairs Committee (PAC)	Mr. Robert Phiri	Executive Director
National Initiative for Civic Education (NICE)		
Catholic Commission for Justice and Peace (CCJP)	Ms. Tafadzwa Muropa	Capacity Building and Advocacy Advisor
Institute for Policy Interaction	Dr. Nandini Patel	Director
<b>Political parties</b>		
Democratic Progressive Party (DPP)	Dr. Jeane Kalirani	Secretary General
Malawi Congress Party (MCP)	Dr. Jessie Kwabila	Publicity Secretary
	Mr. Gustav Kaliwo	Secretary General
	Mr. Felix Jumbe	Campaigns Director
	Mr. Max Thyolera	Deputy Director of Political Affairs
Peoples Party (PP)	Mr. Kenneth Chitatata Nsonda	Acting National Publicity Secretary
United Democratic Front (UDF)	Mr. Kandi Padambo	Secretary General



# **EISA PRE-ELECTION ASSESSMENT MISSION REPORT**



**REPUBLIC OF MALAWI**

**10-15 MARCH 2014**

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## LIST OF ABBREVIATIONS

AU	African Union
AFORD	Alliance for Democracy
BCP	Basutoland Congress Party
CCJP	Catholic Commission for Justice and Peace
CCP	Chipani Cha Pfuko
CE	Civic Education
CMD	Centre for Multiparty Democracy
COPs	Camera Operators
CROs	Constituency Returning Officers
CSOs	Civil Society Organisations
DFID	Department for International Development
DPP	Democratic Progressive party
EISA	Electoral Institute for Sustainable Democracy in Africa
EMB	Election management Body
EU	European Union
FBOs	Faith Based Organisations
FPTP	First Past the Post
IPI	Institute for Policy Interaction
LCD	Lesotho Congress for Democracy
MAFUNDE	Malawi Forum for Development
MBC	Malawi Broadcasting Corporation
MCP	Malawi Congress Party
MEC	Malawi Electoral Commission
MISA	Media Institute of Southern Africa
MK	Malawi Kwacha
MPLCs	Multiparty Liaison Committees
MP	Member of Parliament
MTV	Malawi Television
NARC	New Rainbow Coalition
NASAF	National Salvation Front
NECOF	National Elections Consultative Forum
NICE	National Initiative for Civic Education
NIMD	Netherlands Institute for Multiparty Democracy

NLP	New Labour Party
PAC	Public Affairs Committee
PAM	Pre-election Assessment Mission
PETRA	Peoples Transformation Party
PPM	People's Progressive Movement
PP	Peoples party
QCMs	Quality Control managers
RP	Republican Party
SADC	Southern African Development Community
SMS	Short Messaging System
UDF	United Democratic Front
UIP	United Independence Party
UNDP	United Nations Development Programme
UP	Umodzi Party
USAID	United State Agency for International Development
VE	Voter Education
VR	Voter Registration

## 1. EXECUTIVE SUMMARY

Pursuant to its mission of promoting credible elections, citizen participation and strengthening political institutions for sustainable democracy in Africa, EISA deployed a Pre-Election Assessment Mission (PAM) to Malawi from 10<sup>th</sup> to 15<sup>th</sup> March 2014. The Mission was conducted by Dr. Victor Shale, Country Director, EISA Zimbabwe and Miss Magdalena Kieti, Programme Officer, EISA Kenya.

The overall objective of the Pre-Election Assessment Mission was to assess the state of readiness of the Malawi Electoral Commission (MEC), political parties, CSOs and other stakeholders for the forthcoming 20<sup>th</sup> May 2014 Tripartite elections. The Pre-Election Assessment Mission also assessed the overall political context to ascertain whether conducive conditions exist for the conduct of credible elections.

In fulfilment of its mandate, the Pre-Election Assessment Mission met with key stakeholders in the electoral process based in the Capital city Lilongwe as well as in Blantyre (See appendix 1).

The Pre-Election Assessment Mission noted that the 2014 tripartite elections take place against the backdrop of the sudden death of President Mutharika and the ascendency of President Banda who was not at the time a member of the ruling party. The elections are expected to be keenly contested between four main presidential contestants none of whom is tipped to have a clear win. This said, the Mission notes that the electoral system does not provide for the president to be elected by absolute majority, this may again lead to the election of a president who may not receive the popular vote.

The pre-election context is also impacted by the recent corruptions scandal allegations which have impacted negatively on the image of the country, and have also become a campaign issue for opposition parties that also accuse the President of abusing state resources. The mission also notes that the legal framework finance is quite limited in regulating campaign finance as it does not provide expenditure ceilings nor does it provide for mandatory disclosure.

