

MALAWI ELECTORAL SUPPORT NETWORK



Democracy, Elections, Governance

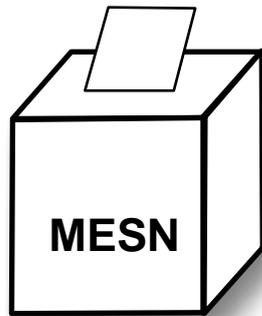
ELECTIONS REPORT

20TH MAY, 2014 TRIPARTITE ELECTIONS IN MALAWI

August 2014



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ABBREVIATIONS AND ACRONYMS

BVR - Biometric Voter Registration
DPP - Democratic Progressive Party
CVE – Civic and Voter Education
MEC – Malawi Electoral Commission
ECA - Electoral Commission Act
FPTP - First Past the Post System
LGEA - Local Government Elections Act
LTO - Long Term Observers
MCP - Malawi Congress Party
NDI - National Democratic Institute
NICE - National Initiative for Civic Education
OMR - Optimal Mark Registration
PPEA - Parliamentary & Presidential Elections Act
PPRPA - Political Parties Registration & Regulations Act
PP - People's Party
PVT - Parallel Vote Tabulation
TPE – Tripartite Elections
STO - Short Term Observers

ACKNOWLEDGEMENT

Malawi Electoral Support Network (MESN) is very grateful to the UK Aid through the National Democratic Institute (NDI) for funding the Parallel Vote Tabulation (PVT) project, United States for International Development (USAID) for funding the Short Term Observation and Long Term Observation programs. It is without doubt that these programs have to a large extent helped to strengthen Malawi's young democracy by providing Malawian citizens with an independent and trusted source of information regarding the outcome of the 2014 Tripartite Elections as well as the general election atmosphere.

MESN is also thankful to NDI for the support it rendered prior, during and after the 2014 elections. NDI has been a very reliable partner to MESN in these programs and during the whole 2014 elections period in Malawi.

Further, the election observation exercise would not have been a success without many sacrifices by MESN's member organizations. We recognize the assistance member organizations provided in identifying, training and allocating election monitors and observers in all parts of the country. It is equally important to acknowledge that member organizations and individuals sacrificed their precious time and resources for the success of these projects.

MESN also recognizes the support it got from Malawi Electoral Commission (MEC) during the planning and implementation of the programs, which needed access to the voters roll and other crucial materials and information so as to make the results of the election observation more credible and acceptable by the Malawi citizenry.

Finally, MESN is indebted to its staff for the dedication they showed throughout these programs.

MESN will continue to be a key player in elections, democracy and governance matters in Malawi.

Steve Duwa,
MESN Board Chairperson.

EXECUTIVE SUMMARY

The report endeavours to encapsulate the diverse task undertaken by the Malawi Electoral Support Network (MESN) since November 2013 to June 2014 constituting the pre-elections phase, the polling day and the announcement of results. The activities of MESN for 2014 tripartite elections comprised of:

- i. The Long Term Observation (LTO) with support from USAID through NDI
- ii. The Short Term Observation (STO) with support from USAID through NDI
- iii. Media monitoring in partnership with the Institute for War and Peace (IWRC), and;
- iv. The Parallel Vote Tabulation (PVT) with financial and technical support from UK Aid through National Democratic Institute (NDI).

The report presents the key elements captured in the Long Term Observation (LTO), the Short Term Observation (STO), the PVT report and the media monitoring report by IWPR. The report further presents an overall conclusion and recommendations for MESN.

Summary of Long Term Observation:

MESN deployed 84 LTOs in constituencies which were described as “hot spots” on the basis of highly competitive nature of contestation there, and past record of violence and electoral fraud. Some areas were potentially tense due to shifting of political alliance by incumbents. Such dynamics provide a fertile ground for intimidation and conflict.

The long-term observers in their constituencies of deployment observed all electoral activities leading up to the polls, the polling day as well as post electoral developments, until the announcement of results.

The Voter registration process began on 22nd July 2013 and ended in December 2013. This was done in nine phases from the southern region towards the northern region. MESN observers identified the following challenges during this process:

- i. Inadequacy of the number of clerks recruited by MEC for this exercise,
 - ii. The heavy workload allocated to the clerks and their inability to cope,
 - iii. Procurement of faulty equipment like cameras, printers, solar transformers and generators;
 - iv. Projection of eligible voters by MEC doubted by a number of stakeholders.
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The above hiccups prolonged the registration process and in a number of centers the exercise could not be concluded by the intended date and had to be extended. The voter registration exercise concluded with 7.5 million people registered representing 94% of the projected voters.

- a. The verification of the voter register took place in 3 phases and for the first time, it had SMS and internet outlets in addition to the physically checking of the register in specified centers. Though, it did not start off well due to low turn-out and inaccuracies, the exercise did contribute to improve the quality of the register.
 - b. To ensure participation, Civic and Voter Education and Voter information was supported and introduced by the MEC and carried out by CSO organisations country wide both on the ground and through the media. Prevalent approaches to this CVE among most organisations were public rallies, performances through dance and drama, distribution of leaflets, stickers, posters in public places as well as jingles on most radio and TV stations in Malawi. MEC therefore developed a code of conduct for CVE providers. For 2014 tripartite elections, the MEC developed a strategy to serve as a frame work for coordinating the roles of various CVE providers and for ensuring gender parity, equality and equity in access to information and participation of voters, candidates, electoral officials focusing on the objectives of CVE, the content and the methods of delivery and the monitoring process.
 - c. Nominations: Parliamentary and local government candidates filed nominations at the District and city/town council headquarters while the Presidential candidates presented nominations in Blantyre at the Comesa Hall where the Chairperson of the commission received the nominations. This process or exercise saw 12 candidates expressing interest to contest for the presidential vote. Out of the 12, two were female candidates. 1,274 candidates came in the open to contest for the 193 parliamentary seats, out of which 1,020 were male candidates and 254 were female candidates. A good proportion of these candidates were youthful men and women than ever before. A total number of 2,398 candidates contested the 462 ward councils, out of which 1,981 were men and 417 women.
 - d. Political parties held conventions and primary elections where they elected their presidential, parliamentary and local government candidates. These elections were indicative of lack of intra party democracy due to practices of
-

imposition of candidates and intimidations. As a result, many defeated and dissatisfied contestants decided to contest in the polls as independent candidates. A number of female candidates got disappointed and frustrated. There were instances of imposition of candidates by party leadership were commonly found in the case of major parties particularly the DPP and PP. LTOs captured some of these incidents as presented in this report.

- e. The campaign was conducted through rallies, whistle stop tours, distribution of posters were popular among many parties. Handouts in form of clothes, food stuff, and cash were disbursed along with messages essentially promising better social and economic performance and service delivery. There were reported instances of electoral malpractices and misconduct such as intimidation, harassment, voter card buying and abuse of public resources. There were also a couple of cases of campaign violence.
 - LTO reported that Peoples' Party reportedly had the largest presence in the constituencies with on average 98.7 percent of party members interviewed reporting activities in all regions. This was followed by the Democratic Progressive Party with 93.3 percent, United Democratic Front with 92 percent and Malawi Congress Party with 90.7 percent while independent candidates had 81.3 percent.
 - There were several candidates' debates at all levels. The presidential debates, conducted for the first time in Malawi drew wide national attention.
- f. A comprehensive election media monitoring operation was undertaken by the Institute for War & Peace supported by USAID and UK Aid. The monitoring exercise covered the whole of the official campaigning period of 22nd March -18th May 2014. This encompassed not just the traditional media of print, radio and television but also the news websites and the social media. The project covered outputs of thirteen radio stations (including the two state radio stations), two television stations, two newspaper groups, seven news websites, eight Facebook groups and Twitter.

Summary of Short Term Observation

For the polling day observation MESN had 800 monitors recruited for parallel vote tabulation (PVT) observers and 1,434 short term observers (STOs) throughout the country in all the 28 districts and 193 constituencies. The 1,434 STOs were deployed across all the wards in Malawi on the actual Election Day. These STOs were particularly critical to the PVT.

The overall goal of this project was to implement a systematic and comprehensive election observation, including a PVT for the 2014 tripartite elections. The objectives of this project were:

- i. To strengthen civil society capacity in election observation including PVT
 - ii. To enhance credibility of the 2014 tripartite elections results
 - iii. To validate the accuracy of the official presidential results and
 - iv. To mitigate conflict by enhancing public confidence.
- a. On 20th May 2014, the polling day in almost all the polling stations the polling officials were present at 5.30 am but only in about 25% of them polling began at 6.00 am due to logistical challenges. However, by 6.30 am more than 50% of the centers were open whilst others opened by noon or later in the afternoon.
 - b. On the Election Day, Malawians turned up in large numbers to vote though the exercise had to be extended to the second and third in few areas. Voting was generally calm and peaceful except for a few incidents in Blantyre and other areas where the logistical challenges caused public anger and frustration. For the centers that opened polling was extended to one or two days more days to ensure all eligible had an opportunity to vote.
 - c. A number of anomalies in the processing of presidential results were identified by MEC at the national tally centre and a striking one was that in about 65 centers the number of votes cast was higher than the registered number of voters. MEC sought the advice from the Court on proceedings for a recount and the required extension of time to announce results since the law stipulates a time frame of eight days for announcement of results after polling. Making the Commission's position clear, the Chairman of the Commission said MEC was continuing to prepare to announce its determination of the Presidential results in accordance with the law or as
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the Courts may otherwise direct. The court ruled out the possibility for any extension and directed MEC to declare the results within the specified time.

- d. Instances of polling stations with over 100% of voter turnout were not reported by MESN observers. These stations covered 2% of sampled polling stations and the discrepancies were small. A similar view is presented in the EU observers' statement that, 'the total number of valid votes at stake could not influence the order of the Presidential candidates in the final results.
- e. Malawi Electoral Commission announced final presidential election results, on 30 May 2014, shortly before expiry of the legal eight-day period for the announcement of the results, declaring Peter Mutharika of the DPP as the winner of the presidential race and endorsed by all 10 MEC commissioners. Notwithstanding, the rising political tension before the results announcement, presidential results were accepted by the leaders of the three other main political parties and generally across the country. The official figure for the national turnout for the presidential election was 70.78 per cent corresponding to 5,285,258 total votes cast – 7.5 per cent lower than the official figure for the 2009 elections. The official figure for invalid votes was 56,675 or 1.07 per cent
- f. The results in Figure 20, with estimated voter turnout of 70.7%, show that former President Dr. Joyce Banda of PP got 20 in every 100 national votes (with expected minimum of 18 and maximum of 22 in 100 votes if every vote was valid and counted). Further, Dr. Lazarus Chakwera of MCP got 28 in every 100 votes (with expected minimum of 25 and maximum of 31 in 100 votes). In addition, Mr. Atupele Muluzi of UDF got 14 in every 100 national votes (with expected range of 12 to 16 in 100 votes). While President Professor Peter Mutharika of DPP got 36 in every 100 national votes (with overall range of 33 to 39 in 100 votes), The rest of the candidates got less than 5 in 100 national votes each.
- g. The PVT Estimates were for each of the four top vote-getting candidates, the official result as announced by the MEC falls within the PVT estimated range. The PVT estimated Dr. Joyce Banda should get between 18.2% and 21.8% of the vote, and she got 20.2% of the vote according to MEC's official results. The PVT estimated Dr. Lazarus Chakwera should get between 25.1% and 31.7% of the vote, and he got 27.8% of the vote according to MEC's official results. The PVT estimated Atupele Muluzi should get between 11.9% and

15.5% of the vote, and he got 13.7% of the vote according the MEC's official results. The PVT estimated Prof. Peter Mutharika should get between 32.7% and 39.3% of the vote, and he got 36.4% of the vote according to MEC's official results. Thus, MESN can confidently and independently verify the accuracy of the official results as announced by the MEC.

