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EISA ELECTION OBSERVER MISSION REPORT

MALAWI



PRESIDENTIAL
AND PARLIAMENTARY ELECTIONS
19 MAY 2009



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P O Box 740
Auckland Park
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Tel: 27 11 482 5495
Fax: 27 11 482 6163
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www.eisa.org.za

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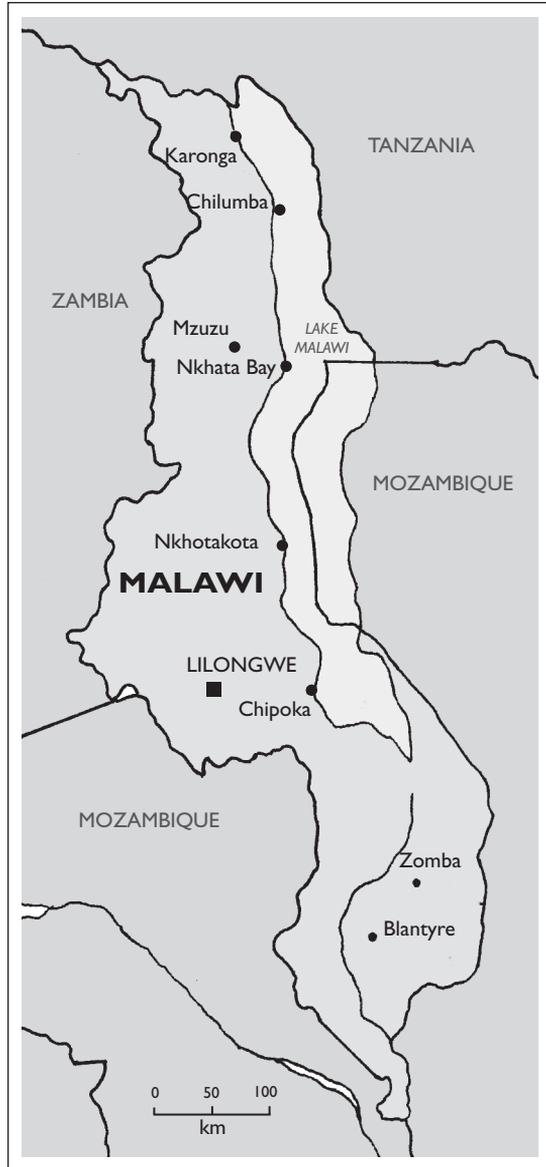
EISA strives for excellence in the promotion of credible elections, participatory democracy, human rights culture, and the strengthening of governance institutions for the consolidation of democracy in Africa.

EISA Election Observer Mission Report, No. 30

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Abbreviations

Aford	Alliance For Democracy
CCJP	Catholic Commission for Justice and Peace
Code	Congress of Democrats
Comesa	Common Market for Eastern and Southern Africa
CSO	Civil Society Organisation
DPP	Democratic Progressive Party
EISA	Electoral Institute of Southern Africa
FBO	Faith-based Organisation
Macra	Malawi Communications Regulatory Authority
Mafunde	Malawi Forum for Unity and Development
MBC	Malawi Broadcasting Corporation
MCP	Malawi Congress Party
MEC	Malawi Electoral Commission
MESN	Malawi Electoral Support Network
MP	Member of Parliament
MPLC	Multiparty Liaison Committee
MPP	Malawi People's Party
Narc	New Rainbow Coalition
Necof	National Elections Consultative Forum
NGO	Non-governmental Organisation
Nice	National Initiative for Civic Education
PAC	Public Affairs Committee
PEMMO	Principles for Election Management, Monitoring and Observation
Petra	People's Transformation Party
PPEA	Parliamentary and Presidential Elections Act
RP	Republican Party
SADC	Southern African Development Community
TVM	Television Malawi
UDF	United Democratic Front
UNDP	United Nations Development Programme

EXECUTIVE SUMMARY

The 19 May 2009 Malawi presidential and parliamentary elections were held as part of regular elections conducted every five years in line with the country's Constitution. Following an invitation from the Malawi Electoral Commission (MEC) to observe these elections, EISA deployed a nine-member continental observer mission to Malawi from 12 to 22 May 2009. The mission was guided in its observation of the electoral process by the Principles of Election Management, Monitoring and Observation (PEMMO) in the Southern African Development Community (SADC) region.

The mission affirmed that the legal framework for elections in Malawi is generally conducive to the holding of credible elections. During the pre-election phase, the mission observed a generally peaceful campaign in all three regions of the country. However, the use of hate speech by political parties, evident during the campaign, was deplored by the mission. A few isolated cases of violence were reported but these did not seem to have affected the overall peacefulness of the process and voters' freedom of choice. The mission observed that the governing Democratic Progressive Party (DPP) had significantly more campaign material than other political parties. The mission received several reports of allegations of the illegal use of state resources for campaign purposes by the incumbent party. Although it took these allegations seriously, it was not in a position to verify them. The mission observed that Television Malawi and the Malawi Broadcasting Corporation failed to provide equitable access to all parties, giving excessive coverage to the DPP and its presidential candidate, Bingu wa Mutharika.

According to the mission, the MEC displayed a degree of transparency in the management of the electoral process, thus winning the confidence of the majority of the electoral stakeholders that the mission interacted with. The mission commended the MEC for establishing multiparty liaison committees at district level throughout the country. These committees enabled the electoral commission and the contesting political parties to consult each other on an ongoing basis and address any problems that arose, minimising conflict in the electoral process.

The MEC acknowledged to the mission that its greatest challenge in organising the elections was the production of an accurate and comprehensive electronic voters' register. Anticipating hitches on voting day and attempting to avoid disenfranchising voters, the MEC ensured that each station had two registers, the certified computerised voters' register and a manual reference register to counter the errors that were detected in the computerised roll after voter registration was completed and the voters' roll displayed for inspection. The MEC officials, however, were not consistent in the manner in which they handled people who had voter's cards, but could not find their names on either list. In some cases they were allowed to vote and in other cases they were turned away.

Polling day was generally smooth and peaceful, and the secrecy of the ballot was largely ensured. Voters were calm and expressed much enthusiasm in casting their ballots. A high turnout of 78 per cent was registered. The mission noted the limited number of domestic observers in the areas visited by the EISA teams on polling day. The MEC announced provisional results as they came in from the constituencies and declared the presidential results on 22 May 2009, a great improvement compared to the 1999 and 2004 elections, which were also observed by EISA. The elections saw the re-election of President Bingu wa Mutharika of the DPP, who won the race with 66 per cent of the votes, while his party garnered 59 per cent of the votes in the parliamentary elections.

Overall, the mission's assessment was that the 2009 presidential and parliamentary elections were held in conformity with the PEMMO. However, the mission noted areas in which the electoral process could be improved and has, in this report, made recommendations on a number of them, including the appointment of electoral commissioners, elections management, conflict management, state media, intra-party democracy and domestic election observation.

TERMS OF REFERENCE

These Terms of Reference describe the roles and responsibilities of the EISA Election Observer Mission during deployment for the 2009 presidential and parliamentary elections in Malawi. It provides a summary of the mission's objectives and outlines the activities of the international observers.

All EISA observers were invited guests in Malawi and the elections and related processes were for the people of Malawi to conduct. As observers, members of the EISA mission were expected to support and assess the electoral process, but not to interfere. EISA believes that international observers can play a critically important supportive role by helping to enhance the credibility of the elections, reinforce the work of domestic observer groups and eventually increase popular confidence in the entire electoral process.

The overall objective of the mission, in line with EISA's vision, was to promote credible elections and democratic governance. The specific objectives of the mission were:

- To assess whether the conditions existed for the conduct of elections that reflect the will of the people of Malawi;
- To assess whether the elections were conducted in accordance with the electoral framework of Malawi; and
- To assess whether the elections met the benchmarks set out in the PEMMO, developed under the auspices of EISA and the Electoral Commissions Forum (ECF) of SADC countries.

In order to achieve the above, the mission undertook the following activities:

- Obtained information on the electoral process from the Malawi Electoral Commission;
- Met with political parties, civil society organisations (CSOs) and other stakeholders to acquaint itself with the electoral environment;
- Observed all aspects of the elections in the areas that it visited;

- Assessed whether all registered voters had easy access to voting stations and whether or not they were able to exercise their vote in freedom and secrecy;
- Assessed the logistical arrangements to confirm if all necessary materials were available for the voting and counting to take place efficiently;
- Found out whether all competing parties and candidates were given an equal opportunity to participate in the elections; and
- Reported accurately on its observations and referred any irregularities to the relevant authorities.

THE EISA APPROACH TO ELECTION OBSERVATION

EISA strives for excellence in the promotion of credible elections, participatory democracy, a human rights culture and the strengthening of governance institutions for the consolidation of democracy in Africa. In this regard, EISA undertakes applied research, capacity building, advocacy and other targeted interventions. It is within this context that EISA fields election observer missions to assess the context and conduct of elections in the SADC region and the rest of the continent. Since November 2003, EISA has promoted the PEMMO election benchmarks in the SADC region. This tool informed the work of the EISA Election Observer Mission to the 2009 Malawi elections.