On the state of preparedness for the conduct of the 2014 elections which will be the first tripartite elections<sup>1</sup> in Malawi, the Mission gathered that the Malawi Electoral Commission (MEC) is adequately prepared. The Mission was also informed that the MEC enjoys good

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<sup>1</sup> Presidential, parliamentary and local council elections will be held on the same day. Note that local government elections have not been held since 2000.

working relations with relevant electoral stakeholders. Stakeholders raised concerns about the setback experienced by MEC in its preparations for the elections, especially, delayed funding from the treasury and delays owing to legal challenges by disqualified candidates. There have also been allegations and indications of mistrust on some aspects of the electoral process such as the voter registration process. For instance, opposition political parties believe that voter registration figures have been inflated in favour of the ruling party.

The Mission also noted that women's representation in parliament may be reduced following the 20 May 2014 elections as only 20% of the candidates in the parliamentary elections are women.

In view of the above findings, the Pre-Election Assessment Mission recommended a number of legal reforms which will only be possible after the 2014 elections. With regard to immediate actions required before the elections, the Mission recommends that the MEC and its partners should undertake intensive voter education to enlighten voters on the procedures for the tripartite elections which is the first of its kind in Malawi. The mission also calls on the MEC to release the preliminary voters register for public inspection and verification to dispel the allegations of a bloated voter register. MEC is also encouraged to enforce the electoral code of conduct to dissuade the abuse of state resources and other violations of the electoral code of conduct. Finally, it is recommended that the MEC investigate reported cases of abuse of voters' cards including vote buying and that it should publish the voters roll for public inspection timeously.

## **2. HISTORICAL BACKGROUND AND CONTEXT OF THE 2014 ELECTIONS**

Malawi gained independence from British colonial rule in 1964. After 30 years (1964-1994) of as a one-party state under President Kamuzu Banda of the Malawi Congress Party (MCP). Four multi-party elections have held since the return to multi-party democracy, these were in 1994, 1995, 2004 and 2009 respectively.

Malawi's multiparty dispensation has been characterised by political instability related to interpretation of the constitution, choice of successors within political parties, choice of running mates by presidential candidates and a factionalised party system.

Malawi's post-1994 political history can be considered in three phases that form a background to the 2014 elections. These are (a) the 2004 elections and floor crossing, (b) the

2009 Elections and their aftermath, (c) the death of President Bingu Wa Mutharika and Joyce Banda's ascendency to power.

After two terms of Dr. Bakili Muluzi's presidency (1994-1999) and his failed attempt to amend the constitution to allow him contest for a third term, his party, the United Democratic Front (UDF) won the 2004 elections with President Binguwa Mutherika as its candidate. It is important to mention that President Muluzi by-passed his Vice President Mr Justin Malewezi to anoint Mutherika as the UDF presidential candidate due to inter-personal conflicts between him and the Vice President. Though the Vice President was isolated by the UDF, he remained Vice President till the end of the Muluzi tenure and he contested as an independent candidate in the 2004 elections.

President Mutherika was faced with intra-party conflicts that led to his isolation; he decamped from his party to form the Democratic Progressive Party (DPP) in 2005. In order to consolidate its grip to and also become a majority party in the National Assembly, the DPP lured Members of Parliament (MPs) from the UDF and other parties. This action effectively reduced the UDF which was elected through the ballot to an opposition party.

The co-optation of MPs from other parties in parliament meant that they had effectively crossed the floor. Yet, none of the floor crossers vacated their seats as mandated in Section 65 of the Constitution. This led to political tensions between the DPP on the one hand and the UDF and other opposition parties on the other. The new ruling party was accused of violating Section 65 (1) of the Constitution<sup>2</sup>.

The Pre-Election Assessment Mission noted that article 65 remains unchanged in the Constitution of Malawi and it has never been enforced even in the run up to the 2014 elections.

The 2009 elections were the first test of the strength of the DPP. It is important to mention the attempt by the UDF to have the former President Bakili Muluzi as its presidential candidate in 2009 on the basis that the Constitutional presidential term limit is only relevant for two consecutive presidential terms. The Malawi Electoral Commission (MEC) passed a judgement barring Muluzi's candidature and the its decision was upheld by the Constitutional Court after an appeal by Muluzi. This case gave a clear interpretation to the constitutionally provided limits on presidential tenure.

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<sup>2</sup> Article 65 (1) provides that *'The Speaker shall declare vacant the seat of any member of the National Assembly who was, at the time of his or her election, a member of one political party represented in the National Assembly, other than by that member alone but who has voluntarily ceased to be a member of that party or has joined another political party represented in the National Assembly, or has joined any other political party, or association or organisation whose objectives or activities are political in nature'*.

