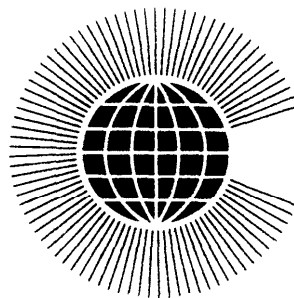


Voting for Democracy

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ELECTION AND DEMOCRACY

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1 What Kind of Election Management Bode

The Malawi Electoral Commission is provided for under section 75 of the Constitution of the Republic. It consists of a Chairman who shall be judge nominated by the Judicial Service Commission and such other members not being less than six , as may be appointed in accordance with an Act of Parliament . There are currently nine members of the Commission, apart from the Chairman who were appointed in terms of section 4 of the Parliamentary and Presidential Elections Act No. 31 of 1993 (the (PPE Act).

According to Section 7 of the PPE Act , the Commission shall be appointed with respect to every general election which takes place at intervals of five years in terms of Section 67 of the Constitution. However , the Constitution provides a term of office of four years for a member from the date of appointment unless re-appointed to a new four year term. A bill, entitled Electoral Commission Bill, 1998 has been published for tabling during the current sitting of the National Assembly. If the bill is enacted, it will make clear the appointment of commissioners, their term of office and terms and conditions.

The Independence of the Commission is provided for under Section 76(4) of the Constitution and Section 8 of the PPE Act. Since under the present arrangement the appointment of the Commission is done by the President without the involvement of other state organs, and since the Commission and every member thereof, for the purpose only of accountability is answerable and shall report directly on the overall fulfillment of the functions of the Commission, the perception in certain quarters, though not justified, is that the Commission is not independent.

The other factor which affects the independence of the Commission is that the Clerk of Parliament and officers subordinate to him serve as election officers and shall be attached to the Commission and act in its service for the conduct of an election. In addition, there is fear that because the Commission gets its funds from the government (Ministry of Finance) for the performance of its functions to conduct free and fair elections, the Commission is not independent enough. Nobody has come up with evidence to prove these fears. However, the Electoral Commission Bill, 1998 has attempted to address these fears.

2. What kind of Elections

Before multi-party politics was re-introduced in Malawi following the referendum of 1993, the election of members of the National Assembly within the one party set up during the past thirty years was based on the first past the post

(FPTP) system. Candidates from the then sole legal political party, the Malawi Congress Party (MCP) who competed in the elections in a constituency and polled the largest number of votes, was declared winner in the election.

When Malawi became a multiparty democracy again in 1993, it adopted the first past the post plurality system during its first multi-party General Election of 1994. This electoral system is not described in the Constitution or in the PPE Act. However, the nearest definition of the electoral system is contained in Section 80(2) of the Constitution which provides that the President shall be elected by a majority of the electorate through direct, universal and equal suffrage. The First Past The Post plurality system or the simple majority system is found in Britain and in most countries historically influenced by her. Under this system members of Parliament theoretically represent constituencies rather than political ideologies. Under the system a candidate has simply to poll more votes than any other candidate in order to win an election. At the national constitutional conference on the provisional Constitution held in Lilongwe in February, 1995, the conference resolved by consensus that Malawi should maintain the First Past the Post electoral system for the both the parliamentary and presidential elections.

Since the 1994 General Election and subsequent re-runs and by-elections have been determined on the basis of the First Past the Post electoral system. The advantage of this system is that it is simple to understand and it is economical to operate. Take for instance, the presidential election of 1994 where voting was made basically on regional lines, if the Constitution had stipulated a minimum per centage of say, 51% for a candidate to win, the country would have difficulties producing a president. The geography and population distribution of Malawi are directly relevant to the workings of the plurality system. Since 1964 Malawi had been divided into three administrative regions (North, Centre and South) and 25 administrative districts . About 90% of Malawians live in rural areas while the rest live in urban centres mostly in the South and the centre. A lot of money would be wasted to determine from which region the president should come.

3. Getting the register right

In terms of part 111 of the Parliamentary and Presidential Elections Act of 1993 every citizen of Malawi residing in Malawi and who on or before the polling day, shall be have attained the age of eighteen years shall be eligible to register as a voter in an election. However, in terms of Section 77(2) a person shall be qualified to be registered as a voter in a constituency if, and shall not be so qualified unless, at the date of the application for registration that person-

- (a) is a citizen of Malawi or if not a citizen, has been ordinarily resident in the Republic for seven years;

(b) has attained the age of eighteen years; and

(c) is ordinarily resident in that constituency or was born there or is employed or carries on a business there.