EISA deployed a team of nine short-term observers, led by Mr Denis Kadima, EISA's Executive Director, who arrived in Blantyre on 12 May 2009 (see Appendix I for the composition of the team). Observers' briefings took place on the following two days. Observers were acquainted with their terms of reference, observation practices and logistical matters, and committed themselves to the Code of Conduct for International Election Observers (see Appendix II) extracted from the Declaration of Principles for International Election Observation, which has been endorsed by over 35 organisations, including EISA. The first part of the briefings dealt with the principles, standards and practices of election observation. The second part consisted of briefings from a range of stakeholders, including the Malawi Electoral Commission, political parties, CSOs and the media (see Appendix III for detailed programme). The Arrival Statement was delivered at a press conference on 14 May 2009 (see Appendix IV).

The mission was divided into teams and deployed in all three regions of Malawi. Two teams were deployed in Blantyre to cover the Southern region, one team was deployed in Lilongwe to cover the Central region and one team was deployed in Mzuzu to cover the Northern region. The teams assessed the pre-election phase in the respective regions and met various electoral stakeholders. On voting day, the teams visited polling stations throughout the day and later observed vote counting. A total of 46 polling stations were visited.

The teams converged in Blantyre on 20 May 2009 and held a debriefing session. The following day, the mission released an Interim Statement covering its observation findings up to that point (see Appendix V) at a press conference. Newspaper clippings of media articles covering the EISA mission are attached in Appendix VI.

This report provides the mission's full account of the pre-election, election day and post-election phases of the 2009 Malawi presidential and parliamentary elections.

1

Historical and Political Overview



- Political background
- Election trends

EISA has observed all presidential and parliamentary elections held in Malawi since 1999. This section positions the 2009 elections by providing a brief background to the major features of Malawi's political and electoral history.

1.1 POLITICAL BACKGROUND

Malawi became independent from British colonial rule in 1964; between 1891 and 1964 it was known as the British Protectorate of Nyasaland. Malawi is a unitary republic and its legal system is based on English common law. The country was a multiparty state both before independence and soon after the collapse of colonial rule. Some of the early political parties that existed and operated in the country included the United Federal Party, the Christian Democratic Party and the Congress Liberation Party. However, most of the political parties that had contested the country's first multiparty elections in 1961 disintegrated when it became clear that the Malawi Congress Party (MCP) would win most of the parliamentary seats, except those reserved for the minority white population. By 1966 all the early parties, except the MCP, had ceased to exist.

Malawi had become a one-party state and remained so until 1993 (Maliyamkono & Kanyongolo 2003). The MCP under Dr Hastings Kamuzu Banda, seeking to consolidate its grip on power, in 1966 declared the country a one-party state. In 1971, the MCP instituted life presidency for Banda, which became a feature of the one-party state and MCP regime for the

next 30 years. All opposition parties were outlawed and Banda's political opponents were arrested, detained without trial, unfairly imprisoned, exiled or died mysteriously (Khembo 2005).

Malawi returned to multipartyism in 1993, following a national referendum in which Malawians voted overwhelmingly for a return to a multiparty system of government. The passing of the Registration and Regulation of Political Parties Act in 1993 meant that political parties were free to be constituted and to register. By 1994 numerous new parties were operational in the country. More parties continued to emerge in subsequent elections either as entirely new formations or as breakaway parties. By the 2004 elections, the party system had shifted from a state of relative stability in 1994 to one of fragmentation.

In 2002, an attempt by the then president, Bakili Muluzi, and his allies to extend the presidential term of office by altering section 83 (3) of the Constitution through the Open/Third Term Bill failed to sail through Parliament due to public outrage and political divisions set off by this campaign (EISA, 2004). The issue not only caused deep controversy among political parties and coalitions but also within Muluzi's United Democratic Front (UDF). Following the defeat in Parliament, Muluzi proceeded to handpick two unpopular choices, Dr Bingu wa Mutharika and Dr Cassim Chilumpha, as the UDF's presidential candidate and running mate respectively for the 2004 elections, a move that furthered discontent in the party and led to the resignation of senior party figures and eventually to a split in the party.

The UDF conflict continued to reverberate in the post-election period – after Mutharika won the presidency – and found its way into Parliament. Barely a year after the elections, political bickering started between the president and Muluzi, the former president and chairperson of the UDF. Sparked by Mutharika's anti-corruption campaign which targeted the former Muluzi administration, the bickering raged on for months and led to Muluzi and others being charged by the Anti-Corruption Bureau. Mutharika then broke away from the UDF to form his own party, the Democratic Progressive Party (DPP). UDF parliamentarians unsuccessfully initiated an impeachment motion, because Mutharika had left the party after it had sponsored him in

the 2004 elections. By-elections held in 2005 to fill constituencies left vacant after the deaths of five MPs and the conviction of another MP gave the DPP its first parliamentary seats when it won all six polls, changing the configuration of political parties in Parliament.

Mutharika was able to orchestrate the formation of the DPP and gain support for it even with Malawi's legislation on floor-crossing, which has been contentious to the extent of paralysing parliamentary business. According to section 65 of the Constitution, when a member of Parliament (MP) voluntarily ceases to be a member of the political party that sponsored his/her election and joins another party that is represented in Parliament, that constitutes floor-crossing and the speaker is required to declare the seat vacant. Section 65, however, is unclear on floor-crossing by independent candidates. A constitutional amendment in 2001 changed section 65 to extend the application of that provision to MPs who 'join any other political party (not represented in the National Assembly) or association or organisation whose objectives or activities are political in nature'.

However, in 2003, the High Court declared the 2001 amendment unconstitutional (Malawi Law Commission 2006). With Parliament embroiled in disagreements over the invocation of section 65 by the speaker and, pending a court judgement on the matter, Mutharika was able to form his new party without any repercussions. Even more parties emerged between 2005 and 2008, bringing the total of registered political parties in Malawi to 40. The latest batch of parties formed ahead of the 2009 polls alongside the DPP included the United Democratic Party (UDP), New Republican Party (NRP), Malawi People's Party (MPP), New Rainbow Coalition (Narc) and Congress of Democrats (Code).

Malawi is divided into three administrative regions: the Northern, the Central and the Southern regions. These are then further divided into 26 districts – five in the North, nine in the Central region and 12 in the South. There are local government structures at the district level and the major stakeholders are the district commissioners, the traditional authorities, the chiefs, the mayors, the councillors and group village headmen. The three regions are unevenly divided into 193 constituencies. The Northern region has 33 constituencies, the Central region 73 and the Southern region 87. The

country has an estimated 14.7 million inhabitants (UNDP 2009). The majority of Malawi's population (approximately 80%) is rural, although urbanisation is a growing trend.

1.2 ELECTION TRENDS

After the 1993 referendum, the process of democratisation in Malawi gained momentum. Presidential and parliamentary elections were held in 1994. The parliamentary elections were won by the UDF, while Bakili Muluzi, at that time a former businessman and politician, led a coalition of several parties and was elected president. The MCP became the main opposition in Parliament. Muluzi was then re-elected for a second term in the 1999 elections and his UDF party had a majority in Parliament.

In 2000, local government elections were held, followed by presidential and parliamentary elections in 2004. These saw the election of a new president, Bingu wa Mutharika, and the entrance of new political parties into Parliament. In 2009, former president Bakili Muluzi once again attempted to run for a third term, arguing that the two-term presidential term limit only applied to consecutive terms. However, the electoral commission barred him from doing so, arguing that the spirit of the law was meant to prevent taking Malawi back to the era of life presidents. Muluzi took the matter to the High Court and the case proceeded as election arrangements and campaigns were underway. A ruling on the eve of the 2009 elections (16 May 2009) barred him from contesting.

The distribution of parliamentary seats following all parliamentary elections held between 1994 and 2004 suggests regional political preferences among voters, with the main political parties, the Alliance for Democracy (Aford), the MCP and the UDF winning the most seats in the Northern, Central and Southern regions respectively (Khembo & Mcheka 2005). However, as this report will reveal, these regional barriers and strongholds of the past were broken in the 2009 elections in both the presidential and parliamentary elections. In addition, voting patterns also changed in 2009. Whereas in the 2004 elections, the then ruling party, the UDF, was voted back on a minority ticket by certain regions, the 2009 electoral outcome was produced by a nationwide majority vote. Finally, despite the proliferation of political parties in the country, the results of the 2009 elections suggest a return to the era of a few dominant political parties.

2

Constitutional, Legal and Institutional Framework



- The Constitution
- The Malawi Electoral Commission Act
- The Parliamentary and Presidential Elections Act
- The Political Parties Registration and Regulation Act
- Electoral System
- Election Administration

The Constitution of Malawi, the Malawi Electoral Commission Act of 1998, the Parliamentary and Presidential Elections Act (PPEA) of 1993 and the Political Parties Registration and Regulation Act of 1993 provide the legal framework for elections in Malawi. The EISA observer mission was of the view that this legal framework is generally conducive to the holding of credible elections. The Malawi Electoral Commission (MEC) is the institution charged with the conduct of elections.

2.1 THE CONSTITUTION

In an effort to close the book on the despotic Banda era, the 1994 Constitution, though hurriedly crafted, has curtailed the absolute powers which were vested in the president under the previous Constitution of 1966. It enshrines multiparty democracy and contains a bill of rights, but retains the death penalty.