President Bingu Wa Mutharika won a second term with 66.7% of the votes in the 2009 elections. In the parliamentary elections, the DPP's strength was further demonstrated when it secured 58.85%, independent candidates got 16.67%, MCP 14.06%, UDF 8.85%, AFORD 0.52%, Malawi Forum for Development (MAFUNDE) 0.52% and Malawi People's Party 0.52%.<sup>3</sup>

**Table 1: The 2009 Presidential election results**

Candidate	Party	Votes	% of votes
Dr Bingu Wa Mutharika	Democratic Progressive Party (DPP)	2 963 820	66.17
John Tembo	Malawi Congress Party (MCP)	1 365 672	30.49
Kamuzu Chibambo	People's Transformation Party (PETRA)	35 358	0.79
Stanley Masauli	Republican Party (RP)	33 982	0.76
Loveness Gondwe	New Rainbow Coalition (NARC)	32 432	0.72
<u>James Nyondo</u>	Independent	27 460	0.61
Dindi Gowa Nyasulu	Alliance For Democracy (AFORD)	20 150	0.45
<b>Total</b>		<b>4 478 874</b>	<b>99.99</b>

Source EISA EOM report: 2009

President Mutharika's second term was characterised by decline in economic development and widespread human rights violations such as clamp down on press freedom and other civil liberties. The Parliament during this period also passed a number of laws that have been criticised as repressive such as the Police Bill 2009, the Local Government Amendment Bill 2010 and the amendment to Section 46 of the Penal Code in 2011 which empowered the Minister of Information to ban any media house which was deemed to be publishing offending material.

As President Mutharika moved closer to the end of his presidency, the question of a suitable successor became one of the prominent issues in the run-up to the 2014 elections prior to his death. The source of contention was the President's attempts to pick his Brother Peter Mutharika (then the Foreign Minister) as the DPP presidential candidate for the 2014 elections instead of the country's Vice President, Mrs Joyce Banda. The latter's objection to the President's move led to her expulsion from the DPP in 2010. Similar to Justin Malewezi's

<sup>3</sup> Source: Malawi Electoral Commission 2009

experience during the Muluzi regime, Joyce Banda remained Vice President of Malawi but was effectively ostracised by the President. This led the Vice President to leave the ruling party to form another party, the Peoples' Party (PP) in 2011.

The country's economy was on a downward spiral characterised by soaring food and fuel prices. This triggered demonstrations across the country in 2011 as scores of Malawians from civil society organisations and student movements coalesced to form the 'Concerned Citizens' Movement and organised the public demonstrations. Police reacted to the demonstrations in a heavy handed manner killing about 20 demonstrators and injuring many more in what was one of the biggest uprisings in post-independence Malawi. The tensions between government and organised civil society formations lasted for most of 2011 thus creating political instability as the government struggled to bring things under control. Besides threatening the organisers of the revolts, the President also fired his whole cabinet as he sought to deal with the crisis. The relationship between the President and his Vice President was further strained by her support for the 20<sup>th</sup> July 2011 demonstrations against economic hardship.

**Context of the 2014 elections:**

The most notable development which put Malawi's democratic credentials to test was the Constitutional crisis triggered by the passing away of President Bingu Wa Mutharika on 5<sup>th</sup> April 2012. His death sparked political tensions as the Vice President had been isolated by the late President and there were attempts to conceal his death by some of his political allies as part of an unconstitutional succession plan. After interventions from within and outside Malawi, President Joyce Banda was sworn into office as mandated by the Constitution. Her ascension to power meant that a new ruling party had come into the political space. Similar to the situation after the 2004 elections, again the new ruling party sort to establish itself by luring members of parliament to decamp from other parties, again Article 65 of the Constitution was not enforced. The 2014 elections will therefore be the first test of the PP. President Banda will be contesting against the former President's brother, Dr Peter Mutharika of the DPP which still considers itself as the ruling party.

The Pre-Election Assessment Mission noted that the 2014 elections are critical in Malawi's history as these elections will be keenly contested. There are 17 Presidential candidates and out of these, only four are touted by all stakeholders consulted by the Pre-Election

Assessment Mission as having an almost equal chance of victory. Below is a list of candidates in alphabetical order<sup>4</sup>:

**Table 2: list of top 4 presidential candidates**

Candidate	Political Party
Mr. Atupele Muluzi	United Democratic Front (UDF)
Mrs. Joyce Banda	Peoples Party (PP)
Rev. Dr. Lazarus Chakwera	Malawi Congress Party (MCP)
Dr. Peter Mutharika	Democratic Progressive Party (DPP)

*Compiled from MEC website*

The 2014 elections also take place within a context of economic decline, heavy donor dependence and corruption scandals—the popular among them being the twin “gates” known as the “cashgate”<sup>5</sup> and the “Jetgate”<sup>6</sup>. These scandals have been widely reported in the media and there is a threat by donors to cut back on aid to the already weak Malawian economy.

The Pre-Election Assessment Mission also gathered that Parliament has not convened since December 2013, this has been interpreted as an attempt by the ruling party to avoid a probe of the corruption scandals by Parliament. Some political parties consulted by the Mission were of the opinion that the Parliament may not convene until its dissolution at the end of March 2014.

### **3. ELECTORAL FRAMEWORK**

#### **3.1 The Constitutional and legal framework**

The Constitution of Malawi provides for guarantees of civil liberties and locates the source of power to govern in the people as manifested through the universal adult suffrage in elections. The Article 67 (1) of the Constitution is unambiguously clear on the holding of regular elections by universal adult suffrage.