- h. Five days after the announcement of Presidential results the parliamentary and Ward Council results were also announced.
- i. Women's success in the 2014 polls was below the expected levels. There is a drop from 42 in 2009 National Assembly to 32. Of these 8 were DPP candidates, 6 were MCP, 5 for PP, 2 for UDF and 11 independents. The report captures the reasons for this drop in representation of women and proposes some corrective measures.
- j. Key recommendations include:
 - i. Review and reform the entire legal framework thoroughly to ensure that courts have a minimal role in election administration and to ensure that that the application of law safeguards the interests of voters and promotes the credibility of the electoral process.
 - ii. Open up the chairmanship of the Electoral Commission to other professions because there is no justification for limiting the privilege to Judges only. The 2007 Law Commission report recommended that the chairmanship of the EC should not be restricted to judges. To achieve this requires the amendment of section 75(1) of the Constitution.
 - iii. Harmonise the eligibility criteria for candidates to require the same type of citizenship for candidates for all three elections.
 - iv. Set Malawi School of Education Certificate as the minimum level of education required for candidates in parliamentary and local government elections.
 - v. Design a better way of recruiting Commissioners of the Electoral Commission rather than nominations by political parties. Provide in the Electoral Commission Act a formula whereby the term of office for the Electoral Commissioners does not expire at the same time for all of them as is currently the case. Terms should expire at different times to ensure institutional memory.

- vi. Constituency demarcation to be carried out efficiently and regularly as stipulated in the Constitution.
 - vii. Registration of voters should be linked to the National Identity programme to cut on costs and other inefficiencies. Biometric Voter Registration should be considered as an option for registration because the Optical Mark Registration is not serving our electoral purposes very well.
 - viii. The official campaign period should be extended to give the EC authority to regulate campaigns (which take place anyway) at an earlier stage of the election cycle. There is no justifiable reason for aligning the official campaign period to the dissolution of parliament.
 - ix. There should be a law banning any form of hand-outs for campaign purposes.
 - x. The PPEA and the LGEA should be amended to prohibit the publication of any results- including “unofficial results” until all polling stations are closed in order to prevent undue influence of voters' choices by the announcement of results.
 - xi. Time for announcement of the presidential results should be done within 7 days not exceeding a defined period of 14 or 16 days.
 - xii. Parliamentary results within 14 days and Local government results within 21 days. A law should be put in place to guide the Electoral Commission in the case of withdrawal or death of a candidate, especially presidential running mates.
 - xiii. Establish effective lobbying and liaison with Government to improve capacity in key departments.
 - xiv. MEC should have its own resources without state interference MEC's financial independence to be secured.
 - xv. MEC to be able to secure employment of temporary staff from the open market with clear contracts.
 - xvi. There has to be enhanced information within MEC use and flow among (both vertical and horizontal).
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Chapter

Introduction

1

INTRODUCTION

1.1 The Social and Political context and the legal framework of the 2014 tripartite elections in Malawi

During the 2009 parliamentary and presidential elections late President Bingu wa Mutharika sponsored by Democratic Progressive Party (DPP) won with a landslide victory breaking regional pattern of voting that characterized previous elections in 1999 and 2004. Bingu won the elections by an unprecedented 65% of the national vote. This was a great departure from 2004 elections where he won by 35% of votes with United Democratic Front (UDF) ticket, a party he abandoned in 2005 to form his own party the DPP.

The expectations and hopes pinned on the 2009 government of Mutharika began to dwindle with erosion of rule of law and decline of constitutionalism that ensued. By 2010 the President had become increasingly autocratic and arrogant. The intolerance to dissent turned into suppression of rights and freedoms of citizens. Declining governance standards led to donor concern on democratic regression leading to cutting off of aid by western development support. This resulted in scarcity of forex, fuel, medicine and other necessities. Increasing pressure from civil society led to nationwide demonstrations in July 2011 in which 20 people were killed by Police. The political and economic pressure was mounting. On 5th April 2012 President Mutharika died of cardiac arrest at the state house in Lilongwe.

While in power, Bingu expelled the state vice president from the party in December, 2010. By that the DPP had endorsed the late president's brother Professor Peter Mutharika to take the presidency from his brother. The vice President formed her political party called the Peoples Party (PP). After a failed coup attempt by six close aids of Mutharika, the Vice President was sworn in as President on 7th April 2012. The Peoples Party had no members of parliament to support its agenda and the president formed an inclusive cabinet with MPs from other political parties.

Whilst the Joyce Banda administration made a good start with some correct initial moves, like the long overdue devaluation of the Kwacha, normalization of relations with traditional partners, the micro economic indicators were slumping. The drastic devaluation steepened inflation. The CCJP and NDI research, among many others clearly indicated that common people were being hit hard with growing inflation with the lowering power of the Kwacha. The citizens were feeling a sense of helplessness on one hand and with the exposure of corruption at Capital Hill with

cash-gate, Jet-gate and other gates on the other hand the frustrations and anger were getting heightened. The massive corruption at government further widened the gap between the rich and the poor and exposed the rot in the civil service. Absence of values like social concern, solidarity, honesty and patriotism that is expected of civil servants was visibly eroded.

The social service delivery system had come to virtual collapse like in health with the shortage of drugs and congestion in public health centers. Lack of access to basic amenities like potable water, sanitation all added up to the misery of the common man.

Thus, Malawi was going to one of the complex elections with public trust in the state at the lowest ebb.

1.2 Background to MESN's Electoral Observation

Malawi Electoral Support Network (MESN) is a registered network of civil society organizations working on democratic governance and elections in Malawi. It was formed in 2003. MESN has a membership of 27 civil society organizations and is a registered member of the Council for Non-Governmental Organizations in Malawi (CONGOMA) and the NGO Board of Malawi.

MESN successfully participated in 2004 and 2009 Parliamentary and Presidential Elections in Malawi. It has participated in election observer missions in the SADC region and beyond. MESN is the current chair for SADC Electoral Support Network (SADC ESN) and founding member of the Global Network for Domestic Support Network (GNDEM). MESN works in collaboration with Malawi Electoral Commission (MEC), other civil society networks, development partners, political parties and eligible voters in ensuring that elections held in Malawi meet both local and international standards for acceptable democratic elections as a way of sustaining democratic governance in Malawi.

1.2.1 Objectives of MESN

- a. To advocate for adoption and implementation of national, regional and international standards, commitments and principles on democracy, elections and good governance
- b. To strengthen capacity and independence of its members to implement electoral projects covering the entire electoral cycle based on highest ethical standards and best practices

- c. To conduct research and advocacy on electoral laws and other electoral related issues
- d. To facilitate information sharing on publications and materials related to elections, democracy and governance
- e. To mobilize and encourage civic participation in democracy, elections and governance

1.2.2 Objectives of LTO and PVT of 2014 Tripartite Elections:

Malawi Electoral Support Network (MESN) with financial support from UK Aid and USAID through National Democratic Institute (NDI) for technical support conducted a domestic election observation that included a PVT and Long Term Observation (LTO).

The LTO program's overall objective was to build capacity of credible non-partisan domestic observers to effectively monitor the entire electoral process. MESN believes that assessment of all aspects of the electoral process — both before, during and after Election Day — are essential to determining the extent to which the electoral process, including voter registration, campaigning, and voter education efforts, fulfills the local, regional and international obligations of the country. The presence of local long-term observers allows the development of a relationship with election officials, party candidates, members of civil society and other stakeholders in the electoral process, providing the observers with valuable insight into the political environment and the status of election preparations. The process also increases understanding on the part of the state and other stakeholders about the role played by election observers.

To achieve the above objective, the LTO program focused on the following specific objectives:

- a. Assessing whether the conditions for a free and fair election exist ahead of 2014 Elections,
- b. Documenting all election related events prior to, during and after the 2014 elections in order to objectively inform the citizens of Malawi and other interested stakeholders,
- c. Using observations made by the long-term observer to advocate for electoral reforms,
- d. Publicizing all election related developments in order to minimize electoral malpractices,
- e. Enhancing confidence in the electoral process by highlighting and commending the best practices in the run up to the election,
- f. Encouraging citizen participation in the political process,
- g. Increasing the capacity of domestic observers.

1.3. Methodology of LTO and PVT

1.3.1. Deployment of Long-Term Election Observers:

Following accreditation from the Malawi Electoral Commission (MEC), MESN launched its local observation mission in November, 2013, deploying a small core team to Blantyre to establish a central office and begin logistical preparations and other operations in readiness for the long term observation assignment. Later on in January, 2014, 84 long-term observers from purposively sampled constituencies out of the 193 constituencies were recruited from MESN network membership. They were taken through a systematic training held in the four regions of the country and then deployed to begin assessing the electoral activities that were on going and other electoral preparations. The 84 long – term observers were deployed from February, 2014.

In the deployment of observers and selection of locations MESN used a purposive sampling technique based on selecting political hot spots during the 2014 tripartite elections in Malawi. These “hot spots” are areas that MESN has identified where the level of competition was high, and areas that have had a past of violence and fraud. In some of these areas the potential for high tension was extremely high because of the election fever among the candidates in the constituency which often resulted from controversial changes of political allegiance by some key figures in some political parties. Such dynamics tend to provide a fertile ground for incidents that either directly or indirectly affect the conduct of elections and determination of the eventual winners and losers.

The long-term observers remained in their constituencies of responsibility to observe all other electoral activities leading up to the polls as well as post electoral developments, including the announcement of results. Periodically, ranging from two weeks to four weeks, MESN produced reports and statements based on data collected from the constituencies of responsibility which it shared with all players and stakeholders on the political arena.

1.3.2 STO Observation Methodology:

In early May, 2014, MESN recruited additional observers for the election Short-Term Observation assignment from its 27 network members. These recruited Short-term Observers were 1,434 in total and were proportionally picked to the number of centers in the respective districts. The short-term observers were mobilized to a one day training workshop at central point in their respective districts

beginning from the 14th of May 2014 to the 17th of May 2014 before their deployment on E-day. The STOs were deployed to observe the polling centre set up, the voting, the counting and the announcing of results. The STOs were evenly distributed to 1,434 polling centers in all wards within the 193 constituencies. On Election Day, MESN STOs used mobile phones to electronically submit critical incident checklist their observation data throughout the day. Staff members Highly trained data center operators were available to each observer team to verify checklist data over the phone and ask pertinent questions throughout all stages of the polls. Through the use of this technology at the call centre, MESN observers were also given the opportunity to report any unique or key issues occurring in their areas of responsibility through a specifically designed incident reporting form.