The 1994 Constitution is specific about the holding of presidential and parliamentary elections on a particular day every five years (Ng'ong'ola 2002). Section 67 (1) of the Constitution of Malawi states that 'Parliament stands dissolved on 20 March in the fifth year after its election, and the general elections for the next National Assembly must take place on the Tuesday of

the third week of May that year'. A general election shall be held within 60 days of dissolution of the National Assembly. In line with the Constitution, the 2009 presidential and parliamentary elections were held on 19 May 2009.

Section 75 of the Constitution provides for the establishment of an electoral commission that is independent of any external authority. The High Court has the right of judicial review over the commission to ensure that it acts in accordance with the Constitution and Acts of Parliament. The National Assembly has the power to confirm constituency boundaries, but it is not empowered to alter them, except upon recommendation of the electoral commission.

2.2 THE MALAWI ELECTORAL COMMISSION ACT

The Malawi Electoral Commission Act of 1998 spells out the powers and functions of the MEC and provides for the appointment of members of the commission and the establishment of a Secretariat of the MEC and related election matters.

The Act establishes the independence of the MEC and stipulates that the members must perform the functions and exercise their powers independently of interference from any public office, organ of the government, political party, candidate, and person or organisation.

The MEC, according to the Act, exercises general direction and supervision over the conduct of every election and also has specific functions, to:

- Determine the number of constituencies for the purposes of elections;
- Undertake or supervise the demarcation of boundaries of constituencies;
- Undertake 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.

2.3 THE PARLIAMENTARY AND PRESIDENTIAL ELECTIONS ACT

The Parliamentary and Presidential Elections Act of 1993 regulates the contestation of elections and by-elections. Its provisions touch on several election actors including candidates, the MEC, political parties, voters and international observers.

The law permits both party candidates and independent candidates. Nomination of candidates by political parties for the National Assembly is done through party primary elections. Nomination requires completion and submission of a nomination paper in the prescribed format signed by a minimum of ten registered voters from the constituency the candidate intends to contest, supporting documents and a fee set by the MEC. To be eligible to contest the presidency, the candidate must be a Malawian citizen and must be a minimum of 35 years of age. Presidential candidates can be nominated from political parties or they can be independent contestants. No candidate can run for more than two consecutive terms.

The PPEA mandates the MEC to handle the electoral process fairly, equitably and in a transparent and accountable manner. The Act also gives the MEC a clear mandate and powers to deal with electoral irregularities and challenges.

Sections 56 to 66 prescribe the rules governing campaigning by political parties and candidates. The Act provides for the MEC to come up with a code of conduct that commits political parties and their agents to non-coercive campaigns. This includes a prohibition on parties preventing other parties' access to voters. The legislation compels parties to refrain from using language that can incite violence and intimidate voters or other political parties, including any inducement to voters through means other than political appeal. Non-compliance or breach of the code is punishable

by a range of penalties to be enforced either by the normal court system or the electoral court. Every political party and representative member is guaranteed complete and unhindered freedom of expression and information in the exercise of the right to campaign.

2.4 THE POLITICAL PARTIES REGISTRATION AND REGULATION ACT

The Political Parties Registration and Regulation Act of 1993 provides the regulatory framework for political parties and governs the behaviour of political parties in elections. Political parties in Malawi have mushroomed since the early 1990s. They are required to register with the registrar general in the Ministry of Justice. There were about 40 registered political parties in 2008. The Act requires that a party seeking registration should consist of no fewer than 100 members and should submit its application, together with the party's constitution and manifesto. It is easy to form political parties in Malawi. Political parties are not penalised or deregistered for violation of their manifestos or for indulging in undemocratic and unconstitutional behaviour (Patel 2005).

2.5 ELECTORAL SYSTEM

Malawi, being a former British colony, inherited a number of British practices and conventions, including the electoral system, which is the first-past-the-post system. The president is directly elected concurrently with Parliament by a plurality.

The 1994 Constitution established a presidential form of government based on the principle of the separation of powers. The term of office of the president is five years and a president may seek re-election for a second five-year term. The head of state is the president and is elected by the people. The president is also the head of government.

The National Assembly of Malawi has 193 seats (increased from 177 in 1994), elected by direct universal adult suffrage for a term of five years. Cabinet ministers who are not elected MPs also sit in the National Assembly. The system provides for independent candidates.

2.6 ELECTION ADMINISTRATION

Malawi's electoral management body has a combination of supervisory,

administrative and adjudication functions in relation to all electoral processes. In discharging its duties, the MEC has experienced a series of setbacks and has been subjected to political turmoil, transitions and internal reform.

Members of the commission are appointed in accordance with the procedure laid down in section 4(1) of the Electoral Commission Act No 11 of 1998, which states that 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.

The chairperson of the commission is a judge, who is nominated by the Judicial Service Commission. The composition of the commission reflects the presence and participation of the different political parties represented in Parliament. The MEC appointed in 2008 consisted of nine members. The commissioners are assisted by a Secretariat headed by the chief elections officer, who is appointed by the MEC and is answerable to it.

The first MEC – appointed by Banda in December 1993 and chaired by Justice Anastasia Msosa – successfully managed the electoral process through its administrative efficiency and effectiveness, to such an extent that the MCP peacefully accepted defeat in the 1994 elections. However, this MEC did not last: Muluzi, the new head of state and government, disbanded it in December 1997. The disbanded MEC contested its dissolution in the High Court, but lost the case. Muluzi appointed a new MEC in July 1998, led by Justice William Hanjahanja, who left office shortly before the 1999 elections. Hanjahanja failed to run the elections effectively and his widely reported biased and partisan conduct prompted civil society pressure for his resignation (Ott & Patel 2000). The MEC once again underwent reform, notably the change of its top leadership, when Muluzi appointed Justice James Kalaile as the commission's chairperson. Kalaile led the MEC through the 1999 and 2004 elections, both of which were contested in the courts. Kalaile was replaced by Justice Msosa, who took up the position of MEC chairperson for a second time. She was again sworn in as head of the MEC ahead of the country's 2009 general elections.

The MEC faced a delay in commencing its preparations for the 2009 presidential and parliamentary elections when the appointment of new commissioners by the president in 2008 was rejected by opposition parties, which claimed they had not been consulted. They challenged the matter in court, but the High Court ruled that the appointments were legal. When it eventually became operational, the MEC worked tirelessly to put in place measures to address the shortcomings of the 2004 elections, including transforming itself to become a transparent, accountable, effective and independent body that enjoys public confidence and trust. This objective was largely met. The MEC, the government of Malawi and the United Nations Development Programme (UNDP), through a basket of contributions from various donors, partnered to fund the 2009 elections. The MEC's initial budget was five billion Malawian kwacha (US\$35-million). This was then revised upwards to 6 581 210 945 Malawian kwacha (US\$46.8-million).

The EISA observer mission observed that the MEC displayed a degree of transparency in the management of the electoral process, thus winning the confidence of the majority of the electoral stakeholders that the mission came into contact with.

3

Conduct and Results



3.1 THE PRE-ELECTION PHASE

3.1.1 Setting the election date

The timing of elections in Malawi is fixed. The Constitution of Malawi is explicit about the dissolution of Parliament ahead of a general election and the date for holding such an election every five years. After the president dissolved Parliament on 20 March 2009, elections had to be held within 60 days and on the third Tuesday in May. The 2009 presidential and parliamentary elections were therefore set for 19 May 2009.

3.1.2 Voter registration and voters' register

Every Malawian citizen who is resident in the country, has attained the age of 18 and is ordinarily resident in that constituency, or was born there, or is employed or conducts a business there, is eligible to vote, according to the PPEA. The Constitution extends the right to register as a voter to those non-citizens who have been ordinarily resident in the republic for seven years. The mission gathered that the MEC had conducted a massive voters' register overhaul in 2008, an exercise which aimed to produce an accurate, comprehensive and inclusive voters' register. Voter registration for the 2009 elections commenced in August 2008 and ended in November 2008. Due to resource limitations, the exercise was conducted in six phases of two weeks each during this period.

At an EISA election observer mission briefing meeting, the MEC acknowledged that during the exercise it was faced with a number of logistical and technical challenges that included faulty equipment. The MEC representatives explained at the meeting that when they opened the voters' register for inspection, they recognised irregularities such as missing names, duplicated names, incorrect placement of pictures and names that had not been transferred. To address these problems the MEC provided a reference voters' register to complement the electronic one used on polling day. The voter registration exercise was generally smoother than in previous elections and the mission learnt that 5 930 949 voters were registered to vote at the end of the exercise. The MEC devoted more than half the election budget to voter registration and the voters' register and later noted that the preparation of the voters' register was the most challenging task in its preparations for the presidential and parliamentary elections.

3.1.3 Nomination of candidates

By law, independent and political party candidates can contest both parliamentary and presidential elections. Party nominations for the National Assembly are to be done through party primary elections. Nomination papers, supporting documents and nomination fees are submitted to the MEC. Presidential candidates must be Malawian citizens of no less than 35 years of age. Candidates are barred from running for more than two consecutive terms.