The Constitution also provides for the establishment of an institutional framework for the management of elections and resolution of election disputes. Besides these Constitutional

<sup>4</sup>Details of candidate nominations are provided under section 2.3 of this report

<sup>5</sup>It has been reported that in one incident, a government official was caught with about \$300,000 cash in his car and this triggered investigation which has since exposed collusion in corruption by serving and former civil servants as well as between some ministers and the business sector.

<sup>6</sup>There has also been an allegation of the ambiguous sale of the presidential jet. The Pre-Election Assessment Mission was however informed by some stakeholders that it was sold at the initiation of the President who considered it an unnecessary luxury in a struggling economy.

provisions and, in conformity with international best practices, a number of laws and regulations guide the election management and administration. These are:

- **The Electoral Commission Act:** This Act makes provision for the appointment of members of the Malawi Electoral Commission; for the establishment of a Secretariat for the Electoral Commission; and for matters incidental to the electoral process. The Act also takes a leaf from the constitution and reaffirms the independence of the MEC.
- **The Parliamentary and Presidential Elections Act:** This Act makes provision for the conduct of election of Members of Parliament and the President. As the principal law on elections, the Parliamentary and Presidential Elections Act regulates the entire electoral process from the registration of voters, nomination of candidates, campaigns, election observation, voting procedures, election results management and election petitions.
- **The Local Government Elections Act:** similar to the Parliamentary and Presidential Elections Act, this Act makes provision for the conduct of the election of local councillors. The Pre-Election Assessment Mission noted that Local Government Elections have not been held in Malawi since 2000 mainly due to political reasons.

The legal framework for elections provides for resolution of electoral disputes by the Electoral Commission and the High Court. However, there is no clear timeline for resolution or determination of the electoral disputes.

### **3.2 The electoral system:**

Malawi operates a first-past-the-post (FPTP) electoral system for the presidential, parliamentary and local government elections. Under the FPTP electoral system the candidates who receive the most number of votes will be declared winners. In Malawi, unlike other countries where the FPTP system is operational, elections are won by a simple majority, thus there is no provision for a second round. Therefore a candidate can win presidential elections with a minority vote. For instance, in the 2004 Presidential elections, Bingu wa Mutharika won the elections with only 38.5% of the valid votes cast.

### **3.3 Party and campaign finance:**

In line with international standards, an effective system of regulation of party and campaign finance requires a system of disclosure, limits on expenditure and monitoring of campaign and party finance.

There is no state funding of candidates and campaigns in Malawi but the Constitution provides for state funding of parliamentary parties that won on-tenth of the national votes in the election<sup>7</sup>.

The Pre-Election Assessment Mission noted that while this is a welcome provision by political parties, parties perceive the pre-requisite 10 % threshold of the seats in parliament or of the total number of votes to access the public funds as too high and may lead to the weakening of smaller political parties.

The mission noted the following gaps in the legal framework in Malawi:

- there is no ceiling on campaign finance,
- there are no provisions for mandatory public disclosure of sources of funding and campaign expenditure
- the Electoral Commission is not mandated to audit party finances.

Campaign funding is not provided to political parties nor to candidates in Malawi. The Pre-Election Assessment Mission noted that these gaps in the legal framework leave the electoral process open to the influence of political entrepreneurs.

In its consultation with MEC, the Mission gathered that notwithstanding the absence of a provision for campaign funding in the legal framework, the Commission will provide campaign airtime. It will provide media airtime to all political parties to run campaign messages, jingles etc.

### **3.4 Election management:**

The Malawi Electoral Commission (MEC) is constitutionally empowered to manage elections. It is established through Chapter VII of the Constitution of Malawi and operationalised through the Electoral Commission Act. Articles 75 and 76 of the Constitution provide for the composition, powers and functions of the Electoral Commission. The Electoral Commission Act on the other hand bestows on the MEC the responsibility of exercising general direction and supervision over the conduct of every election and also has specific functions, to:

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<sup>7</sup> Article 40(2) of the constitution provides that “*State shall provide funds so as to ensure that, during the life of any parliament, any political party which has secured more than one-tenth of the national vote in elections to that parliament has sufficient funds to continue to represent its constituency.*”

- Determine the number of constituencies for the purposes of elections;
- Undertake or supervise the demarcation of boundaries of constituencies;
- Undertake or supervise the demarcation of wards for the purposes of local government elections;
- Organise and direct the registration of voters;
- Devise and establish voter registers and ballot papers;
- Print, distribute and take charge of ballot papers;
- Approve and procure ballot boxes;
- Establish and operate polling stations
- Establish security conditions necessary for the conduct of every election;
- Promote public awareness of electoral matters through the media and other means and;
- Take measures and do such other things as are necessary for conducting free and fair elections

Consistent with regional practices in Southern Africa, the Constitution provides that the Electoral Commission Chairperson shall be a Judge. Other members of the Commission (no less than six in number) are appointed in terms of the Electoral Commission Act (Section 4 (1) of the Act<sup>8</sup>). The independence of the MEC is unambiguously guaranteed in Section 76 (4) of the Constitution that mandates it to exercise its functions without interference.