1.4 Summary of LTO and STO activities:

The 84 LTOs deployed in 84 constituencies, covered electoral process from voter registration to close of campaign. During this process the LTOs observed and periodically reported on the following:

- a. Political environment
- b. Voter registration & verification of voter roll,
- c. Use of state resources
- d. Civic and voter education activities,
- e. Nominations of candidates, and
- f. Election campaign.

The LTO program facilitated MESN to make periodic press releases so as to keep the voters abreast of what was going on the ground. The information and the recommendations from the reports assisted concerned authorities in shaping and improving the preparedness, the conduct and direction of the events leading up to the E-day and thereafter.

The STO program focused on the polling day events reporting on the basis of the checklist provided encompassing the events from the opening of polling stations to announcement of results. It also captured the presence of polling and security personnel, and the presence of monitors. The checklist data collected generated reports that provided periodic updates to leadership and staff as the observations occurred. Later after the polls, MESN collected almost all STO checklists from the STOs throughout the country and compiled them at MESN secretariat for data entry, processing and analysis. From the STO checklists MESN produced a comprehensive report on the conduct of the polls specifically the E-day with focus on the set up, voting, counting and results at the polling centers. Our findings show clear projections of results of the presidential race which validate MEC results.

Chapter 2

Legal and Institutional Framework of Elections in Malawi



LEGAL AND INSTITUTIONAL FRAMEWORK OF ELECTIONS IN MALAWI

2.1 An Overview

The legal framework for national elections is generally commended to be sound and providing adequate legal basis for the conduct of free and fair elections. Whilst the Constitution gives the general mandate for holding periodic elections, and the institutional framework for MEC, the electoral laws are in several pieces of legislation as discussed in the section below. As the law to hold tripartite elections were passed barely about a year and a half before the 2014 elections, the harmonization of the several electoral acts could not be complete which caused some bottlenecks in the electoral process.

This chapter provides an overview of the electoral laws that Malawi has put in place in line with the international and regional instruments as well as the challenges that need to be addressed in the Malawi electoral legal framework. It becomes imperative to address the legal gaps and glitches in earnest for future elections.

2.2 International and regional instruments on elections:

Malawi is a party to several international and regional instruments that contain obligation of the state related to elections. The relevant international commitments include the 1966 International Covenant on Civil and Political Rights (ICCPR) ratified in 1993, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) ratified in 1987, the 1966 International Convention on the Elimination of All Forms of Racial Discrimination ratified in 1996, the 2007 Convention on the Rights of Persons with disabilities ratified in 2009 and the Convention against Corruption ratified in 2007.

At the regional level, Malawi is committed to the 1981 African Charter on Human and Peoples Rights (ACHPR) ratified in 1989 and 2003 ACHPR Protocol on the Rights of Women ratified in 2005 as well as the 2007 African Charter on Democracy, Elections and Governance, ratified in 2012. Malawi has signed but not ratified the Protocol of the ACHPR on the African Court. Malawi is also committed to the 2004 SADC Principles and Guidelines Covering Democratic Elections and 1997 Declaration on Gender and Development. Malawi is signatory to most of the international and regional instruments pertaining to Democracy, Human Rights and Elections.

2.3 Electoral Laws of Malawi

In order to have effective and responsive laws, the International Institute for Democracy and Electoral Assistance (IDEA) summarizes the requirement as '*The legal framework should be so structured as to be unambiguous, understandable and transparent and should address all components of an electoral system necessary to ensure democratic elections*'.

The conduct of elections in Malawi is governed by four major legal instruments which constitute the Electoral Law of Malawi. These are: The Constitution of 1995, the Parliamentary & Presidential Elections Act (PPEA) of 1993, the Local Government Elections Act (LGEA) of 1998 and the Electoral Commission Act (ECA) of 1998. The Constitution of Malawi (Ch.7, Sections 75 – 77) stipulates the establishment and powers and functions of the Malawi Electoral Commission, secures the right to vote for all eligible persons, and most importantly secures the independence of the Electoral Commission (Section 76(4)) in the exercise of its powers and functions from any direction or interference by other authority or any person.

The Electoral Commission Act (1998) elaborates on the legal status of the Commission, functions and powers. It details the appointment of the Chief Elections Officer, and provides the financial and transitional provisions.

The Parliamentary & Presidential Elections Act (1993) stipulates the necessary provisions for all the activities involved in the electoral process from registration of voters, legal provision for holding of general elections and by –elections, nominations, campaigns, polling stations, the vote and the voting process, determination of results, election petitions and international observations.

The Local Government Elections Act (1998) deals with provisions required for the conduct of local government elections such as voter registration, nomination of Councilors, campaign, voting, results and observation.

In 2012, Parliament unanimously amended the Constitution in order to allow for the conduct of local government elections together with the general elections in a single day in May 2014. Amendments to other acts aimed at harmonising the electoral legislation framework followed in 2013, but included almost no substantive improvements. There is much needed to be done to align the LGEA with PPEA in the light of tripartite elections to be held in future.

The one positive change in the electoral law was the extension of the period for submitting election petitions from 48 hours to seven days after the announcement of the election results.

2.4 Electoral System

Malawi applies a first –past-the-post system, based on simple majority to elect President, Members of Parliament and Local Councillors by universal adult suffrage. Presidential, Parliamentary and Local Councils offices terms are for a period of five years. There is a limit of two consecutive terms placed on holding of presidential office. The Vice President is elected together with the President on the same ballot. The president appoints a cabinet of minister and the number is according to how big or small the President wants it to be.

The 2004 elections results kindled a debate on electoral system when Bingu Wa Mutharika won with 36% of the national vote. This raised many concerns: Firstly, whether it was legitimate to have a government which had secured less than 50% of the national vote, secondly, whether this would provide a political stability and fair representation of all sections of society. A similar scenario in the 2014 elections where the winner has secured a 36% of national vote had rekindled the debate and there are prospects for a wider national debate and eventual electoral reform towards a requirement of 50% +1 vote for a candidate to win the presidential elections.

2.5 Codes of conduct for the Commissioners of MEC, the media, political parties, traditional leaders, civil society

Within the electoral calendar for the 2014 tripartite elections, every key stakeholder to the electoral process signed a code of conduct in the presence of an invited audience. Though the codes of conduct lack legal enforcement they are commitment made in good faith in full public knowledge.

2.5.1 Code of Conduct for Malawi Electoral Commission

Every Commissioner of MEC takes an oath of office which commits him/her to conduct in an irreproachable manner, observing the highest level of personal integrity, professionalism, discretion and objectivity; refrain from the use of official resources for personal gain and neither solicit nor accept any gifts or favors that could be perceived as compromising their integrity; Maintain strict independence, reject and report any attempt at improper influence, and refrain from accepting direction regarding my responsibilities

from any person expect their official superior. Thus the Commissioners are committed to act in a strictly neutral and unbiased manner, disclosing any actual or potential conflict of interest and doing nothing, including in any private activity that could be seen to indicate any partisan support or partiality. They are to refrain from publicly expressing any political views, or views on any subject which may become a political issue in an election.

2.5.2 Code of Conduct for the Media

In June 2013, 35 media houses signed a code of conduct for the 2014 tripartite elections witnessed by 15 stakeholders. The code among other things outlined the role of the media in reporting during the entire electoral process – the pre electoral phase, the voting period and the post voting period. The code also stipulated the conditions required for media effectiveness by highlighting the role of media houses in ensuring this and the requirements for the professional conduct of journalists upholding the principles of fairness, truth and balance.

2.5.3 Code of Conduct for Political Parties

In August 2013, representatives of 20 political parties signed the code of conduct witnessed by 25 stakeholders for the 2014 tripartite elections. The code ensued commitment by all contesting parties and candidates to:

- a. Abide by the code which guaranteed political rights such as right to campaign, publish, distribute campaign materials, erect banners, conduct political recruitment etc.
- b. To accept results of any elections or challenge the results in court under the ECA, PPEA, LGEA and the Constitution of Malawi.
- c. Refrain from using language or act or behave in any way to provoke or promote violence or intimidate candidates, members of parties, supporters or voters.

2.5.4 Code of Conduct for Traditional Authorities

In the 2014 TPE the Traditional Authorities also signed a code of conduct committing them to refrain from blocking any party or candidate from holding rallies and carrying out any campaign activity. Traditional Authorities were assembled in every region where the code of conduct was debated and eventually signed.

2.6. Election Management

The Constitution of Malawi (1994) establishes the Malawi Electoral Commission (MEC) as the administrator of the electoral process. The Malawi Electoral Commission is an independent, permanent body which was established under Section 75 of the Constitution of the Republic of Malawi. The Commission is mandated to exercise general direction over the conduct of every election. The Electoral Commission Act (1998) and the Parliamentary and Presidential Elections Act (1993) mandates the Commission to: determine constituency boundaries; to devise and establish a voters register; establish a register of candidates; regulate the electoral campaign; oversee the voting process on Election Day; tabulate and announce the results and decide on election complaints. Thus the Electoral Commission is the principal duty bearer for the delivery of free and fair elections.

The MEC is composed of a Chairperson and nine Commissioners. According to the Electoral Commissions Act of 1998, the Chairperson of the Commission must be a Judge nominated by the Judicial Service Commission (JSC) and appointed by the President, whereas the Commissioners are appointed by the President in consultation with political parties represented in the Parliament, for a four-year period that may be renewed. MEC is assisted by a Secretariat which is headed by the Chief Elections Officer (CEO) who is appointed by MEC Commissioners. The Secretariat oversees and coordinates the work of a number specialized departments, including electoral services, civic and voter education, media and public relations, information and communication technology, finance, administration and human resources.

For the 2014 tripartite elections MEC undertook the following initiatives:

- a. Re-introduced National Elections Consultative Forum (NECOF) for consultations and updates with electoral stakeholders on its activities
- b. Developed a five year (2013-2017) strategic plan
- c. Accredited 107 civic and voter education providers to carry out the function
- d. In consultation with users developed codes of conduct for political parties, CVE providers, Media and for Traditional Leaders.