The selection of candidates in political parties and alliances in Malawi has been a divisive enterprise that has often resulted in resignations and defections (Kadima 2006). There were approximately 40 registered political parties in the run-up to the 2009 elections. The mission observed a lack of commitment to internal democracy within political parties. This was most visible in the choice of office bearers and the selection of party candidates. The common practice of handpicking and imposing candidates in the elections has created mistrust and loss of confidence between political parties and the electorate (Khembo & Mcheka 2005).

Furthermore, the 2009 nomination process was problematic due to the structural shortfalls in administrative channels of communication and poor organisational lines of authority and command; unverified party

membership; lack of resources and infrastructure; and a culture of centralised rule mostly carried forward by political leaders who had been in politics since the one-party state, and who occupied prominent positions in the former MCP regime. This has affected the institutionalisation of parties, leading to an unstable party system characterised by frequent fragmentation and an increasing number of candidates opting to run for election as independent candidates.

The undemocratic manner in which nominations were conducted in 2009 was one of the factors that led to defections and the formation of new parties. For example, Loveness Gondwe, Malawi's first female presidential candidate, formed the Narc party after Aford, which she had represented since 1994, refused to endorse her as its candidate.

Former president Muluzi (1994-2004), who was barred from contesting the presidential elections for a third time, entered into an alliance with the MCP in support of the latter's presidential candidate, John Tembo. The DPP entered into an alliance with the People's Progressive Movement (PPM) to support the DPP presidential candidate, Bingu wa Mutharika.

The nomination fees set by the MEC were increased to the Malawian kwacha equivalent of US\$750, thereby effectively barring those who did not have their own funding or funding from their parties. Candidates who relied on their parties to sponsor their candidacies were at the mercy of influential party leaders who fund the party and therefore have a substantial voice in the choice of candidates.

Although political parties included the promotion of gender equality in their manifestos, no political party had a well articulated and comprehensive gender policy within its structures to encourage women to participate in politics. There were no quotas or reserved seats for women in the party nominations.

For the first time in Malawi electoral history, 2009 witnessed a female presidential candidate, a female running mate for the DPP presidential candidate and the highest ever number of women parliamentary candidates. The number of candidates for the 2009 parliamentary elections was given

as 1 165 – and more than 220 were women. There were seven presidential candidates, as shown in Table 1.

Table 1
Presidential candidates, 2009 elections

Candidate	Political party
Bingu wa Mutharika	DPP
Dindi Nyasulu	Aford
James Nyondo	Independent candidate
John Tembo	MCP
Kamuzu Chibambo	Petra
Loveness Gondwe	Narc
Stanley Masauli	RP

Source: Malawi Electoral Commission 2009

3.1.4 Voter and civic education

While the Electoral Act provides that the responsibility for civic and voter education rests with the MEC, political parties and civil society organisations (CSOs) also conduct civic and voter education programmes. Non-governmental organisations (NGOs) and faith-based organisations (FBOs) played a significant role in the delivery of voter and civic education, primarily through the National Initiative for Civic Education (Nice), the Public Affairs Committee (PAC) and its affiliate, the Catholic Commission for Justice and Peace (CCJP).

The EISA mission gathered that there was a delay in the process of carrying out voter and civic education programmes, an observation it has made in previous elections. The mission learnt that more than 70 CSOs were accredited by the MEC to conduct voter and civic education. Constituencies were allocated to each CSO to ensure that all areas of the country would be covered. However, only 35 CSOs received funding from the United Nations Development Programme basket fund. Once again, the funding was disbursed very late and the CSOs felt that the reporting mechanisms put in place were burdensome.

3.1.5 Media access and coverage

The electronic and print media coverage of the 2009 electoral campaigns in Malawi was generally extensive. However, by not providing fair coverage to all contesting parties and candidates, the media – particularly the state-owned media – failed to provide a level playing field. Concerns about unbalanced media coverage and the unfair use of the state media, namely the Malawi Broadcasting Corporation (MBC) and Malawi Television (TVM), were once again raised by electoral stakeholders as they were in the 1999 and 2004 elections.

The mission observed that TVM and the MBC failed to provide equitable access to all parties. Their coverage excessively favoured the DPP. According to the Malawi Communications Regulatory Authority's (Macra) weekly reports, MBC and TVM favoured the DPP, giving it 93 per cent and 96 per cent coverage respectively, on average. The Independent Media Monitoring Unit Report of the MEC covering the period January to April 2009 found that public television and radio, as well as Joy Radio (owned by the UDF's Muluzi), had operated on the assumption that ownership or control of the airwaves gave them the right to use the resources virtually exclusively for the benefit of one or other party. According to the MEC report, Zodiak BS, Capital FM, Star Radio and MIJ FM radio stations and *The Nation* and *Daily Times* newspapers lived up to the principles of balanced, fair journalism as set out in the media code of conduct that they signed. The MEC once again accused the state-owned media of bias and of not abiding by the code of conduct. The MEC chairperson criticised the state media for failing to level the playing field, adding that the MEC's hands were tied in dealing with the situation as the law does not provide it with any significant power (see *The Nation* 19 May 2009).

3.1.6 Campaign process

The right to campaign is articulated in and regulated by the PPEA. It is premised on the equal treatment of parties, freedom of expression and information, and freedom of assembly. The law contains ethical norms that should be observed during campaigning, including prohibiting the use of certain places for campaigning. Section 61 of the PPEA forbids the use of inflammatory, derogatory, insulting language which constitutes incitement to public disorder, insurrection, hate, violence or war. It also stipulates that the

MEC can prescribe a code of conduct to be complied with by every political party during the election campaign.

The official campaign period runs for two months, closing 48 hours before polling begins. Political rallies, which require prior approval by the district commissioner, dominate the campaign. Other campaigning techniques employed include posters, billboards, advertisements in the media, door-to-door canvassing and motorcades. Party campaigns have been substantially personality-focused as parties are ideologically weak. The mission deplored the use of hate speech between political parties which was evident during the campaign.

EISA teams also observed and learnt that the election campaigns were generally peaceful in all three regions of the country. A few isolated cases of violence were reported but these did not seem to have affected the overall peacefulness of the process and voters' freedom of choice. Irate DPP supporters allegedly blocked a road in Thyolo, dispersed UDF supporters and stoned the vehicles of party chairman Bakili Muluzi who had wished to hold a rally there (see *The Nation* 13 May 2009). A day later, one of DPP presidential candidate Bingu wa Mutharika's coaches was stoned during his whistle-stop campaign in Mangochi (see *The Nation* 14 May 2009). Both these incidents occurred a week after a suspected UDF supporter allegedly hacked a DPP supporter.

Reports emanated from opposition parties and CSOs that the government and ruling party candidates were allegedly using state resources, such as vehicles and parastatal funds, for election campaigning. The mission observed that the governing DPP had significantly more campaign material than other political parties and it received several reports of allegations of the use of state resources for campaign purposes by the incumbent party. The EISA observer mission was not in a position to verify these allegations, although it regarded them with the utmost seriousness.

3.1.7 Stakeholder relations

The mission commends the MEC for establishing multiparty liaison committees (MPLCs) at district level throughout the country. These committees enabled the electoral commission and the contesting political

parties to consult each other on an ongoing basis and address any problems that arose. The MPLCs also provided a forum to discuss issues of political violence.

At the national level, the National Elections Consultative Forum (Necof), consisting of 10 political parties, committed itself to fair and transparent elections by signing a pledge ahead of the elections. The MEC used the MPLCs and Necof to keep the stakeholders informed of its management of the elections and also to consult political parties on various issues. The mission noted that the MEC also had a better relationship with donors than it had during the last elections.

3.1.8 Election materials

There were generally sufficient election materials for the 2009 elections. The MEC hired vehicles and 193 small trucks so that there was one vehicle for every two polling stations. Each of the 3 897 polling stations had a standby generator to ensure that counting was not disrupted. The MEC misprinted ballot papers for four constituencies in Lilongwe and these had to be reprinted. However, when MEC officials were burning the misprinted ballot papers, they mistakenly also burned the presidential ballot papers. The MEC had enough extra ballot papers to replace them. For the first time – and in line with some other SADC countries – the MEC printed special templates for the blind, with the intention of enabling them to cast their vote with ease.

3.2 ELECTION DAY

3.2.1 The voting process

The mission observed polling day operations and randomly visited 46 polling stations in all three regions of the country, from the opening at 06h00 until the close of polling at 18h00. The voting processes went smoothly, despite a few last-minute hiccups relating to the delivery of election materials. Polling stations opened on time in most places and where they did not they made up for it by extending the closing time.

The mission teams observed long, meandering queues at most polling stations, especially in the morning. Voters were calm and expressed much enthusiasm in casting their ballots. The inking of voters was done twice on

either index finger, first after voters cast the parliamentary ballot and then after they cast the presidential ballot. Polling was done outdoors, as is the practice in Malawi, and most stations were laid out in a way that allowed a smooth flow of voters and secrecy of the ballot, although secrecy could be improved by increasing the distance between the polling booths and the queues so that the voter is assured of privacy in the booth. Security forces were present at all polling stations visited and were professional in their conduct. The teams did not witness or hear of any interruptions caused by acts of violence or intimidation at any of the polling stations they visited.