It should be noted that the Constitution was adopted on the eve of the first multi party General Election in 1994.

Before the Commission conducted the General Election it decided to register voters afresh throughout the country because of the unreliability of the 1993 National Referendum figures due to alleged multiple registration, and the need to introduce a new registration system which would ensure security for the entire electoral process. The objective of registration of voters is to ensure that eligible citizens vote only once during an election. To achieve this, the registration of voters depends on the completion of demarcation of constituency boundaries, and identification and gazetting of registration centres, dissemination of information on registration centres, preparation of materials such as stamps pads, registers etc.

The registration of voters in Malawi is voluntary for resident Malawi citizens aged eighteen years and above. It is not compulsory and this means that there should be intense campaign for public awareness of the importance of a citizen to register and to cast his vote in an election. It is evident from by-elections so far held since the General elections that most people do not understand why they should vote. They think their task had been accomplished with the change of government. Registration of voters is the prerequisite to winning most elections since it is registration which determines, with effective civic education, who is going to vote on election day. It is therefore, not only the task of the Electoral Commission alone, but the political parties and the civil society to participate in civic educating the populace to achieve meaningful participation of the voters in the voting process.

4. Civil Society and The Electoral Process

The Electoral Commission is mandated to organise, supervise and conduct free and fair elections. Under the Republic Constitution, the Commission must conduct General Elections every five years within sixty days following dissolution of the National Assembly. The Commission also conducts by-elections from time to time whenever vacancies exist in the National Assembly and are notified in the Gazette by the Speaker. Under the Local Government Elections Act of 1996 the Commission is empowered to conduct local authority elections when complementary legislation is put in place.

To ensure that the elections are free and fair, there are arrangements put

in place. The electoral law requires the Commission to promote through the media and other appropriate and effective means the civic education of the citizens concerning elections. Whenever the Commission decides to hold an election, it makes an announcement on the radio and through the print media to that effect. The print media is expected to make objective reporting but sometimes it does not because of partisan interest. In order for the Commission to be transparent in its functions there is need to develop a close relationship with the media through its Chairperson or the Press Officer but more often than not statements from the Commission have been distorted to suit individual papers which have close affiliation with political parties.

Political parties being the main players in the electoral process, are involved right from the beginning when an election has been announced. The political party leaders and campaign directors are invited to a briefing meeting with the Commission where they are briefed on electoral process covering campaigning, registration of voters, nomination, complaint procedure, electoral offences etc and to solicit their cooperation to ensure that the election is free and fair. The Commission believes that such meetings are useful and should be held often even when there is no election in sight. There should be constant dialogue with political parties to explain the Commission activities and to hear the views of political parties and be able to respond in a frank and objective manner in order to allay some of the imagined fears which political parties may have.

The aim of political parties should be to organise their supporters by offering alternative programmes in the form of manifesto in order to win support from the electorate which will be turned into votes on election day. In order to compete for votes the political parties are supposed to work like good salesmen by convincing voters that their party is the best by both word and deed.

The NGO's also play a part in "the electoral process in Malawi". The Public Affairs Committee (PAC) composed of the main Christian Churches in Malawi and the Moslem Community plays a non partisan role in the electoral process. It observes the elections and submits its report to the governing body and to the Electoral Commission. PAC is also very useful in disseminating voter civic education messages to the grassroot level through the church organisation. When voter civic education messages have been developed, the NGO's are advised to refer them to the Electoral Commission to make sure that the messages are free of partisan bias and that they do not contravene the electoral law.

The PPE Act provides for the presence of international observers who are accredited by the Electoral Commission. They are allowed unimpeded access to all election events and to observe all aspects of civic education programmes, registration of voters, nomination of candidates, the campaign, voting and the counting of the votes at all stages. They are free to communicate with the

Commission and exchange information. They are required to respect the Constitution and the electoral laws of Malawi. Diplomats accredited to Malawi who are designated and recognized as international observers exercise their functions as such international observers.

5. Training and Technology

Given the decentralised nature of the election process and the large number of officials involved, training is a critical issue for all aspects of electoral administration. Section 5(i) of the PPE Act requires the Electoral Commission to promote voter civic education of the citizens. This is a broad mandate, encompassing education not only on the mechanics of voting, but also broader issues of democracy and civil rights. Training programmes must be developed in a number of areas.