2.7 Key Observations on Legal and Institutional framework

- a. In the 2014 TPE election there was a heavy involvement of the courts before announcement of the official results. We must find ways of streamlining the electoral process to ensure that elections are won or lost fairly at the ballot box

- b. There is a need for clarity on double candidatures i.e. Candidates in Presidential elections also competing in Parliamentary elections and those contesting in Parliamentary elections also competing in local government elections. It was observed that the decision of the EC to disallow the latter in the 2014 elections was done without legal backing. This has to be rectified as tripartite elections are going to be the norm rather than the exception.
 - c. There is no need to limit the Chairmanship of EC to Judges only. It can be opened up to other professionals with requisite capabilities and character.
 - d. There is need for clarity on the term 'public officers' and whether public officers are required to resign before they run for elected office or they should resign after winning the elections. The period for verification of the voters roll is too short.
 - e. There is a need for standard requirement of educational levels of Malawi School of Education Certificate for MPs and Councillors.
 - f. There has to be harmonization of time frames relating to the dissolution of parliament, nomination of candidates, and the campaign. The challenge now is the time between the dissolution of parliament and the official campaign period is too short. This is unfavourable to sitting MPs who cannot officially campaign while in office.
 - g. Constituency demarcation a legal requirement to carry out in every five years not fulfilled since 1998.
 - h. There is a need for legislation for political parties to disclose their sources of funding and campaign expenses.
 - i. There is also a dire need for string legislation banning state resources for campaign.
 - j. The law needs to regulate announcement of unofficial results while polling is ongoing in other parts of the country.
 - k. The eight day period for determination and announcement of results by the electoral Commission is too short in the event of serious anomalies and is no longer practical for the Electoral Commission in the context of tripartite elections.
 - l. Key departments in MEC lack capacity. This is due to the dependence of MEC on government.
 - m. Need for MEC financial independence.
 - n. There is a need to secure temporary staff from the open market with clear contracts
 - o. There is a visible need to improve information use and flow among (both vertical and horizontal)
 - p. There has to be a continuous regular provision of information and open door policy.
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2.8 Recommendations

- a. Review and reform the entire legal framework thoroughly to ensure that courts have a minimal role in election administration and to ensure that the application of law safeguards the interests of voters and promotes the credibility of the electoral process
 - b. Open up the chairmanship of the Malawi Electoral Commission to other professions because there is no justification for limiting the privilege to judges only. The 2007 Law Commission report recommended that the chairmanship of the MEC should not be restricted to judges. To achieve this requires the amendment of section 75 (1) of the Constitution
 - c. Harmonize the eligibility criteria of candidates to require the same type of citizenship for candidates for all the three elections
 - d. Set Malawi School Certificate of Education as the minimum level of education required for candidates in parliamentary and local government elections
 - e. Design a better way of recruiting Commissioners of the Malawi Electoral Commission rather than nominations by political parties. Provide in the Electoral Commissions Act a formula whereby the term of office for the Electoral Commissioners does not expire at the same time for all of them as it currently the case. Terms should expire at different times to ensure institutional memory.
 - f. Registration of voters should be linked to the National Identity Programme to cut costs and other incidences. Biometric Voter Registration should be considered as an option for registration because the Optical Mark Registration is not serving the electoral purpose very well
 - g. The official campaign period should be extended to give MEC authority to regulate campaigns (which take place anyway) an earlier stage of the election cycle. There is no justifiable reason for aligning the official campaign period to the dissolution of parliament.
 - h. There should be a law banning any form of hand –outs for campaign purposes
 - i. The law should make participation in political and policy debates mandatory for presidential elections
 - j. The PPEA and the LGEA should be amended to prohibit the publication of any results – including unofficial results until all polling stations are closed in order to prevent undue influence of voters' choices by the announcement of results
 - k. Announcement of the presidential results should be done within 7 days, parliamentary results within 14 days and local government results within 21
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days. A law should be put in place to guide MEC in the case of withdrawal or death of candidates' especially presidential running mates.

- l. All electoral laws should be made into one electoral law for Malawi
 - m. Handover and inauguration of the President elect should be regulated by law
 - n. The law should clarify functions and roles of Councilors
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Chapter 3

Key Findings of the Pre
Electoral Phase of 2014
Tripartite Elections (LTO)



FINDINGS OF THE CONDUCT OF PRE - ELECTORAL PHASE OF THE 2014 TRIPARTITE ELECTIONS

3.1.0 Background to the pre – Election Period observation:

The pre electoral observation or Long Term Observation of MESN methodology was drawn on the basis of guidelines for democratic elections contained in regional and international treaties. The legal framework for elections in Malawi formed the core basis for MESN's observer mission. MESN observers carried out their mission in accordance with the declaration of principle for international election observation and all observers signed a code of conduct for election observation that conforms to the international standards as prescribed by MEC. All observers signed code of conduct to abide by the principles of political neutrality and transparency in the discharge of their duties as observers.

Upon accreditation by the Malawi Electoral Commission (MEC), MESN launched its local observation mission in November 2013.

3.1.1 Identification of Constituencies

The 84 constituencies identified for LTO by MESN were described “hot spots” on the basis of highly competitive nature of contestation there, and past record of violence and electoral fraud. Some areas were potentially tense due to shifting of political alliance by incumbents. Such dynamics provide a fertile ground for intimidation and conflict.

The long-term observers in their constituencies of deployment to observed all electoral activities leading up to the polls, the polling day as well as post electoral developments, until the announcement of results.

3.1.2 Key findings

This section covers issues from boundary delimitation to political campaign including the role of the media in this process.

3.1.2.1. Boundary delimitation

The Constitution of Malawi (Section 76 (a)) requires the EC to determine constituency boundaries on the basis of ensuring that constituencies contain approximately equal number of voters eligible to register, subject only to consideration of: Population density, ease of communication and geographical features and existing administrative areas. The Constitution in Section 76 (b)

requires the review of existing constituency boundaries at intervals of not more than five years and alters them in accordance with the principles laid down in Section 76(a).

Despite the Constitutional requirement constituency demarcation has not been done since 1998. Consequently, inequality in parliamentary representation has been constantly on the rise. In the 2014 elections, the average constituencies in the city of Lilongwe had close to 72,000 registered voters, compared to the national average of approximately 39,000. As a result, the parliamentary vote of a voter residing in the city of Lilongwe was worth about half of that of a voter in the average sized Malawian constituency. Such wide discrepancies clearly violate the principle of “one-person one vote.” The demarcation exercise of 1998 was marred by controversies. MEC was accused of favoring the then incumbent the UDF party by creating more constituencies in the South.

The 2010 Electoral Commission (Amended) Act reduced the number of wards per districts. The new legal position is that every district has 2 wards for each parliamentary constituency, except that, in the case of cities of Blantyre and Lilongwe, the number of wards is 30 each, and in the case of the cities of Mzuzu and Zomba, the number of wards is 15 and 10, respectively. This has implications for small districts such as Likoma and Balaka which have few constituencies and therefore fewer councilors. Likoma has only one constituency and therefore only two councilors. This number cannot constitute a district council even if it was to include the District Commission of the district.

3.1.2.2 Voter Registration

The PPEA (part III Sections 15 – 31) stipulates in detail the voter registration process. For the 2014 tripartite elections, MEC had to develop a new voter register, using the Optical Mark Recognition Technology though its effectiveness was a cause for debate in the previous voter registration exercise. In December 2012, MEC proposed to conduct a biometric voter registration exercise as a better and accurate method. However, MEC had to revert to the old OMR voter registration system because of the resistance it got from stakeholders, mainly due to lack of adequate resources to support the BVR technology. MESN expressed appreciation of this reversal by MEC as MESN was also of the view that time was not right to go for a new technology for as critical a process as voter registration.

Voter registration began on 22nd July 2013 and ended in December 2013. This was done in nine phases from the southern region towards the northern region. MESN

observers identified the following challenges during this process:

- a. Inadequacy of the number of clerks recruited by MEC for this exercise,
- b. The heavy workload allocated to the clerks and their inability to cope,
- c. Procurement of faulty equipment like cameras, printers, solar transformers and generators,
- d. Projection of eligible voters by MEC doubted by a number of stakeholders,

The above hiccups prolonged the registration process and in a number of centers the exercise could not be concluded by the intended date and had to be extended. This had an implication on the successive stages of the electoral process.

The success of the entire exercise was MEC at the end of the day managed to register 94% of the projected figures coming to 7,538,000 voters. However, there was no consensus as to the possibility of this final figure hence it remained contested till the polling day. 7,543,000 was seen as covering half of the population which could not be of voting age.

Table 1: Registered voters per district

COUNCIL	ACTUAL VOTERS REGISTERED FOR 2014 TRIPARTITE ELECTIONS			PROJECTED FIGURES FOR 2014	% VOTER REGISTRATION TO TOTAL PROJECTION
	MALE	FEMALE	TOTAL		
Chitipa	48,028	57,473	105,501	119,550	88.25
Karonga	74,511	86,235	160,746	172,579	93.14
Rumphi	53,083	55,227	180,360	112,941	88.14
Nkhata-Bay	62,202	66,864	129,066	135,933	94.95
Likoma	3,351	3,491	6,842	6,672	103
Mzuzu City	48,015	47,642	95,657	89,204	107.23
Mzimba (M'mbelwa)	200,029	232,981	433,010	487,221	88.87
Northern Region Total	489,219	549,963	1,039,182	1,134,100	91.63
Kasungu Dst.	170,124	173,915	344,039	383,137	89.80
Kasungu Municipality	16,036	15,340	31,376	30,194	103.91
Nkhotakota	85,420	92,568	177,988	188,673	94.34
Ntchisi	63,071	68,465	131,536	140,664	93.51
Dowa	156,006	170,133	326,139	342,683	95.17
Salima	82,343	102,122	184,465	197,414	93.44
Mchinji	130,899	139,248	270,147	289,568	93.29
Lilongwe Dst.	307,713	363,799	671,512	706,837	95.00
Lilongwe City	218,439	198,363	416,802	371,778	112.11
Dedza	148,654	197,041	345,695	360,663	95.85
Ntcheu	116,290	148,693	264,983	277,658	95.44
Central Region Total	1,494,995	1,669,687	3,164,682	3,289,270	96.21

Mangochi Dst.	181,491	245,381	426,872	452,502	94.34
Mangochi Town Council	12,145	13,194	25,339	27,547	91.99
Balaka	81,249	105,429	186,678	202,268	92.29
Machinga	115,655	155,749	271,404	305,000	88.99
Zomba Dst.	140,756	176,705	317,461	346,393	91.65
Zomba City Council	27,611	25,175	52,786	56,219	93.89
Blantyre Rural	98,740	116,054	214,794	239,298	89.76
Blantyre City	195,326	177,028	372,354	401,820	92.67
Mwanza	23,983	30,690	54,673	53,414	102.36
Neno	28,529	33,567	62,096	61,082	101.66
Thyolo	135,521	177,324	312,845	340,109	91.98
Luchenza Municipality Council	4,925	4,721	9,646	12,628	76.39
Phalombe	78,855	101,124	179,979	190,696	94.38
Mulanje	129,501	176,795	306,296	320,261	95.64
Chikhwawa	113,680	131,182	244,862	260,256	94.09
Nsanje	55,626	71,010	126,636	139,435	90.82
Southern Region Total	1,497,151	1,836,533	3,333,684	3,588,322	92.90

National Grand Total	3,481,365	4,056,183	7,537,548	8,009,734	94.10
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Source: Malawi Electoral Commission, website

3.1.2.3 Inspection of Voter Roll

The voter verification exercise was scheduled to take place between 24 and 28 March 2014 throughout the country. However, it had to be postponed due to logistical challenges faced by MEC. Consequently the verification exercise was conducted in three separate phases. Southern region between 9th and 13th April, Northern region and part of Central region from 21st to 25th April, and rest of the Central region from 1st to 5th May 2014.