Each station had two registers, the certified computerised voters' register and a manual reference register, due to errors that were detected in the computerised roll. People whose names did not appear in the computerised register, but appeared in the manual voters' register, were allowed to vote. The MEC officials were not consistent in the manner in which they handled people who had voter's cards but could not find their names on either list. In some cases they were allowed to vote and their particulars written in the log book; in other cases they were turned away.

3.2.2 Polling staff

The MEC's day-to-day tasks are carried out by the Secretariat, which is headed by the chief elections officer. Polling staff in Malawi are drawn mainly from the civil service and particularly from among teachers (EISA 2004). For the 2009 elections, teachers also made up the bulk of polling staff. Each station was staffed by a presiding officer and five polling officials.

The mission witnessed the polling staff conducting themselves professionally and most of them were able to offer assistance to voters who needed it. An attempt was made by the MEC to provide special ballots for the blind. However electoral staff appeared not to have received sufficient training on the use of this special ballot. Most of the technical problems regarding the voters' register were ultimately resolved by the electoral staff, though inconsistently.

3.2.3 Monitors and observers

Local NGOs and FBOs provided domestic monitors to observe the elections, political parties deployed party agents and various international

governmental and non-governmental organisations were also accredited by the MEC to observe the elections.

Domestic observers were accredited for the 2009 elections; however there were not enough to cover the entire country. The mission noted the limited number of domestic observers in the areas visited by the teams on polling day. These were from CCJP, the Malawi Electoral Support Network and Nice.

The EISA observers came across a number of international observers whose presence contributed to the transparency of the electoral process. Among the international and regional organisations that deployed observers were the African Union, the Common Market of Eastern and Southern Africa (Comesa), the Commonwealth, the European Union, SADC, the SADC Council of NGOs, the SADC Electoral Commissions Forum, the SADC Parliamentary Forum and the United States Embassy.

3.2.4 The counting process

At most polling stations, counting started shortly after voting had ended. The EISA teams did not observe any disruptions during counting. Counting was done at the polling stations and results posted on the walls or classroom boards before the ballot boxes were taken to the constituency returning officers based at the district headquarters. Each polling station was equipped with a generator to ensure adequate lighting throughout the counting process.

3.3 POST-ELECTION PHASE AND RESULTS

3.3.1 Tabulation and announcement of results

Once counting was completed at the constituency and district levels, the returning officers aggregated the results and sent them to the National Tally Centre at the Comesa Hall in Blantyre. The MEC announced provisional results as they came in from the constituencies and announced the presidential results on 22 May 2009, a great improvement compared to previous elections observed by EISA. The presidential results were announced at 01h10 on 22 May 2009 after 93.25 per cent of votes had been counted from 3 634 out of the 3 897 polling stations. When announcing the results, the MEC chairperson

said that 670 090 voters' results from 19 constituencies were yet to arrive, but that they would not affect the overall outcome. Voter turnout was higher than it had been in the last elections and was estimated at 78 per cent.

3.3.2 The results

The results of the 2009 elections were announced at the National Tally Centre at the Comesa Hall in Blantyre. The DPP emerged victorious in both the presidential and parliamentary elections, marking a break from the regionalism of the past. Mutharika won the presidential poll with a total of 2 963 820 votes or 66 per cent. MCP candidate Tembo came second with 1 365 672 votes. Kamuzu Chibambo of Petra came a distant third with 35 358 votes and the other four candidates won between 20 000 and 34 000 votes each (see Table 2). The results were accepted by all parties except the MCP, which complained of irregularities and threatened to pursue the matter in court.

In the parliamentary race, the DPP made inroads into the Central region, a MCP stronghold. The party also won 24 of the 33 seats in the Northern region and the MCP/UDF alliance none, showing that Aford had lost its support in the north. The Southern region was split between the DPP and the UDF. Smaller parties did not fare well in the 2009 elections and the number of successful independent candidates dropped from the 2004 elections, reconfiguring Parliament. Thirty independent candidates and three candidates from the smaller parties, one from each, were elected, taking the country back to the era of the big three parties. The DPP, MCP and UDF will be the dominant parties in Parliament, with the DPP having won 59 per cent of the seats, just short of an outright majority (see Table 3).

It is expected that in the new Parliament the three major parties will be wooing the independent MPs in an effort either to get the required numbers to push through their legislative agenda or to strengthen the opposition. In the aftermath of the elections, a number of independent MPs have thrown their support behind the DPP. Section 65 of the Constitution, which deals with floor-crossing, is silent on what constitutes floor-crossing by independent candidates. These MPs have been sitting on the government side and have pledged their allegiance to the DPP, stating that they were originally in the DPP and had sought election as independents because they were frustrated by

the manner in which the party primaries were conducted. The dismantling of regional barriers and strongholds, and the fall of major political heavyweights in the 2009 elections, could be an indication that democracy is becoming more entrenched in Malawi. Even so, the DPP's majority in both the executive and the legislature raises fears of subversion of checks and balances by the ruling party.

Table 2: Malawi presidential election results 2009

Candidate	Percentage of votes	Number of votes
B. wa Mutharika (DPP)	66.17	2 963 820
J. Tembo (MCP)	30.49	1 365 672
K. Chibambo (PETRA)	0.79	35 358
S. Masauli (RP)	0.76	33 982
L. Gondwe (NARC)	0.72	32 432
J. Nyondo (Independent)	0.61	27 460
D. Nyasulu (AFORD)	0.45	20 150
Total	100	4 478 874

Source: Malawi Electoral Commission 2009

Table 3: Malawi parliamentary election results 2009*

Party	Percentage of seats	Number of seats
DPP	58.85	113
Independents	16.67	32
MCP	14.06	27
UDF	8.85	17
AFORD	0.52	1
MAFUNDE	0.52	1
MPP	0.52	1
Total	100	192

Source: Malawi Electoral Commission 2009

* Parliamentary elections were not held in the Blantyre City Centre constituency due to the death of a candidate and were postponed to July 2009.

4

Conclusions and Recommendations



Overall, the mission's assessment was that the 2009 presidential and parliamentary elections were held in conformity with the PEMMO. Accordingly, the Malawi electoral stakeholders generally enjoyed all the freedoms associated with participation in elections, such as freedom of association, movement and assembly. On the other hand, the mission noted the unlevel playing field in terms of access to campaign finance and state media. In spite of this, the EISA observer mission believes that Malawians were generally able to express their will.

Noting the observations above, the mission reiterates the following recommendations to improve electoral practice in Malawi:

4.1 Appointment of MEC commissioners

The provision on the appointment of members of the MEC should be reviewed to guarantee its independence, transparency and professionalism. Regional trends and standards have been to appoint an independent electoral commission whose members are selected based on their expertise, integrity and political independence.

4.2 Election management

The mission recommends that the commission build on its achievements during the 19 May 2009 elections and uses an electoral cycle approach to election management in future which entails an ongoing programme for the professionalisation of the commission. Areas of focus would include the

rectification of irregularities identified in the voters' register and continuous updating of this register.

4.3 Conflict management

In addition to the MPLCs, the MEC is advised to introduce community-based conflict management mechanisms at national, regional and local levels that will address not only problems relating to parties and candidates but also those affecting the electorate as a whole, throughout the electoral process.

4.4 State media

Successive incumbent governments have tended to monopolise the state-owned media to their advantage. Malawian authorities need to align the country with the best regional electoral practices by allowing all the contesting parties and candidates to have equitable access to the taxpayer-funded media and to allow the electorate to make informed choices.

4.5 Intraparty democracy

Political parties in Malawi have demonstrated a lack of commitment to internal democracy within their organisations. This lack of intraparty democracy has been most visible in the choice of office bearers and the selection of party candidates. This has affected the institutionalisation of parties, leading to an unstable party system characterised by frequent fragmentation. The democratisation of political parties, through the adoption of fair competitive primary election rules, will go a long way towards consolidating democratic development in the country.

4.6 Domestic election observation

The mission calls upon development partners and national election stakeholders to support domestic election observation as an integral part of the electoral cycle so as to add value to the electoral process through professional domestic election observation.

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APPENDICES

APPENDIX I

Composition of the EISA Observer Mission

Name	Organisation	Country	Gender
Amira Saga	University of Juba	Sudan	Female
Anastácio Chembeze	EISA	Mozambique	Male
Catherine Musuva	EISA	Kenya	Female
Denis Kadima	EISA	DRC	Male
Ellen Kandororo-Dingani	ZESN	Zimbabwe	Female
James Lahai	National Election Watch	Sierra Leone	Male
Pauline Dempers	NANGOF	Namibia	Female
Valma Hendricks	Community Law Centre	South Africa	Female
Wonder Jekemu	Sida	Zimbabwe	Male

APPENDIX II

Code of Conduct

Election Observer Mission

2009 Parliamentary and Presidential Elections in Malawi

CODE OF CONDUCT

International election observation is widely accepted around the world. It is conducted by intergovernmental and international non-governmental organisations and associations in order to provide an impartial and accurate assessment of the nature of election processes for the benefit of the population of the country where the election is held and for the benefit of the international community. Much therefore depends on ensuring the integrity of international election observation, and all who are part of this international election observation mission, including observers and leaders of the mission, must subscribe to and follow this Code of Conduct.