The current MEC was appointed in 2012 after a long period of transition during which the previous Commission was disbanded by the former President. The Commission is currently headed by Justice Maxon Mbendela, who is supported by nine Commissioners. Mr. Willie Kalonga, is the Chief Electoral Officer (CEO) who heads the secretariat, he was also appointed in 2012. The Mission noted that the current MEC enjoys a good level of public trust.

The EMB is funded by the government of Malawi and international community. The Pre-Election Assessment Mission gathered that the overall budget for the 2014 tripartite elections is MK 18.4 Million. At least 60% of this budget is funded by the government while up to 40% of the funds come from donor contributions. The donor contribution is channelled

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<sup>8</sup>“The President shall, subject to the Constitution and in consultation with the leaders of the political parties represented in the national Assembly, appoint suitably qualified persons to be members of the Commission on such terms and conditions as the Public Appointments Committee of parliament shall determine.”

through the United Nations Development Programme (UNDP) managed joint-donor basket fund.

## 4. KEY FINDINGS ON THE PRE-ELECTION PHASE

### 4.1. Constituency delimitation<sup>9</sup>

Article 76 (2) of the constitution mandates the MEC to undertake demarcation of constituency boundaries as one of its functions. It also mandates the Commission to demarcate the boundaries of local Councils and Wards (article 148). The Pre-Election Assessment Mission noted that for the 2014 parliamentary and presidential elections the MEC has retained the 193 existing constituencies from the 2009 elections. For the local government elections, the MEC has demarcated boundaries resulting in 35 Local Councils. The Commission also delimited 462 wards and 4445 registration centres. None of the consulted stakeholders raised reservations about the constituency boundaries.

### 4.2 Voter registration

The legal framework provides for a continuous voter registration system in Malawi. According to Section 15 of the Parliamentary and Presidential Elections Act, every citizen from the age of 18 years is eligible to register to vote. The MEC is for registering voters and maintaining the voter register.

The Pre-Election Assessment Mission gathered that the MEC initially intended to adopt the use of a biometric voter registration system for the 2014 process but could not implement it due to stakeholder concerns. A new registration exercise was undertaken from 22<sup>nd</sup> July to 18<sup>th</sup> December 2013 using the Optical Mark Recognition (OMR) system. This system entails the manual capture of voters' details on paper forms and capturing their photographs, to be later entered into a central database. The exercise was conducted in 9 phases consisting of 14 days per phase. A 3-day transition period was allowed in-between places to allow for the transportation of the registration materials and personnel. The MEC began registration in inaccessible areas as the process started shortly before the rainy season.

The MEC had set itself a target of registering 8, 009,734 but it was able to register a total of 7, 537 548 voters at the end of the exercise translating into 94.1% of their target. There are 3, 481 365 male registered voters while registered female voters amount to 4, 056 183 of the total registered voters<sup>10</sup>.

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<sup>9</sup> Also called demarcation

<sup>10</sup> See MEC website for voter registration statistics [www.mec.org.mw](http://www.mec.org.mw)

Stakeholders consulted by the EISA Mission were of the opinion that the process was generally well-conducted with equal access given to all voters in the process. Some stakeholders raised concerns about the accuracy of the total registration figures of 7, 537 548 released by the MEC. Opposition parties have argued this figure is too high given the country's total of a voting population of Malawi. There were also concerns about alleged connivance between the ruling party and MEC to rig elections with the help of an Israeli company NIGUV and the Zimbabwe Electoral Commission (ZEC) which they accused of having used the same company in the July 2013 Harmonised elections in Zimbabwe.<sup>11</sup>

At the time of the Pre-Election Assessment Mission's visit to Malawi, the MEC was finalising the voters roll and it was expected to be released on 21<sup>st</sup> March 2014 for inspection by the public and political parties. It is hoped that this exercise will help MEC to rebut some or all the suspicion regarding the voter registration. Voters will have the opportunity to also request transfer of their registration. The Pre-Election Assessment Mission was informed that voters roll verification will be done either by visiting MEC offices, via short message system (SMS) and online via MEC official website.

### **4.3 Political party registration and candidate nomination**

Political parties in Malawi are regulated by the Political Parties Registration and Regulation Act of 1993. Political parties are required to register with the Registrar-General in the Ministry of Justice. Once fully registered the parties are become eligible for participating in all elections. The nomination of candidates is done in terms of Section 37 of the Parliamentary and Presidential Elections Act. Pursuant to this provision, MEC provided 5 days within which presidential, parliamentary and local council aspirants were to submit documentation for their candidature. Presidential and parliamentary candidates were required to submit their names to the Malawi Electoral Commission while candidates for the Local Councils were to submit theirs to the Constituency Returning Officers (CROs).