The law requires that the voter roll be open for public inspection to verify their names and photographs, request for correction of information in case of error, request for transfer of polling station and to report deceased voters. The interim voter register was opened for inspection in three phases in April and May 2014 covering the four regions – North, South, East and Central.

The LTO observation on MEC during this exercise revealed that the number of officials at the polling centers varied significantly. The maximum number of officials in one centre was fourteen (14) with the minimum of official in another center to be one (1). This variation was noted with concern. Out of the total number of MEC officials deployed, forty four (44) percent were females indicating MEC's commitment to engage women in all aspects of the electoral process.

Political party monitors from the PP, UDF DPP and MCP and some candidates were present during this process. Overall, the party agents present at the centers was about 63% and 37% of the centers had no party monitors.

On 23 April, 2014, Malawi Elections Information Centre (MEIC) was set up with support from HIVOS and Open Society Initiative for Southern Africa (OSISA) to collect and disseminate information on the electoral process and this body used mobile phones SMS and internet to verify a voter's registration. This system contributed to the voter registration confirmation process by requesting the registered voters to verify their registration status by sending a free SMS 5VOTE (58683) with their Voter ID numbers. The total messages sent to the MEC (Malawi Election Commission) was 217,118, of which MEC successfully verified 182,605 and rejected 34,491 as due to invalid IDs or verification information.

MESN noted that, in spite of the challenges that the inspection of the interim voters roll process faced, at the end of the exercise a good percentage of the registered Malawian voters verified their names in the register and the final registered voter figure was 7,470,806. However, MESN also noted grave concern on the cases of inaccuracy such as missing particulars of names, date of birth and quality of some voter photos and a number of voters name could not be traced in the register. All these gave raise to suspicion of the roll, doubting the credibility of the voter roll. The inordinate delay in sharing of voters roll with political parties added to the building anxiety. However, it was finally resolved by steps taken by MEC to eventually share the voter register.

3.1.2.4 Party Primaries

Nineteen political parties signed the Code of Conduct for 2014 TPE. Not all political parties that participated in the tripartite elections conducted primary elections in all constituencies and in all wards. Besides the four frontrunners, a couple of other parties held convention of some sort. Even in the four frontrunners the conventions had many shortfalls. There were instances of imposition of candidates by party leadership were commonly found in the case of major parties particularly the DPP

and PP. Following are some examples of such events reported by LTOs.

In the Peoples Party controversy lingered over the Karonga Central Constituency where the then deputy minister of Finance Dr. Cornelius Mwalwanda won primaries after defeating the party's deputy secretary general Frank Mwenifumbo but the party called for a rerun.

In Rumphu East, PP deputy publicity secretary Ken Msonda contested the results of the primaries where Kamlepo Kalua won. A similar scenario occurred in the Zomba Central Constituency where the party's deputy administrative secretary Joseph Chikwemba lost but challenged the results. In Ntcheu West, Naomi Chidiwa won but went into hiding after defeating the deputy minister of Education Science and Technology Chikumbutso Hiwa as she was allegedly receiving threats. In Democratic Progressive Party, there was a rerun in Mulanje -Pasani where Angie Kaliati, husband to the party's director of women affairs Patricia Kaliati defeated the incumbent legislator Peter Nowa who then declared to contest as an independent candidate. In ZombaThondwe, DPP's legislator Ruth Lemani lost and declared that she would contest as an independent.

MESN expressed deep concern over the lack of intra party democracy and cautioned the political parties embroiled in primaries controversies that such disputes are recipe for disaster and will split votes in the tripartite elections since some of the losers have already indicated that they would contest as independent candidates.

The irregularities during primary elections resulted in dispute of results by a number of candidates some of whom opted to contest for parliamentary and local government seats as independent candidates whilst others chose to lodge complaints with concerned authorities or go to court.

Competition between adversaries, who were friends then and foes now, during the primaries were characterized by cases of violence, hate speech and intimidation in many closely contested primaries in a few constituencies across the country.

A positive lens to the primaries will be to say parties strive to promote competition from within and candidates also try to bring in some level of issue based approach to elections from this level.

3.1.2.5 Nominations

Requirements to stand for elections are generally in line with the international regulations. Eligible candidates may contest all types of elections as a party-sponsored or independent candidate. No candidate may be nominated for more than one parliamentary constituency or ward for the same election. However, they may be nominated for multiple types of election, meaning that a candidate may contest on presidential, parliamentary and council elections simultaneously. The nominations are subject to the payment of a fee. Female candidates for parliament and local councils benefit from a 25 per cent reduction in the fees.

Parliamentary and local government candidates filed nominations at the District and city/town council headquarters while the Presidential candidates presented nominations in Blantyre at the Comesa Hall where the Chairperson of the commission received the nominations.

This process or exercise saw 12 candidates expressing interest to contest for the presidential vote. Out of the 12, two were female candidates. 1,274 candidates came in the open to contest for the 193 parliamentary seats, out of which 1,020 were male candidates and 254 were female candidates. A good proportion of these candidates were youthful men and women than ever before.

Table 2 gives political party analysis of candidates based on the nomination list.

Candidate analysis based on MEC nomination list

Presidential Candidate	Party	Male	% of 193	Female	% of 193	TOTAL
Friday Jumbe	NLP	1	0.5	1	0.5	2
Joyce Banda	PP	151	78.24	41	21.24	192
Lazarus Chakwera	MCP	124	64.25	31	16.06	155
Kamuzu Chibambo	PETRA	4	2.07	1	0.5	5
John Chisi	UMODZI	1	0.5	-	-	1
Davis Katsonga	CCP	5	2.6	-	-	5
Mark Katsonga	PPM	46	23.83	3	1.6	49
George Mnesa (under Tisinthe Coalition)	MAFUNDE	3	1.6	1	0.5	4
Atupele Muluzi	UDF	151	78.24	32	16.6	183
Peter Mutharika	DPP	144	74.6	44	22.79	188
James Nyondo	NASAF	20	10.7	3	1.6	23
Hellen Singh	UIP	12	6.22	5	2.6	17
(No Presidential Candidate)	PDM	1	0.5	-	-	1
(No Presidential Candidate)	UP	2	1.03	1	0.5	3
(No Presidential Candidate)	AFORD	10	5.18	2	1.03	12
(No Presidential Candidate)	NCP	3	1.6	2	1.03	5
(No Presidential Candidate)	MPP	1	0.5	-	-	1
(No Presidential Candidate)	INDEPENDENT	335	173.58	86	44.56	421
	TOTAL	1020		254		1274

Source: *FilMESNLTO report, 2014*

The MEC had originally rejected nominations of one presidential candidate (John Chisi of Umodzi Party) and 14 parliamentary candidates on the grounds of holding public office. The MEC considered employment at universities and membership on boards of public entities -as public offices. Public office holders are prohibited by the Constitution from standing for elections but the legislation contains no definition of this term, thus creating legal uncertainty regarding the eligibility of certain categories of candidates. Five of the rejected candidates appealed to the High Court and in all the cases the Court ruled that the candidates were eligible to be nominated. The grounds for the court decisions varied as in some cases, the court interpreted their employment as not being a public office, in others the court was satisfied that the leave of absence was equivalent to the termination of the employment contracts. Following these five appeals, the MEC reinstated all 15 nominations.

Members of parliament are constitutionally banned from being nominated as candidates due to holding a public office. This creates an unreasonable restriction and appears to serve no purpose. Although the nomination period took place from 10 to 14 February, the MEC delayed the official announcement of the nominations until the same day as the dissolution of the parliament, on 20 March, to overcome the constitutional ban on sitting members of parliament. This solution, although practical and generally accepted, remains legally questionable. According to the law, a candidate is deemed duly nominated when his or her valid nomination paper is delivered to the returning officer and not at the moment of the announcement by the MEC.

It was observed that all the candidates were accorded equal opportunities during the presentation. This includes the time, the platform to make speeches as well as candidate or party supporters to express their loyalty to their favorite candidates. The candidates' and supporters political rights and freedoms were respected and there was enough security presence at all nomination centers at the district councils.

Overall the process was conducted successfully by the commission, political parties and candidates. There were no reported cases of violence, manipulation or unfair treatment of candidates by the MEC.

3.1.2.6 Voter Education

Section 8 of the Electoral Commission Act gives the MEC a responsibility to promote public awareness of electoral matters through the media and other appropriate and

effective means and to conduct civic and voter education on such matters. Although the responsibility for CVE rests with the Electoral Commission, political parties and civil Society organizations, the media and other groups play significant roles in the delivery of CVE and do so under the general direction and supervision of the commission.

MEC therefore developed a code of conduct for CVE providers. For the 2014 tripartite elections, the MEC developed a strategy to serve as a framework for coordinating the roles of various CVE providers and for ensuring gender parity, equality and equity in access to information and participation of voters, candidates, electoral official focusing on the objectives of CVE, the content and the methods of delivery and the monitoring processes. With the CVE strategy MEC aimed at achieving increased voter turnout at registration and polling day; reduced null and void votes to less than 3.5% of the valid votes, promoted peaceful and smooth conduct of the elections; built confidence and trust of the electorate in the electoral processes; promoted participation of socially excluded and vulnerable groups in the electoral process and improved the implementation and quality of CVE.

In March 2014, MESN observers verified that MEC was conducting voter education in various constituencies. It carried information among others on the electoral process, voting, rights of voters, and the secrecy of the ballot. The MEC CVE activities kept increasing its coverage in the country. Later on in April, and May 2014 the situation greatly improved as MEC's CVE activities could be observed in all constituencies. The below table illustrates this.

Table 3: Constituencies covered by MEC's CVE activities

Month	Percentage of constituencies covered	Percentage of constituencies not covered
April	60%	40%
May	68%	32%

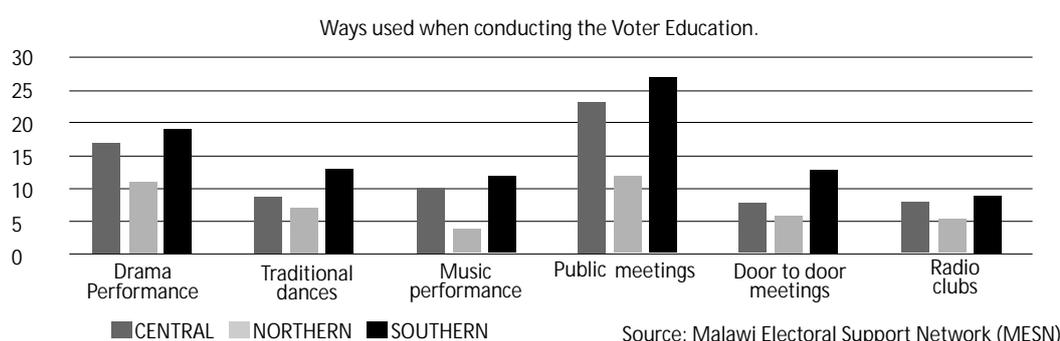
Source: MESNLTO REPORT

Some CSOs that actively participated in this exercise are National Initiative for Civic Education Trust (NICE), Pan African Civic Educators Network (PACENET), Youth Network Counselling (YONECO), Catholic Commission for Justice and Peace (CCJP), Public Affairs Committee (PAC), and Church and Society of Blantyre, Nkhoma and Livingstonia CCAP Synods.