Respect sovereignty and international human rights

Elections are an expression of sovereignty, which belongs to the people of a country, the free expression of whose will provides the basis for the authority and legitimacy of government. The rights of citizens to vote and to be elected at periodic, genuine elections are internationally recognised human rights, and they require the exercise of a number of fundamental rights and freedoms. Election observers must respect the sovereignty of the host country, as well as the human rights and fundamental freedoms of its people.

Respect the laws of the country and the authority of electoral bodies

Observers must respect the laws of the host country and the authority of the bodies charged with administering the electoral process. Observers must follow any lawful instruction from the country's governmental, security and electoral authorities. Observers also must maintain a respectful attitude towards electoral officials and other national authorities. Observers must note if laws, regulations or the actions of state and/or electoral officials unduly burden or obstruct the exercise of election related rights guaranteed by law, constitution or applicable international instruments.

Respect the integrity of the international election observation mission

Observers must respect and protect the integrity of the international election observation mission. This includes following this Code of Conduct, any written instructions (such as a terms of reference, directives and guidelines) and any verbal instructions from the observation mission's leadership.

Observers must: attend all of the observation mission's required briefings, trainings and debriefings; become familiar with the election law, regulations and other relevant laws as directed by the observation mission; and carefully adhere to the methodologies employed by the observation mission. Observers also must report to the leadership of the observation mission any conflicts of interest they may have and any improper behaviour they see conducted by other observers that are part of the mission.

Maintain strict political impartiality at all times

Observers must maintain strict political impartiality at all times, including leisure time in the host country. They must not express or exhibit any bias or preference in relation to national authorities, political parties, candidates,

referenda issues or in relation to any contentious issues in the election process. Observers also must not conduct any activity that could be reasonably perceived as favouring or providing partisan gain for any political competitor in the host country, such as wearing or displaying any partisan symbols, colours, banners or accepting anything of value from political competitors.

Do not obstruct election processes

Observers must not obstruct any element of the election process, including pre-election processes, voting, counting and tabulation of results and processes transpiring after election day. Observers may bring irregularities, fraud or significant problems to the attention of election officials on the spot, unless this is prohibited by law, and must do so in a non-obstructive manner. Observers may ask questions of election officials, political party representatives and other observers inside polling stations and may answer questions about their own activities, as long as observers do not obstruct the election process. In answering questions observers should not seek to direct the election process. Observers may ask and answer questions of voters but may not ask them to tell for whom or what party or referendum position they voted.

Provide appropriate identification

Observers must display identification provided by the election observation mission, as well as identification required by national authorities, and must present it to electoral officials and other interested national authorities when requested.

Maintain accuracy of observations and professionalism in drawing conclusions

Observers must ensure that all of their observations are accurate. Observations must be comprehensive, noting positive as well as negative factors, distinguishing between significant and insignificant factors and identifying patterns that could have an important impact on the integrity of the election process. Observers' judgments must be based on the highest standards for accuracy of information and impartiality of analysis, distinguishing subjective factors from objective evidence. Observers must base all conclusions on factual and verifiable evidence and not draw conclusions prematurely. Observers also must keep a well documented record of where they observed,

the observations made and other relevant information as required by the election observation mission and must turn in such documentation to the mission.

Refrain from making comments to the public or the media before the mission speaks

Observers must refrain from making any personal comments about their observations or conclusions to the news media or members of the public before the election observation mission makes a statement, unless specifically instructed otherwise by the observation mission's leadership. Observers may explain the nature of the observation mission, its activities and other matters deemed appropriate by the observation mission and should refer the media or other interested persons to those individuals designated by the observation mission.

Cooperate with other election observers

Observers must be aware of other election observation missions, both international and domestic, and cooperate with them as instructed by the leadership of the election observation mission.

Maintain proper personal behaviour

Observers must maintain proper personal behaviour and respect others, including exhibiting sensitivity for host-country cultures and customs, exercise sound judgement in personal interactions and observe the highest level of professional conduct at all times, including leisure time.

Violations of this Code of Conduct

In a case of concern about the violation of this Code of Conduct, the election observation mission shall conduct an inquiry into the matter. If a serious violation is found to have occurred, the observer concerned may have their observer accreditation withdrawn or be dismissed from the election observation mission. The authority for such determinations rests solely with the leadership of the election observation mission.

Pledge to follow this Code of Conduct

Every person who participates in this election observation mission must read and understand this code of conduct and must sign a pledge to follow it.

APPENDIX III
Stakeholders Briefing Programme

Pre-deployment and Stakeholder Briefing

DAY ONE – 13 MAY 2009

TIME	TOPIC	PRESENTER/FACILITATOR
0900hrs-1200hrs	Accreditation	Malawi Electoral Commission
1200hrs-1400hrs	LUNCH	
1400hrs-1545hrs	Free Afternoon	Observers
1545hrs-1600hrs	Registration & Distribution of Observer Kits	Rev Anastácio Chembeze – Mission Coordinator
1600hrs-1615hrs	Welcome Remarks	Mr Denis Kadima – Mission Leader
1615hrs-1630hrs	Mission Background & Plan	Rev Anastácio Chembeze
1630hrs-1700hrs	Election observation types, function & role of international observers	Mr Denis Kadima
1700hrs-1730hrs	General features for Free and Fair Elections	Mr Denis Kadima & Rev Anastácio Chembeze
1730hrs-1830hrs	The Media and the 2009 Presidential and National Assembly Elections	Mr Wisdom
1830hrs-1900hrs	Facilitated Discussion	Rev Anastácio Chembeze
1900hrs	End of Day One	

DAY TWO – 14 MAY 2009

TIME	TOPIC	PRESENTER/FACILITATOR
0900hrs-0930hrs	Reporting Forms and Check-lists	Mr Denis Kadima & Rev Anastácio Chembeze
0930hrs-1015hrs	Arrival Press Conference	Mr Denis Kadima
1015hrs-1045hrs	GROUP PHOTO & TEA/COFFEE BREAK	

1045hrs-1115hrs	Political and Historical Context of the 2009 Presidential and National Assembly Elections	Dr Nandini Patel – Institute for Policy Interaction (IPI)
1115hrs-1215hrs	The State of Readiness of the Malawi Electoral Commission	Malawi Electoral Commission
1215hrs-1300hrs	Preliminary Assessment of the Electoral Process: Perspectives from Civil Society (NICE, MESN, etc)	Mr Rafiq Hajat – IPI
1300hrs-1400hrs	LUNCH	
1400hrs-1430hrs	Political Parties Panel	UDF/MCP Coalition & AFORD
1430hrs-1500hrs	Terms of Reference and Code of Conduct	Mr Denis Kadima
1500hrs-1600hrs	Political Parties Panel	DPP, RP, PTP, PPM, PETRA
1600hrs-1700hrs	Deployment plans	Rev Anastácio Chembeze

APPENDIX IV

EISA Election Observer Mission Arrival Statement
EISA Observer Mission to the Malawi Parliamentary & Presidential
Elections 2009

**ARRIVAL STATEMENT**

Blantyre, 14 May 2009

EISA is pleased to announce the arrival of its election observer mission in Malawi for the 2009 Malawi Presidential and National Assembly Elections. The elections will be held on 19 May 2009. The mission is in Malawi at the invitation of the Malawi Electoral Commission (MEC) and is led by Mr Denis Kadima, EISA Executive Director.

The mission will consist of 10 members drawn from civil society organisations (CSOs) and election management bodies in the following countries: Democratic Republic of Congo, Kenya, Mozambique, Namibia, Sierra Leone, South Africa, Sudan and Zimbabwe. The deployment of the mission is in line with the following strategic objectives of EISA:

- To enhance electoral processes to ensure their inclusiveness and legitimacy
- To promote effective citizen participation in democratic processes to strengthen institutional accountability and responsiveness
- To promote principles, values and practices that lead to a culture of democracy and human rights

Members of the mission began arriving in Malawi on 10 May and will remain until 22 May 2009. Observers attended a briefing session on 13-14 May where they were addressed by various electoral stakeholders. On 15 May, members will be deployed to the central, northern and southern regions of Malawi, where they will meet with electoral officials, CSOs and representatives of political parties and the media. They will also attend campaign rallies.

On Election Day, members of the mission will observe voting and counting at the polling stations. They will return to Blantyre on 20 May to attend a debriefing session and assess the electoral process up until that point.

The interim assessment will be delivered on 21 May 2009. EISA will continue to monitor the process until the finalisation of the election results upon which the mission's final report and assessment of the Malawi Presidential and Parliamentary elections will be made.

Denis Kadima
Mission Leader

APPENDIX V

EISA Election Observer Mission Interim Statement
EISA Observer Mission to the Malawi Parliamentary & Presidential
Elections 2009

**INTERIM STATEMENT**

Blantyre, 21 May 2009

INTRODUCTION

EISA, at the invitation of the Malawi Electoral Commission (MEC), deployed a mission to observe the Presidential and Parliamentary Elections held on 19 May 2009. This interim statement contains an assessment of the pre-election phase, polling day and tabulation of the results at the time of this press release.

The Mission will continue to follow the process, including the announcement of final results, in order to evaluate the post-election phase. EISA will produce a more comprehensive and detailed account of the entire election process in a final report. It will include recommendations for the consolidation of democracy and good governance in Malawi, as elections are not an end but a process.