Electoral Commissioners and senior members of staff of the Commission need training. A training needs assessment should be conducted accordingly. The training needs assessment should take account of the mandate of the Commission, and assess present knowledge and experience, and problems likely to be encountered in the future given the likely responsibilities and duties of the Commission. Training should include any or all of the following:

- in house workshops for discussing problems and defining solutions;

- local training courses conducted by international experts in the field of elections;

- study tours for Commissioners and members of staff in the region (Africa) and abroad to acquaint them with the electoral systems of others;

- short-term attachments to foreign organisations in the field of elections;

- participation in electoral processes of other countries as observers;

- networking in the region by participating in regional electoral organisations

The effective training of polling staff is particularly important. The Commission should have direct responsibility for the training of polling staff up to the returning officer. The training of returning officers should be in relation to the management of elections at the constituency level, and should be undertaken in

accordance with guidelines established by the Commission. Such training might be conducted with technical assistance support, but the Commission should still take direct responsibility for it. The Commission should also be directly responsible for production of all training materials required. A Training Section within the Commission's permanent independent secretariat would facilitate such training.

The training of polling staff should be assigned to returning officers with the support of other district election officers. The training should be closely supervised by the Electoral Commission which would be fully responsible for the production of all training materials required.

The training of candidates on the electoral process should be the direct responsibility of the Electoral Commission, though technical assistance support might be requested.

The training of security personnel should be done by the Commission. The training should be phased. The first phase of training should focus on offences under the electoral law (the PPE Act). This should take place following the publication of an order that an election will take place. The second and last phase of the training should focus on the role of the security forces in relation to the polling process and the declaration of the results of the election.

6. Election Day

The success of the election day will depend on proper planning starting with the budget and the calendar of activities to be undertaken in accordance with the provision of the electoral law. In addition, voters must be properly briefed on the polling processes. Everything must be done in a transparent accurate and non partisan manner. The officials must be trained to understand what is expected of them. The following must be taken into account before polling:

that candidates have been properly nominated

that there are adequate supplies of election materials in right quantities

that the key to the ballot box is available and that the box can be locked properly

that correct ballot papers are available

that manual voter registers are available

that computerised voter registers are available

that complaints log books are available

that form of result of poll are available

The right of a person in an election shall be exercised individually by him physically, and that voting shall be by secret ballot. A voter shall be entitled to cast his vote only once and one person shall have one vote. For the purpose of voting, each constituency in Malawi is divided into registration centres where during voting they become polling centres. During the polling process accredited observers are allowed to observe the process. At the end of voting votes are counted at each centre in the presence of party monitors and representatives and if possible independent accredited observers. The results are then delivered at the District Commissioner's office where results from all the centres in the constituency are compiled and announced publicly on the spot before submitted to the Electoral Commission for formal determination and announcement of the results. In the case of a General Election International Observers will have made their declaration whether or not the election was free and fair.

7. **After the Event**

So many things take place during the electoral process which will have an effect on the result of an election. By section 97 of the PPE Act the Commission is required to take a decision on any matter which has been subject of complaint and shall examine the votes which have been classified as null and void and may affirm or correct the determination therefore at the polling stations and the offices of District Commissioners. By Section 113, any complaint submitted in writing alleging any irregularity at any stage if not satisfactorily resolved at lower level of authority, shall be examined and decided on by the the Commission and where the irregularity is confirmed the Commission shall take necessary action to correct the irregularity and the effects thereof.

If the complainant is not satisfied with the decision of the Commission, confirming or rejecting the existence of an irregularity, the complainant shall by a petition appeal to the High Court specifying clearly the order being sought. The determination of the High Court is final on such complaints. The High Court shall have power to direct scrutiny and recount of votes if it is satisfied, during proceedings on an election petition, that such scrutiny and recount are desirable. For that reason it is provided that ballot papers be kept for twelve months before they are destroyed.

Although these procedures are straight forward, they have been interpreted variously by the political actors. Some parties have chosen to communicate to the Commission in writing through more than one officer in the

party organisation and the reply to one by the Commission has not been passed to the other and this has affected the integrity of the election process in some instances. In some cases this has resulted in going to court to seek an injunction against the Commission, stopping the election because to proceed would not be free and fair to other political parties. However, Section 114(3) of the PPE Act seems to suggest that the electoral process can be challenged after the Commission has determined an election result.

References:

1. The Constitution of the Republic of Malawi
2. The Parliamentary and Presidential Elections Act 1993
3. The Electoral Commission Bill, 1998
4. The Parliamentary and Presidential Elections (Amendment Bill, 1997)
5. Report on Workshop for Political Parties
6. Report on the National Constitutional Conference on the Provisional Constitution
7. Commission Reports