Table 4: Represents CSO CVE activities in the month of March, April and May 2014

Month	Covered	Not Covered
March	88%	12%
April	91%	09%
May	89%	11%

Source: MESNLTO report



Prevalent approaches to this CVE among most players were public rallies, performances like dance and drama, distribution of leaflets and stickers and displays of posters in public places as well as playing of jingles on most radio and TV stations in Malawi.

Despite the above mentioned activities, a late start and selective approach along with high levels of poverty and illiteracy significantly impacted the efficiency of voter education programs in the pre-election period. There were very few players on the arena that implemented CVE at the beginning of the electoral cycle of the tripartite elections. Significant CVE interventions by CSOs though few started to be registered in February 2014. It was only very close to the polls in April and May, 2014 that CVE was intense and widespread since several players had joined to support the CVE efforts which were to a certain extent late.

The 20th May 2014 polls registered 70.07% turnout of registered voters on the parliamentary vote and 68.9% turnout on local government vote which is relatively a great achievement. The turnout margin had arisen from 14% in local government elections to almost 69%. MEC and all other players and stakeholders must have done a very good job.

The 20th May polls only saw 1.43% and 2.35% null and void votes on the parliamentary and presidential votes. The number of these null and void votes has thus reduced null and void votes to less than 3.5% of the valid votes which is within the set target of the objective of MEC CVE strategy.

3.1.2.7. Campaigns

The Electoral laws in Malawi guarantee the right to campaign in an election. Section 59 of PPE Act stipulates that “every political party and every representative, member or supporter shall enjoy complete and unhindered freedom of expression and information in the exercise of the right to campaign”. During campaign, party agents and candidates are free to use materials within their reach to advance their manifestos to the electorate in Malawi. However, the Malawi Electoral laws also have some restrictions to the conduct of the campaign such as a general ban on civil servants using state resources for promotion of a political party. In this regard the MEC developed a code of conduct which all political parties signed for guidance in their electioneering activities.

The official campaign period is supposed to last for two months, finishing 48 hours before the opening of the polls. Due to conflicting legal timeframes, the MEC was obliged to wait until after the dissolution of the parliament before the official announcement of candidatures and opening the campaign period on 20 March.

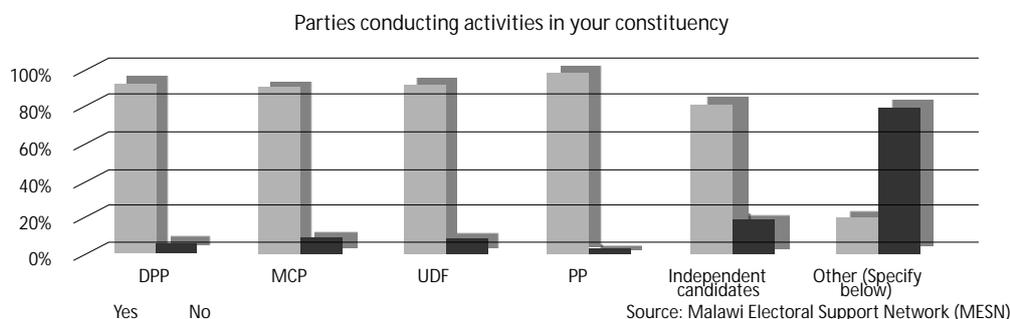
Malawi electoral laws are silent on campaign financing limits which results in great discrepancies between the resources of the contestants. Parties and candidates are allowed to receive funds from any sources, both domestic and foreign. The absence of such legally binding guide lines, under levels of transparency and accountability of the process on the part of all players in the political arena, which may breed fraud and abuse of public funds. Also, the lack of explicit prohibition of the use of state resources for campaigning opens up the possibility of blurring between the ruling party resources and state resources.

All political parties participated in the electioneering activities in one way or another. Candidates, political parties, representatives and supporters were found to be undertaking their campaign activities across the country.

3.1.2.7.1 Party Campaigns at constituency levels: A comparative analysis

Peoples' Party reportedly had the largest presence in the constituencies with on average 98.7 percent of party members interviewed reporting activities in all regions. This was followed by the Democratic Progressive Party with 93.3 percent, United Democratic Front with 92 percent and Malawi Congress Party with 90.7 percent while independent candidates had 81.3 percent. Other parties, apart from the big four, had little presence with a 20 percent presence in the constituencies.

The party campaigns during the official campaign period in the months of March, April and May, 2014 has been captured by MESN –LTO as follows:



3.1.2.7.2 Political Party Financing

Government funding for political parties is legally secured for parties securing more than one-tenth of the national vote in elections. This is the only known source of income for political parties. Parties do receive donations from anonymous “well-wishers,” e.g. individuals and organisations and companies and business enterprises are forced to finance political parties. These are forms of political investments usually without written contracts, hence not easily enforceable by the courts. Abuses of public funds by incumbent parties are an open secret. In the absence of proper legislation, incumbent parties are a threat to the safety of the public purse.

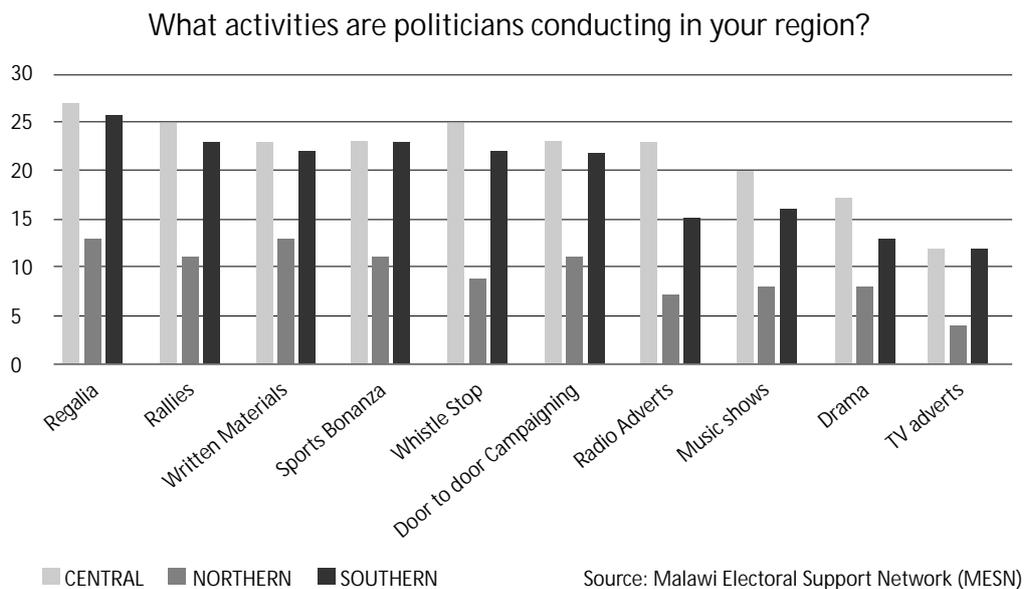
In Malawi, the PPRRA has no specific provisions regarding political party financing and regulation. However, currently there is a draft Bill being championed by the Centre for Multiparty Democracy. The bill has provisions in relation to political party financing and regulation.

3.1.2.7.3. Campaign tools

Campaign tools consisted of public rallies, door to door initiatives, meetings with voters, stop overs through convoys of leaders. Campaign rallies were very frequent and of small to medium size commonly among candidates competing for the local government and parliamentary seats. Larger political meetings were reserved mostly for presidential candidates who joined with the party candidates competing in the parliamentary and local government elections. In most cases, campaigning activities were limited to printed materials, including posters, billboards, and leaflets. Only the four main political parties –the PP, DPP, MCP and UDF –were able to hold large rallies and countrywide whistle-stop tours. The

remaining political parties channeled their resources into small meetings and door-to-door campaign activities with much less visibility, mostly due to a lack of financial resources and the absence of party structures at local level.

The table below is a representation that summarizes the various campaign tools used by candidates and parties.



The candidates' debates were another platform for campaign in 2014 tripartite elections. Among others Malawians witnessed four presidential debates i.e. two vice presidents and three for the presidents in which most candidates exchanged views on live television and some radio stations across the country. The debates were viewed widely, informed the nation, and gave an opportunity for citizens to see and hear the candidates interact with one another. The relatively open debate style of the format allowed voters to hear different views on issues affecting their daily lives. MESN observed that some contesting presidential candidates opted out though they were duly invited to participate, one of whom was the then President of the country Joyce Banda contesting on a PP ticket. Similar debates for candidates on parliamentary and local government were also organized in various constituencies across the country.

NDI worked with a multi-stakeholder taskforce of civil society organizations, media houses and the Malawi Electoral Commission (MEC) to organize the first –ever presidential debates in Malawi. All the debates received wide coverage via both print and online media which was mostly positive. Blantyre Newspapers Limited

stated that “a new chapter has been opened with the presidential debates which have sent a clear message to the people that political differences do not have to degenerate into enmity and violence.

3.1.2.7.4. Campaign messages

During campaign activities, messages have focused on general socio-economic development issues, with most opposition parties also giving significant emphasis to corruption and governance issues. On a different note The incumbent PP and other contesting parties that have governed Malawi before focused its messages on achievements and successes during their tenure of office such Joyce Banda's presidential initiatives in providing housing and livestock to the population; the success of Bingu's food security initiative on the part DPP; the introduction of free primary education on the part UDF and the Malawi road and other infrastructure on the part MCP. However, some candidates developed more reformative political platforms referring to specific local problems such as promotion of transparency and accountability to combat fraud and abuse of public resources.