The EISA Observer Mission extends its deepest gratitude and appreciation to the people of Malawi for the warm welcome and hospitality accorded to the Mission.

1.1 Mission Composition

The Mission was led by Mr Denis Kadima (Executive Director, EISA) and was composed of ten experienced individuals drawn from civil society organisations from the following countries: Democratic Republic of Congo, Kenya, Mozambique, Namibia, Sierra Leone, South Africa, Sudan and

Zimbabwe. Members of the Mission began arriving in Blantyre on 10 May and observed the last phase of electoral campaigning, the voting and early tabulation of results.

1.2 Methodology

During the period preceding the polls, members of the Mission consulted with various electoral stakeholders including members from the MEC, civil society organisations, the media, political parties, domestic election observer groups and other international observer missions. A total of four teams were deployed in the three regions of Malawi: one team each in the Northern and Central regions and two teams in the Southern region. Teams based in Mzuzu, Lilongwe and Blantyre also covered surrounding rural areas. Furthermore, teams attended rallies of various political parties and candidates in the three regions. On polling day the Mission was able to visit several polling stations throughout the country, covering randomly selected rural and urban areas. In its assessment, the Mission was guided by the Principles for Election Management, Monitoring and Observation in the SADC region (PEMMO).

1.3 Findings of the Mission

The 2009 Presidential and Parliamentary elections were the fourth democratic elections in Malawi after the restoration of multiparty democracy in 1994. Previous elections were held in 1994, 1999 and 2004. It is the expectation of the Mission that recommendations in regard to these findings will be followed by reforms to improve future electoral processes and enhance democracy in the country. Some of the observations made during the 2009 elections were already highlighted in the previous elections by EISA and other election observer missions particularly in 2004.

Based on the principles entrenched in PEMMO, the following are the findings of the Mission:

The Constitutional and Legal Framework

The main instruments regulating the conduct of elections in Malawi include the Constitution of the Republic of Malawi; the Parliamentary and Presidential Elections Act, 1993; and the Malawi Electoral Commission Act, 1998. The Mission is of the opinion that the legal framework for elections in Malawi is generally conducive to the holding of credible elections.

Malawi Electoral Commission

The Mission noted that according to the legal provisions on the appointment of members of the commission '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'. As a result of this provision, the appointment of additional members to the MEC was challenged in court by leaders of some opposition parties claiming that they were not consulted in line with the Malawi Electoral Commission Act (1998). Notwithstanding these claims, the Mission observed that the MEC displayed a degree of transparency in the management of the electoral process thus winning the confidence of the majority of the electoral stakeholders the Mission came into contact with.

The Campaign Process and Access to Media

The Mission observed that the governing Democratic Progressive Party had significantly more campaign material than other political parties. The Mission received several reports of allegations of the use of state resources for campaign purposes by the incumbent party. The EISA observer mission was not in a position to verify these allegations although it views them most seriously.

EISA teams also observed and learnt that the election campaign was generally peaceful in all the three regions of the country. A few isolated cases of violence were reported but these did not seem to have affected the overall peacefulness of the process and voters' freedom of choice.

The Mission deplored the use of hate speech between political parties which was evident during the campaign. It observed that Malawi Television (TVM) and the Malawi Broadcasting Corporation (MBC) failed to provide equitable access to all parties. Their coverage excessively favoured the DPP who, according to the Malawi Communications Regulatory Authority (MACRA), received on average over 90% coverage. While several private radio stations also gave coverage to opposition candidates, it is important that state-owned media give fair coverage to all contesting parties and candidates in order to provide a level playing field.

Voter Registration and Voters' Register

The Mission gathered that MEC had conducted a massive voters' register overhaul in 2008, an exercise which aimed to produce an accurate, comprehensive and inclusive voters' register. The Mission learnt that 5 930 949 voters were registered to vote.

At an EISA election observer mission briefing meeting, the MEC acknowledged that during the exercise they were faced with a number of logistical and technical challenges that included faulty equipment and irregularities in the voters' register such as missing names, duplicated names, incorrect placement of pictures and transfer of names that was not effected. To address these problems MEC provided a reference voters' register to complement the one used on polling day.

The Voting Process and Counting

The Mission observed polling day operations from the opening at 06h00 until the close of polling at 18h00. The teams observed long, meandering queues at most polling stations, especially in the morning. Voters were calm and expressed much enthusiasm to cast their ballot. The teams did not witness or hear of any interruptions caused by acts of violence or intimidation at any of the polling stations they visited.

An attempt was made by the MEC to provide special ballots for the blind. However electoral staff appeared not to have received sufficient training on the use of this special ballot.

Security forces were present at all polling stations visited and were professional in their conduct.

Counting started shortly after closing of voting at most polling stations. The teams did not observe any incidents of disruptions during counting. The MEC provided each polling station with generators to ensure a smooth counting process. With regard to the voters' register the teams observed a few cases of omissions and inaccuracies. Although a sizeable number of voters were affected by these problems, most of these technical problems regarding the register were ultimately resolved by the electoral staff, though inconsistently.

Conflict Management Mechanisms

The Mission commends the MEC for establishing multiparty liaison committees (MPLCs) at district level throughout the country. These committees enabled the electoral commission and the contesting political parties to consult each other on an ongoing basis and address any problems that arose.

Election Observation

The EISA observer mission came across many international observers whose presence contributed to the transparency of the electoral process. However the Mission noted the limited number of domestic observers in the areas visited by the teams on polling day.

RECOMMENDATIONS

Noting the observations above, the Mission proposes the following recommendations:

MEC

- The provision on the appointment of members of the commission should be reviewed to guarantee its independence, transparency and professionalism. Regional trends and standards have been to appoint an independent electoral commission whose members are selected based on their expertise, integrity and political independence.
- The Mission recommends that the electoral commission builds on its achievements during the just ended elections and uses an electoral cycle approach to election management in future which entails an ongoing programme for the professionalisation of the commission. Areas of focus would include the rectification of irregularities identified in the voters' register and continuous updating of this register.
- In addition to the MPLCs, the MEC is advised to introduce community based conflict management mechanisms at national, regional and local levels that will address not only problems relating to parties and candidates but also those affecting the electorate as a whole throughout the electoral process.

Media

- Successive incumbent governments have tended to monopolise the state-owned media to their advantage. Malawian authorities need to align the country to the best regional electoral practices by allowing all the contesting parties and candidates to have equitable access to this taxpayer-funded media and to allow the electorate to make informed choices.

Political Parties

- Political parties in Malawi have demonstrated a lack of commitment to internal democracy within their organisations. This lack of intra-party democracy has been most visible in the choice of office bearers and the selection of party candidates. This has affected the institutionalisation of parties, leading to an unstable party system characterised by frequent fragmentation. The democratisation of political parties will go a long way towards consolidating democratic development in the entire country.

Development partners and election stakeholders

- The Mission calls upon development partners and national election stakeholders to support domestic election observation as an integral part of the electoral cycle so as to add value to the electoral process through professional domestic election observation.

CONCLUSION

Overall the elections up to the time of the release of this statement were held in conformity with the PEMMO. Accordingly, the Malawi electoral stakeholders generally enjoyed all the freedoms associated with participation in elections, such as freedoms of association, movement and assembly. On the other hand, the Mission noted the unlevel playing field in terms of access to campaign finance and state media. In spite of this, the EISA Observer Mission believes that Malawians were generally able to express their will.

As the electoral process moves to its conclusion, the Mission encourages the MEC to continue to demonstrate transparency in the tabulation and

announcement of results and to address any complaints brought by candidates timeously. On the other hand, such complaints should be substantiated and not aimed at causing unnecessary delays in the announcement of the final results.

Denis Kadima
Mission Leader

APPENDIX VI
Newspaper Clippings

EISA observer team for transparent polls

BY LUCAS BOTTOMAN

ELECTORAL Institute of Southern Africa (EISA), an observer Mission which is in the country on the invitation of the Electoral Commission (EC), said yesterday it was interested in ensuring transparency in the electoral process.

EISA Executive Director Denis Kadima said this during a press conference held in Blantyre on Thursday ahead of the May 19 Presidential and Parliamentary Elections.

"Although we arrived in the

country on May 10, we have been monitoring other electoral activities from a distance by lining up with other local organisations such as Interaction for Policy (IPI)," Kadima said.

He stated their deployment of a 10-member observer mission had three strategic objectives which include enhancement of electoral processes' inclusiveness and legitimacy and promotion of citizenry's participation.

He said the objective of EISA is to promote principles,

values and practices that lead to a culture of democracy and human rights.

Kadima said EISA's overall objective is to assess whether elections are conducted in accordance with the Southern Africa Development Community (Sadc) standards.

On recent reported acts of political violence, Kadima said: "There is no justification for violence before, during and after elections."

Kadima said that EISA team will be equally deployed in the three regions of the country to

ensure a regional balance.

"EISA will ensure that its members are deployed in both urban and rural areas. Our coverage will also ensure that we have targeted stronghold areas of all parties," Kadima said.

According to Kadima, EISA Observer Mission team would produce an election report on May 21 before their departure on May 22.

Formed in 1996, EISA is a non-profit making organisation headquartered in Johannesburg, South Africa.