A total of 12 presidential candidature application submissions were received by MEC and one out of these was declared by the MEC as ineligible to contest. The Mission noted the controversy over the interpretation of article 80 (7) (e) of the constitution which provides that a person will not be eligible for nomination in a presidential election if he/she "*is a holder of a*

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<sup>11</sup> The perception is created by the fact that MEC has borrowed gas lamps and tents from ZEC and the parties think there is much more going on than lighting equipment. The mission notes that sharing of equipment such as tents and lamps is a common practice among Election Management Bodies in the region (EMBs) due to financial constraints.

*public office or a member of Parliament, unless that person first resigns.”* On the basis of this provision, the MEC rejected the nomination of Professor John Chisi of the Umodzi Party (UP) because he had not resigned from the university but had taken a leave without pay which in the view of the MEC is not the same as resignation. The Pre-Election Assessment Mission noted that the MEC also rejected the nomination of 15 candidates for the parliamentary election. These disqualified individuals had contested the MEC decision in the courts of law and the decision on the matter had not yet been made during the time the Pre-Election Assessment Mission was in Malawi. At the time of the Mission, the MEC was still busy with the candidate list for the Local Government Elections. Statistics released by the MEC shows that there are 1,290 contestants for parliamentary elections in all the 193 constituencies. The mission noted that the choice of running mates for presidential elections was influenced by two factors: regional affiliation and age. This is highlighted in the table below. One final point to note about the nomination process is the fact that history seems to be repeating itself again as the incumbent president has again by-passed the vice-president to choose a younger candidate as her running mate. This has been the case twice in the past.

**Table 3: Presidential candidates & Running mates**

Political party	Candidate & Running Mate	Region of origin	Gender	Age
DDP	Dr. Peter Mutharika	Southern	M	74
	Saulos Chilima	Central	M	41
MCP	Rev. Dr. Lazarus Chakwera	Central	M	59
	Richard Msowoya	Northern	M	52
PP	Dr. Joyce Banda	Southern (married in the North)	F	64
	Mr. Sosten Gwengwe	Central	M	37
UDF	Mr. Atupele Muluzi	Southern	M	36
	Dr. Godfrey Chapola	Central Region	M	64

#### **4.4 The media**

Malawi has experienced a proliferation of media houses since the advent of democracy in 1994. There are about seventy (70) media houses consisting of both national and community

broadcasters with the majority of these being privately-owned. The activities of the media are regulated through the media code of conduct which is enforced by the Media Council. There is also another code of conduct jointly developed by MEC and the media houses in Malawi. Although not legally binding, all media houses have signed a pledge to adhere to this code of conduct. Besides the usual classification of the media as either public or private print and electronic media, there is an emergent category of social media which, unlike the conventional media is more difficult to be regulated by the Media Council.

The Pre-Election Assessment Mission gathered that the public media (Malawi Broadcasting Corporation and Malawi Television) is perceived as providing unlimited coverage to the ruling party while some private stations are perceived as providing balanced coverage. In particular, a privately-owned radio station recently hosted Malawi's first ever Presidential Running mates debate.

The Pre-Election Assessment Mission was also informed of a rising trend of media ownership by political actors who use such media houses to pursue their political ambitions. This has therefore contributed to the lop-sided coverage of election issues. These are:

#### **4.5 Civil society**

The Pre-Election Assessment Mission noted that civil society organisations have been at the forefront of the campaigns for reforms during the 2011/12 protests discussed in earlier in this report and they have continued to be actively involved in the electoral process ahead of the 2014 elections. Civil society involvement in the 2014 electoral process includes civic and voter education, election observation and advocacy for reforms.

Since the current regime took office, stakeholders noted an improvement in the protection of citizens' rights and freedom. The MEC also demonstrated its commitment to the transparency of the electoral process by accepting the proposal of CSOs to undertake a parallel vote tabulation (PVT).

The MEC had not yet released an invitation to CSOs to apply for accreditation as observers at the time of the Mission

#### **4.6. Women's representation**

A look at the statistics shows that Malawi is yet to meet commitments to women's representation as provided in regional and international protocols. For instance, in the National Assembly women constituted 5.65% in 1994, 9.38% in 1999, 14.44% in 2004 and 20.83% in 2009 (EISA 2009).

In the 2014 elections, only 20% of the candidates contesting in the parliamentary elections are women<sup>12</sup> and only 4 of the 22 candidates and running mates contesting the presidential elections are women<sup>13</sup>. With only 20% representation of women as parliamentary candidates, women representation in the next parliament may not be expected to improve. The mission notes that this limited representation of women could be attributed to the electoral system and non-provision of quotas for women. .