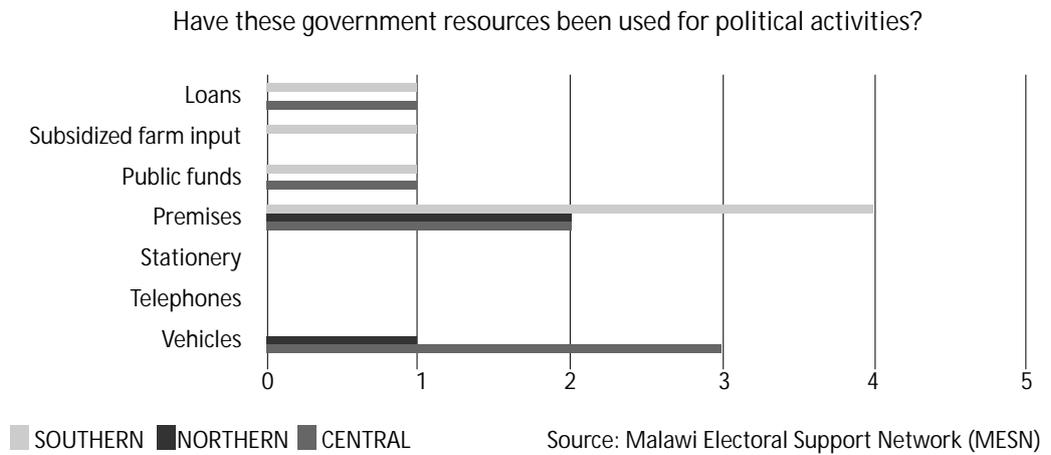
3.1.2.7.5 Hand Outs

During the campaign rallies observed by MESN most of the main parties provided participants with material hand outs such as campaign t-shirts, caps and sometimes some food stuff as well as financial incentives to attend the events. The financial resources available to the PP appeared to be higher than for other parties. MESN observers reported PP distributing hand outs such as maize, motorbikes, bicycles, blankets, and shoes in many districts across the country.

3.1.2.7.6. Incumbency and Public resources

The PP clearly had an advantage over the other political parties as it benefitted from the advantages of the incumbency including more state-owned media coverage. The distinction between PP campaign activities and the activities inherent to the presidential office were not always clear. The blurring of lines was evident in daily state television and radio broadcasting of PP rallies and in presidential activities where attendants and speakers wore clothes and party paraphernalia of the ruling party, including the President herself. Such events included the inauguration of public works such as the Malawi Rural Electrification programmes, construction of roads and housing projects in several districts across the country.

The chart below shows the distribution in a graphical form.



3.1.2.7.7 Campaign Violence

The campaign had a number of critical incidents though on a small scale. MESN's observers reported isolated cases of vandalism such as destruction of campaign posters, violence, hate speech, designation of no go zones in areas which are deemed as power houses of some parties. Some of these incidents left many injured and a few dead. The Mangochi incident of designation of no 'go zones' is an example of a case in the UDF dominated area. The Goliati incident in Thyolo district where DPP and PP party supporters clashed stands out as one serious incident that attracted serious attention countrywide.

The figure below represents the above information:



3.1.2.8 Media reporting of the campaign

A number of legal instruments and self-regulatory guidelines and code of ethics guide the performance of the media in covering electoral issues in Malawi. The Constitution of the Republic of Malawi, The Communications Act – 1998, the Gender Equality Act - 2013, Guidelines on media coverage of elections in SADC region 2012, The African Charter on Broadcasting - 2001, the SADC Principles and Guidelines Governing Democratic Elections – 2004, to mention a few.

The code of conduct signed by media houses in the run up to 2014 TPE stipulate the conditions required for media effectiveness by highlighting the role of media houses in ensuring this and the requirements for the professional conduct of journalists upholding the principles of fairness, truth and balance.

A comprehensive election media monitoring operation was undertaken by the Institute for War & Peace supported by USAID and UK Aid. The monitoring exercise covered the whole of the official campaigning period of 22nd March -18th May, 2014. This encompassed not just the traditional media of print, radio and television but also the news websites and the social media. The project covered outputs of thirteen radio stations (including the two state radio stations), two television stations, two newspaper groups, seven news websites, eight Facebook groups and Twitter. In total 11,354 news items were collected and analyzed from the various media. The analysis takes into account both public and private media, the restricted and the unrestricted space.

The project focused exclusively on news on radio, television, newspapers, news websites and social media. The focus on news was because it was obviously an important resource base and also because research from many countries indicates that news has higher audiences and greater credibility than all other aspects of media outputs.

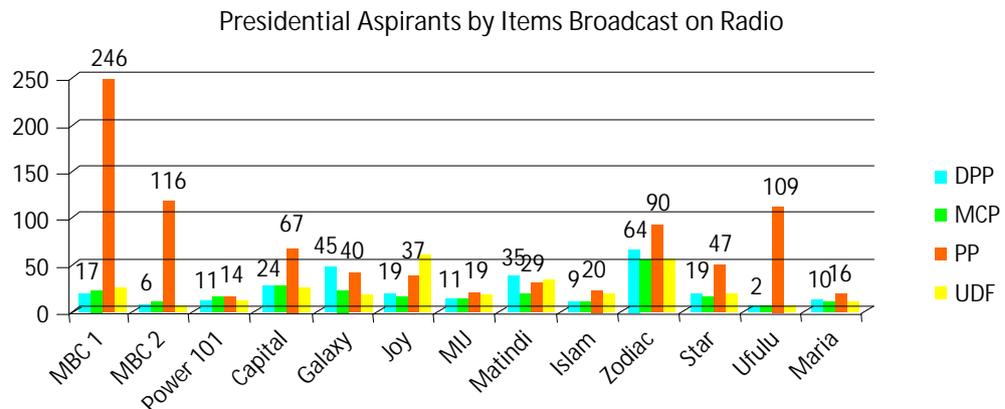
Radio: 13 radio stations were monitored during this period: MBC 1 and 2, Power 101, Capital FM, Galaxy, Joy, MIJ, Matindi, Islam, Zodiak, Star, Ufulu and Maria, from which 4,400 news items were collected and analyzed. It denotes significant differences in the sheer amount of coverage; for example Capital, Zodiak and Galaxy broadcast three times as many stories during the campaign period as did Power 101 and MBC 2 (incidentally both stations target younger audiences). MBC 1 broadcast the largest number of stories (566) - an average of 10 stories a day on the two bulletins monitored - followed by Galaxy (497), Zodiak (471) and Capital (426).

a. Coverage of tripartite elections

The observation was that the coverage mostly focused on the presidential battle, eclipsing important parliamentary and local government contests and this was indeed the case. Whilst 49% of all coverage monitored did not specify a particular election, the Presidential elections with 38% of the coverage dominated, the parliamentary elections gained 12% of the coverage and the local government elections received just 2%.

b. Coverage of Presidential campaign by main political parties

The distribution of the coverage (neutral, pro and anti) between the presidential aspirants from the four main political parties indicated that the maximum of the presidential coverage was given to the People's Party (PP) aspirant; however, given the incumbency factor, this was predictable. However, most of the private radio stations gave a fairer share of coverage to all the parties. The graph below indicates the coverage to these parties.



Television: The project monitored two television stations: MBC TV (981 news items) and Times TV (313 news items). A total of 1,294 television news items were analyzed. The majority of the election coverage on television was given to the presidential contest (54%) and the least was given to the local government elections (4%). The coverage of the presidential aspirants on State Television went to the PP candidate at 71% whilst that of the DPP candidate received 10% of the coverage while the MCP and UDF candidates both received 9%. The private station, Times TV, also gave a majority of its coverage to the PP presidential aspirant but at a much lower level (43%) compared to the State Television. Times TV also gave considerably more coverage to the DPP and MCP presidential aspirants but not a great deal more to the UDF candidate.

Newspaper: The project monitored and analyzed a total of 1,726 articles from the two print media houses, namely the Nation Group and Times Group. Most coverage was given to the presidential election (31%), followed by the parliamentary (12%) and then local government (3%). Over half of the items (54%) did not specify a particular election. The ruling party candidate (PP) received most newspaper mentions, either positive or negative (35%), followed by the candidate from the DPP (18%), then the MCP (17%), UDF (16%), and the candidates from other parties (11%). This final report has found significant mention of presidential aspirants from other parties, for instance the PPM (2%) and the UIP (1%). This is because these candidates were covered in the context of the presidential political debates that were conducted towards the latter end of the campaign period.

News websites: The project monitored seven news websites and collected a total of 1,523 entries. Of these, the highest number of entries was found on the Nyasa Times (30%, N=421) followed by Malawi Voice (19%, N=266), Mana Online (14%, N=204), Maravi Post (14%, N=196), The Oracle Times (9%, N=127) and Banthu Times had the least entries (2%, N=26). The emerging trend throughout the monitoring period is that the presidential race was covered the most (60%) followed by non-specific election coverage (24%), Parliamentary elections (14%) then local government elections (2%). The PP presidential aspirant (46%) and her party (34%) were mentioned the most on the news websites though not as overwhelmingly, as was the case with the state radio and television stations. The emerging trend throughout the monitoring period is that the presidential race was covered the most (60%) followed by non-specific election coverage (24%), Parliamentary elections (14%) then local government elections (2%) The PP presidential aspirant (46%) and her party (34%) were mentioned the most on the news websites though not as overwhelmingly, as was the case with the state radio and television stations.

Facebook: The project monitored eight Facebook groups. Over 1,900 entries were collected but with the vast majority coming from My Malawi My Views (74%), and the Malawi Freedom Network (17 %); other sites monitored included: Kusanthula Zakukhosi Pa Malawi (4%), My Malawi My Land (2%), Malawi Breaking News (2%), Malawi Daily (1%), Malawi @50 (1%) and Gossip (0.4%). As with the other media, Facebook overwhelmingly covered the presidential race, 1717 entries accounting for 90% of the entries. This was followed by non-specific election coverage (7%), the parliamentary race (3%) and local government (0.4%).

Twitter: Overall, the project collected and analyzed a total of 469 tweets throughout the election campaign period. Most coverage on Twitter was about the presidential elections (92%), followed by non-specific electoral coverage (5%), then the Parliamentary contest (2%) and finally Local government (1%). It is interesting that because of the nature of Twitter, it more than any other medium, appeared to discourage posts of a more general nature about the election.

Overall, there was a significant amount of coverage across all the media of what we termed 'topical issues' i.e. coverage of election stories that were not just about parties or politicians but were about those matters that affect ordinary Malawians in their everyday lives. Based on the results of the comprehensive media monitoring operation it is fair to conclude that overall, the people of Malawi were well-served by the mainstream media during the tripartite election campaign. Though the incumbency bias is present it has visibly declined; and to a lesser extent Twitter, opened up spaces for political discussion throughout the eight weeks of the election campaign.

However, the following challenges have been noted which needs to be addressed in future:

- a. Most information lacked credibility and evidence.
- b. Media allowed itself to be used as a 'mere means to an end' as most electoral players used it to achieve their selfish interests. Media turned into a complaints committee.
- c. Media tended to focus on events and not processes and issues.
- d. Some practitioners failed to abide by the media Code of Conduct and allowed to be used as tools of selfish politicians.