The Daily Times, Friday, May 15, 2009, page 2

Observers warn against rushed inauguration, power sharing govt

DEOGRAFIAS MMANA
News ANALYST

International observers, the Electoral Institute of Southern Africa (EISA), has warned political parties against rushing inauguration of the President before resolving queries, and creating a power sharing government that is against the will of the people.

EISA has also asked the parties to stop violence during the campaign period, saying violence undermines people's right to vote.

Speaking at a news

conference in Blantyre on Thursday, EISA executive director Denis Kadima said it would not be fair to rush the swearing-in ceremony of the President-elect when other parties have lodged complaints.

"But again the losing party should not bring unsubstantiated claims just to delay the event," said Kadima.

Kenya and Zimbabwe have a power sharing government following disputed polls in those countries.

Kadima also said it would not be proper for those who lose the elections to press for a

power sharing government when results are not clear and not known.

"We encourage people to go into any agreement as long as the process is clear. We find it difficult when results are not clear and not known. Such agreement should not undermine the will of the people," he said.

An EISA mission with 10 members arrived in the country on May 10. The observers have come from the Democratic Republic of Congo, Kenya, Mozambique, Namibia, Sierra Leone, South Africa, Sudan and Zimbabwe.



Don't rush things: Kadima

The Weekend Nation, Saturday, May 16, 2009, page 6

Observers fault DPP on abuse of state media

EMMANUEL
MUWAMBA
AND FRANK
NAMANGALE,
STAFF REPORTERS

The EU and the Electoral Institute of Southern Africa (EISA) have faulted the ruling DPP that registered a landslide victory in Tuesday's presidential and parliamentary elections for abuse of public resources including the state media ahead of the polls.

But the Commonwealth has said the conduct of the elections remains with grey areas although there were positive aspects to the process.

The observer groups, however, applauded Malawians for being peaceful during the polls. They also commended the Electoral Commission for conducting the polls in an independent manner, despite some shortcomings like general lack of confidence in its ability to supervise the election and "confidence-building measures that were poorly designed".

The EU election observation mission said the use of state resources for campaign purposes was overt during the campaign period and there was a blurring of boundaries between the presidential office and campaigning that included the use of state-owned vehicles, public media, police and security services.

There was lack of a level playing field in this



Morgantini: There was lack of level playing field during campaign

respect, with DPP candidates enjoying both access to far greater financial resources as well as some of the resources attached to the presidential office," said Luisa Morgantini, who led the EU mission that has been in the country since April 7.

The mission observed there is lack of clear legal provisions for funding of political parties and

financing of election campaigns that would provide for public accountability.

Freedom of speech in the media, noted the mission, was respected during the campaign period with no reports of any significant restrictions of movement or access by journalists.

"However, on the polling day the police entered the premises of

the radio station Joy FM in a response to this station airing material that breached the campaign moratorium," said Morgantini, blaming state media for favouring the DPP and Joy for its bias towards UDF and MCP.

EISA deplored the use of hate speech between political parties and that TVM and MBC failed to provide equitable access to all parties. They said the Electoral Commission displayed a degree of transparency in the management of the electoral process but recommended the appointment of members of the commission be reviewed to guarantee its independence, transparency and professionalism.

Meanwhile, the Commonwealth Observer Group chair John Kufuor told the press the election campaign was generally peaceful with basic freedoms provided and voters offered a choice between political alternatives.

However, Kufuor (who is the former president of Ghana) said the overwhelming impact of the exploitation of the incumbency advantage and "the unashamed bias of the state TV and radio created unlevelled playing field. He said these areas of concern reflect some of the problems highlighted in 2004 and appealed for Malawi to address them ahead of next poll through capacity building and legislative reform."

PHOTOGRAPH: JAMES CHIMPWEVA

The Nation, Friday, May 22, 2009, page 3

ABOUT EISA



EISA is a not-for-profit and non-partisan non-governmental organisation which was established in 1996. Its core business is to provide technical assistance for capacity building of relevant government departments, electoral management bodies, political parties and civil society organisations operating in the democracy and governance fields throughout the SADC region and beyond. Inspired by the various positive developments towards democratic governance in Africa as a whole and the SADC region in particular since the early 1990s, EISA aims to advance democratic values and practices and to enhance the credibility of electoral processes. The ultimate goal is to assist countries in Africa and the SADC region to nurture and consolidate democratic governance. SADC countries have received enormous technical assistance and advice from EISA in building solid institutional foundations for democracy. This includes: electoral system reforms; election monitoring and observation; constructive conflict management; strengthening of parliament and other democratic institutions; strengthening of political parties; capacity building for civil society organisations; deepening democratic local governance; and enhancing the institutional capacity of the election management bodies. EISA was formerly the secretariat of the Electoral Commissions Forum (ECF) composed of electoral commissions in the SADC region and established in 1998. EISA is currently the secretariat of the SADC Election Support Network (ESN) comprising election-related civil society organisations established in 1997.

VISION

An African continent where democratic governance, human rights and citizen participation are upheld in a peaceful environment

MISSION

EISA strives for excellence in the promotion of credible elections, participatory democracy, human rights culture, and the strengthening of governance institutions for the consolidation of democracy in Africa

VALUES AND PRINCIPLES

Key values and principles of governance that EISA believes in include:

- Regular free and fair elections
- Promoting democratic values
- Respect for fundamental human rights
- Due process of law / rule of law
- Constructive management of conflict
- Political tolerance
- Inclusive multiparty democracy
- Popular participation
- Transparency
- Gender equality
- Accountability
- Promoting electoral norms and standards

OBJECTIVES

- To enhance electoral processes to ensure their inclusiveness and legitimacy
- To promote effective citizen participation in democratic processes to strengthen institutional accountability and responsiveness
- To strengthen governance institutions to ensure effective, accessible and sustainable democratic processes
- To promote principles, values and practices that lead to a culture of democracy and human rights
- To create a culture of excellence that leads to consistently high quality products and services
- To position EISA as a leader that consistently influences policy and practice in the sector

CORE ACTIVITIES

- Research
- Policy Dialogue
- Publications and Documentation
- Capacity Building
- Election Observation
- Technical Assistance
- Balloting

ELECTORAL OBSERVER REPORTS

CODE	TITLE
EOR 1	Mauritius Election Observation Mission Report, 2000
EOR 2	SADC Election Support Network Observer Mission's Report, 1999/2000
EOR 3	Tanzania Elections Observer Mission Report, 2001
EOR 4	Tanzania Gender Observer Mission Report, 2001
EOR 5	Zimbabwe Elections Observer Mission Report, 2001
EOR 6	South African Elections Observer Mission Report, Denis Kadima, 1999
EOR 7	Botswana Elections Observer Mission Report, Denis Kadima, 1999
EOR 8	Namibia Elections Report, Tom Lodge, 1999
EOR 9	Mozambique Elections Observer Mission Report, Denis Kadima, 1999
EOR 10	National & Provincial Election Results: South Africa June 1999
EOR 11	Elections in Swaziland, S. Rule, 1998
EOR 12	Lesotho Election, S. Rule, 1998
EOR 13	EISA Observer Mission Report: Zimbabwe Presidential Election 9-11 March, 2002 (P/C)
EOR 14	EISA Observer Mission Report: South Africa National and Provincial Elections 12-14 April 2004
EOR 15	EISA Observer Mission Report: Malawi Parliamentary and Presidential Elections 20 May 2004
EOR 16	EISA Observer Mission Report: Botswana Parliamentary and Local Government Elections 30 October 2004
EOR 17	EISA Observer Mission Report: Mozambique Parliamentary and Presidential Elections 1-2 December 2004
EOR 18	EISA Observer Mission Report: Namibia Presidential and National Assembly Elections 15-16 November 2004
EOR 19	EISA Observer Mission Report: Mauritius National Assembly Elections 3 July 2005
EOR 20	EISA Observer Mission Report: Tanzania Presidential, National Assembly and Local Government Elections 14 December 2005
EOR 21	EISA Observer Mission Report: The 2005 Constitutional Referendum in the DRC/ Le Référendum Constitutionnel en RDC 18-19 December 2005
EOR 22	EISA Observer Mission Report: Zanzibar Presidential,

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- House of Representatives and Local Government Elections
30 October 2005
- EOR 23 EISA Observer Mission Report: Zambia Presidential, Parliamentary
and Local Government Elections 28 September 2006
- EOR 24 EISA Observer Mission Report: Madagascar Presidential Elections
3 December 2006
- EOR 25 EISA Observer Mission Report: DRC Presidential, Parliamentary
and Provincial Elections / Elections Presidentielles, Parlementaires et
Provinciales 30 July and 29 October 2006
- EOR 26 EISA Election Observer Mission Report: Lesotho National Assembly
Elections 17 February 2007
- EOR 27 EISA Election Observer Mission Report: Madagascar National
Assembly Elections 23 September 2007
- EOR 28 EISA Election Observer Mission Report: The Zimbabwe Harmonised
Elections of 29 March 2008 Presidential, Parliamentary and Local
Government Elections with Postscript on the Presidential Run-Off of
27 June 2008 and the Multi-Party Agreement of 15 September 2008
- EOR 29 EISA Technical Assessment Team Report: Swaziland House of
Assembly Election 19 September 2008