**Table 4: Full List of presidential candidates & running Mates**

Political Party	Candidates & Running Mates	Gender	
Chipani Cha Pfuko (CCP)	Aaron Davies Chester Katsonga		M
	Godfrey Matenganya		M
Democratic Progressive Party (DPP)	Prof. Peter Mutharika		M
	Saulosi Klaus Chilima		M
Malawi Forum for Unity and Development (MAFUNDE)	George Nnesa		M
	Sylvester Chabuka		M
Malawi Congress party (MCP)	Dr Lazarus McCarthy Chakwera		M
	Mr. Richard Msowoya		M
National Salvation Front (NASAF)	James Mbowe Nyondo		M
	Ethel Peter Changa	F	
New Labour Party (NLP)	Friday Anderson Jumbe		M
	Joseph Petro Kubwalo		M
People's Transformation Party (PETRA)	Kamuzu Walter Chibambo		M
	White Millen Scander		M
Peoples Party (PP)	Dr. Joyce Banda	F	
	Mr. Sosten Alfred Gwengwe		M
People's Progressive Movement (PPM)	Mark Katsonga Phiri		M
	Prof Jacob Fojamuheni Crossan Mbunge		M
United Democratic Front (UDF)	Atupele Muluzi		M
	Dr Godfrey Moses Chapola		M

<sup>12</sup> Statistics show that only 257 of the 1,290 candidates for parliamentary elections are women.

<sup>13</sup> These figures could change if the courts rule in favour of the disqualified candidates. This would however not bring significant change to one sided gender representation.

United Independence Party (UIP)	Abusa Helen Singh	F	
	Chrissy Ndhlwase Tembo	F	
Umodzi Party (UP) <sup>14</sup>	Professor John Chisi		M
<b>TOTAL</b>		4	19

The Mission noted that the MEC granted concessions to female candidates with regard to nomination fees. This was a gesture to encourage female candidates to contest in the elections, this made minimal impact. The table below shows the required nomination fees.

**Table 5: nomination fees structure for female candidates**

<b>Election</b>	<b>Male</b>	<b>Female</b>
Local Government	K20,000	K15,000
Member of Parliament	K200,000	K150,000
Presidential	K1,000,000	K1,000,000

Source: MEC 2014

#### **4.7 Civic and voter education**

The MEC developed a civic and voter education strategy for the 2014 tripartite elections with a view to rectify weaknesses experienced in the previous elections. In its meeting with the Pre-Election Assessment Mission, the MEC indicated that during the four phases of voter registration it carried out civic and voter education. 193 Civic and Voter Education Assistants (CCVEAs) were recruited for this purpose. The Commission adopted a number of outreach strategies to ensure that all communities were reached. These included radio and TV programmes, jingles, public meetings with chiefs, distribution of pamphlets and leaflets, drama, road shows, door to door and loud hailers.

The MEC informed the Mission that it had accredited 107 civic and voter education providers (mostly CSOs) for the tripartite elections. In selecting these providers, the MEC prioritised national coverage, though there is a challenge of funding of these providers.

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<sup>14</sup> Disqualified by MEC

#### **4.8 Security**

The Pre-Election Assessment Mission was encouraged to learn that the security sector is not interfering with the electoral process. None of the stakeholders met by the Mission expressed concerns over the role of the security forces in the elections.

#### **4.9 Campaigns**

Section 57 of the Act provides that campaigning period shall be two months closing 48 hours before polling day. The Parliamentary and Presidential Elections Act guarantees the right of parties and independent candidates to campaign, equal treatment, freedom of expression and information, equal treatment and freedom of assembly. The law however requires all parties and individual candidates to notify the District Commissioner and the Police in writing before holding a campaign rally.

Election campaigning had started in earnest during the EISA Mission's visit though parliament was yet to be dissolved according to law. The campaigns should officially commence on 21<sup>st</sup> March 2014 (a day after the dissolution of Parliament) and end on 18<sup>th</sup> May 2014.

Conduct of political campaigns is guided by a code of conduct which was jointly developed by the MEC and all registered political parties. The code of conduct obliges political parties to ensure that their members comply. It implores parties to ensure that their candidates know their rights, cooperate with the District Commissioners and police, accept election results and refrain from use of foul language nor engage in violent behaviour. The code further commits parties to ensuring that their members do not deface or destroy posters of other parties, aid intimidation of others, influence voters to vote for their parties by buying paying them (vote buying), publish false allegations or discriminate against others on grounds of race sex disability or religion.

On issue that has remained a bone of contention is the question of what the proceeds of the sales of the presidential jet has been used for. opposition parties have accused the ruling party of using the funds for the President's campaigns. There have also been allegations of abuse of state resources by the incumbent who has been seen distributing food items as part of her campaigns though the procurement of these items is believed to be from the state coffers.

#### **4.10 Preparedness of the EMB**

The Pre-Election Assessment Mission noted that the MEC was advanced in preparations for the 2014 elections. though planning is underway and progressive, there have been delays with

the budget approval process which has slowed down some aspects of the Commission's planning.

Besides the various roles mentioned throughout this report, the preparedness of the MEC can be summed up as follows:

**Campaigns:** The MEC will monitor campaigning of parties and independent candidates and will enforce the code of conduct accordingly in the event of violations.

**Polling procedures:** The MEC has determined that there will be polling streams at each of the polling stations. Each polling stream will have up to but not exceeding 800 voters. On the basis of the total number of registered voters, the MEC has established 4,445 polling stations and 11, 624 streams across the country. Counting of the ballots will be done in each stream and the results will be aggregated for the polling station. Signed copies of the results will be given to monitors and then a copy will also be posted outside the polling station. Same results will be forwarded to the collation centre where the same procedure as in the polling station will be followed in announcing results.

The Constituency Returning Officers (CROs) will transmit the collated results electronically to the National Tally Centre (NTC) then deliver them physically to the District Elections Coordinator (DEC). For the Presidential results the DEC will compile district results and then transmit to the NTC with copies of the same pasted outside the district centre.

**Stakeholder engagement and conflict Management:** The MEC informed the Mission that it consulted with all stakeholders in the entire process through the National Elections Consultative Forum (NECOF). NECOF has been a vehicle for consultation and a conflict management tool, the MEC has in collaboration with stakeholders adequately dealt with all complications that arose in the preparations for the elections. At the grass-roots level the MEC established Multiparty Liaison Committees (MPLCs) which are made up of all the contesting parties and supported by institutions which have a stake in elections. MPLCs have been key in dealing with all election related disputes and violation of the electoral code of conduct.

The MEC operates from three regional offices, namely Lilongwe, Blantyre and Mzuzu. None of the stakeholders consulted had reservations regarding the independence and hence the effectiveness of the MEC in conducting the elections.

In summary, the Pre-Election Assessment Mission found a number of pre-election challenges which largely resonate with the ones raised by the MEC. These are presented in the box below:

## RECOMMENDATIONS

Based on the findings highlighted above, the Pre-Election Assessment Mission makes the following recommendations for post-2014 electoral reforms

- **Legal framework:** The current framework for regulating campaign should be revised to provide ceilings on expenditure; mandate disclosure of sources of funding and mandate disclosure of audited financial reports. This will curb the influence of money in politics.
- **Women's representation:** while the choice of an electoral system according is at the discretion of each country in line with its historical and political background, the mission notes that the current electoral system should be reconsidered to make provisions for women. Specifically, the provision of a special quota for women in parliament will further improve women's representation in parliament.
- **Budget:** There is a need for the executive and the legislature to speed up the election budget allocations so as to enable the MEC to fulfil its mandate in line with the electoral cycle.
- **Media and Election Reporting:** In a country characterised by inter-party conflicts, it is important that the media is properly equipped with requisite skills to report in a non-partisan manner during election time.
- **Civic and voter education:** The MEC should intensify its voter education outreach to enlighten Malawian voters who will be voting in a tripartite election for the first time on voting procedures. While the mission notes that the current electoral commission was recently constituted, it recommends that MEC should develop a sustained civic and voter education strategy that will cover the full electoral cycle.
- **Abuse of state Resources:** The Pre-Election Assessment Mission noted concerns of incumbency and abuse of state resources and therefore recommends that the MEC should enforce the electoral code of conduct to dissuade this practice.
- **Voter Registration and voters roll:** It is recommended that the MEC investigates reported cases of abuse of voters' cards and including buying of these cards by some

parties to influence people to vote them into power. It is further recommended that the MEC publishes the voters roll in good time for inspection to dispel the rumours of an inflated register

## APPENDICES

### Appendix 1: List of stakeholders consulted

Organisation	Name of representative/s	Designation
Malawi Electoral Commission (MEC)	Dr. Wellington Nakanga	Commissioner
	Mr. Harris Potani	Deputy Chief Elections Officer-Operations
	Mr. Lellie Longwe	Deputy Chief Elections Officer-Finance
United Nations Development Programme (UNDP)	Mr. Clemence Alfazema	Programme Analyst-Governance
	Ms. Annettie M'buka-Massa	Programme Analyst-Governance
<b>Media</b>		
Media Institute of Southern Africa (MISA)	Anton Kasunda	MISA President
The Nation Newspaper	Mr. Wisdom Chingwede	Investigative Journalist
<b>CSOs</b>		
Netherlands Institute for Multiparty Democracy (NIMD)	Dr. Augustine Magolowondo	Regional Director East and Southern Africa
Centre for Multiparty Democracy (CMD)		
Public Affairs Committee (PAC)	Mr. Robert Phiri	Executive Director
National Initiative for Civic Education (NICE)		
Catholic Commission for Justice and Peace (CCJP)	Ms. Tafadzwa Muropa	Capacity Building and Advocacy Advisor
Institute for Policy Interaction	Dr. Nandini Patel	Director
<b>Political parties</b>		
Democratic Progressive Party (DPP)	Dr. Jeane Kalirani	Secretary General
Malawi Congress Party (MCP)	Dr. Jessie Kwabila	Publicity Secretary
	Mr. Gustav Kaliwo	Secretary General
	Mr. Felix Jumbe	Campaigns Director
	Mr. Max Thyolera	Deputy Director of Political Affairs
Peoples Party (PP)	Mr. Kenneth Chitatata Nsonda	Acting National Publicity Secretary
United Democratic Front (UDF)	Mr. Kandi Padambo	Secretary General