3.1.3 Recommendations

- a. Voter Registration process to be continuous to avoid delays and errors
 - b. Much time and effort be invested in preparing the voters register so that it captures names of all voters who registered.
 - c. Debate on voter registration method OMR, MBR etc. to begin in good time.
 - d. Civic and education to be conducted fairly uniformly across the country in order to be effective.
 - e. Political parties and candidates participating in the elections should consider sending their agents/monitors in all polling streams across the country to increase their confidence in the elections outcome.
 - f. Civil Society Organisations should in future seriously get engaged in every process of the elections for timely advice to MEC, be it accuracy of the voters
-

- roll and delivery of polling materials, rather than closely monitoring events on the polling day only.
- g. MEC should consider starting distribution of polling materials two weeks before elections day so that they are assured of timely delivery of these materials and timely opening of polling centres on the polling day.
 - h. MEC, Political parties and Civil Society Organisations should have enough time and resource to conduct Civic and Voter Education.
 - i. The Communications Act should be reviewed and amended to liberate MBC from the grip of the Executive branch of government and by the extension of the party in government
 - j. Support journalists to specialize in elections reporting i.e. capacity building o concepts and analysis of electoral systems, process and outcomes and electoral legal framework
 - k. MEC should be mandated by law to take action against media houses that defy the Media Code of Conduct
 - l. Incorporate presidential campaign into the electoral law to make them mandatory
 - m. Develop clear guidelines for announcement of unofficial results by accredited media houses. This could be in the law or in the media code of conduct
 - n. Advocate for the enactment of the Access to information bill
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Chapter 4

Election Day
Observation

ELECTION DAY OBSERVATION

4.1 Introduction

An Election or polling day which is the day of the casting of the ballot by the citizens, starts with opening of polling centers and ends with the results announced and displayed outside the polling center. In most cases the day ends way past midnight of the polling day or extends even beyond. There is a range of material and personnel required on this day at each polling station with assigned tasks. From the monitors point of view each item has to be carefully recorded in order to form an objective opinion on the electoral process.

4.2 STO and PVT

- A. Project Goal: The overall goal of this project was to implement a systematic and comprehensive election observation, including a PVT for the 2014 tripartite elections.

The objectives of this project were:

- a. To strengthen civil society capacity in election observation including PVT;
- b. To enhance credibility of the 2014 tripartite elections results;
- c. To validate the accuracy of the official presidential results; and
- d. To mitigate conflict by enhancing public confidence.

For the polling day observation MESN had 800 monitors recruited for parallel vote tabulation (PVT) observers and 1,434 short term observers (STOs) throughout the country in all the 28 districts and 193 constituencies. The 1,434 STOs were deployed across all the wards in Malawi on the actual Election Day. These STOs were particularly critical to the PVT.

- B. Acceptance of PVT: In 2009 parliamentary and presidential elections MEC rejected the conduct of parallel vote tabulation (PVT) by Malawi Electoral Support Network (MESN). This was due to lack of proper understanding and acceptance of PVT. In mid-2013 at a NECOF meeting MEC announced that it would allow interested organizations to conduct a PVT. It was against this background that for the 2014 elections, MESN planned to popularize the PVT methodology by engaging political parties, media, MEC,

government, development partners and other civil society networks. The exercise aimed at getting support from key electoral players and stakeholders in case of MEC backtracked on its public statement of allowing the conduct of PVT during the 2014 tripartite elections.

Based on the experience of the 2009 elections, participants warned that CSOs need to be more cautious of the government, the party in power and some media especially public broadcaster MBC who may not accept PVT as they saw it as a stumbling block to their political ambitions. It was therefore against this background MESN engaged the stakeholders concerned in the buying in process. These included: the Civil Society Grand Coalition, MESN Members from all the four regions (South, Eastern, Central and Northern regions), the media, political parties (PP, PPM, PETRA, DPP and MCP), Development partners (USAID, DFID, UNDP and others), Institutions (Malawi Law Society, MISA Malawi chapter) and the academia.

Following questions guided the discussions during the buying in process:

- a. Does MEC allow PVT for the 2014 tripartite elections?
- b. How is MESN addressing concerns raised by MEC that PVT should cover all polling stations?
- c. Why is PVT concentrating on Election Day only? Why is PVT concentrating on presidential elections only?
- d. How will MESN handle the results from its PVT centre?
- e. Why will MESN release its results after MEC and not before? How soon will it take for MESN to know and release the results?
- f. How will PVT and its results affect/influence the elections results?
- g. How useful is the information collected by PVT for both the MESN and the public? Does MESN have the Powers to challenge MEC?
- h. How independent is MESN?

This discussion greatly facilitated the stakeholders' acceptance of the PVT.

4.3 Key findings On Opening and Setup on Polling Day

4.3.1. Availability of Electoral Officials:

The results in Figure 1 show that a majority (97 in every 100) of polling stations in the country had electoral officials available by 05:30 am on the polling day; this was the case in all the three regions of the country. This was expected as most polling officers were accommodated close to polling stations a day before polling day.

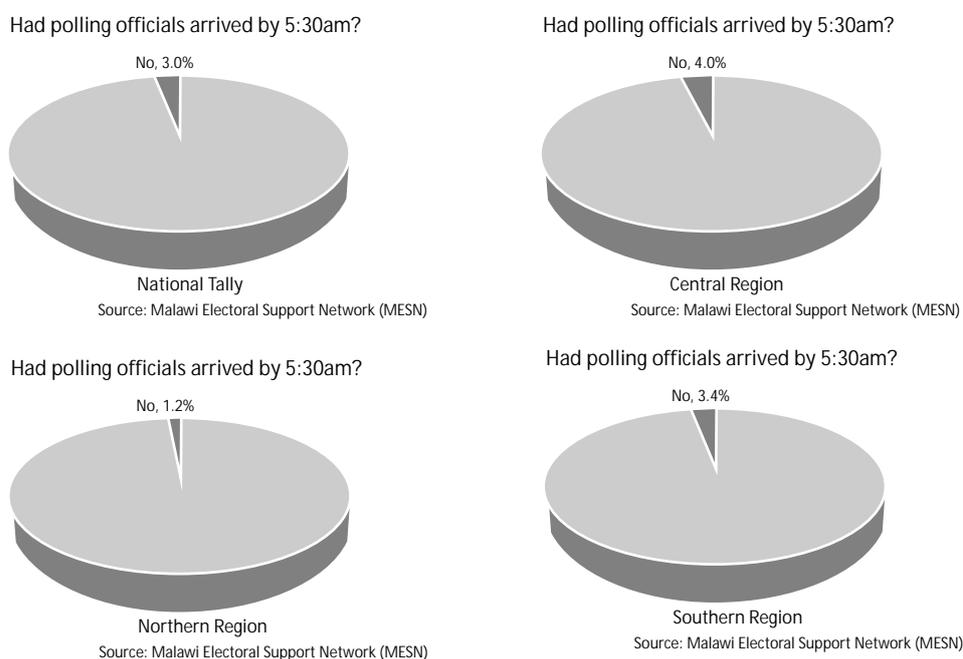


Figure 1: Presence of polling officials at polling centres by 5:30am

4.3.2. Sex Gender of Presiding Officers in Polling Stations

The results in Figure 2 indicate that 78 in every 100 polling stations were presided over by male electoral officials and 22 in every 100 had female presiding officers.

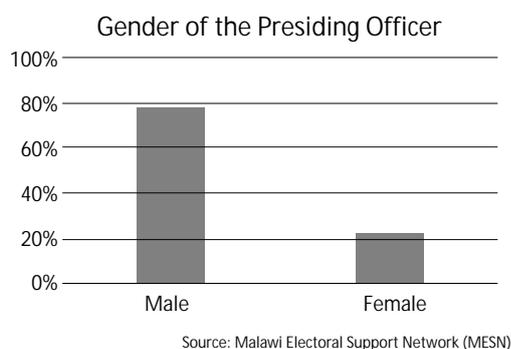


Figure 2: Gender of the station presiding officer

4.3.3 Opening of polling stations

The results in Figure 3 indicate that less than half of the polling centres were open by 06:00 am on polling day, the situation was worse in the Southern region where only 28 in every 100 of the centres were open by 06:00 am. The trend continued in the next 30 minutes of polling in Central and Southern regions where the total number of active polling stations were just over half by 6:30 am. However, in the Northern region over 85 in every 100 of the polling centres were open by 6:30am. This had to do logistical arrangements by MEC in the distribution of polling materials.

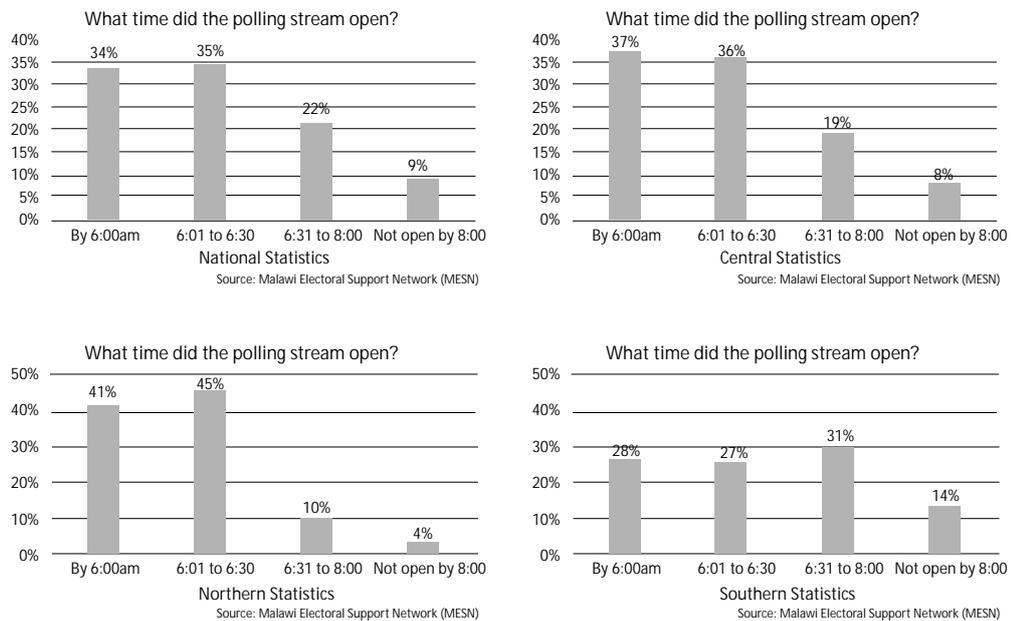


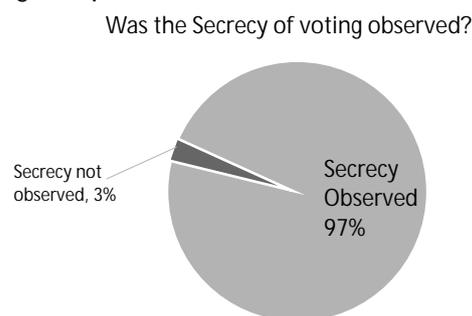
Figure 3: Opening of polling centres during the 2014 Tri-Partite elections

4.3.4 Polling station setup

The results have shown that each polling centre had an average of 4 streams, with each stream having an average of 8 polling officials, whom 2 to 4 were females. Further, a polling stream had an average of 9 political party agents available.

4.3.5 Secret Ballot casting setup

The results in Figure 4 indicate that most (97 in every 100) polling streams provided the secret ballot casting setup.

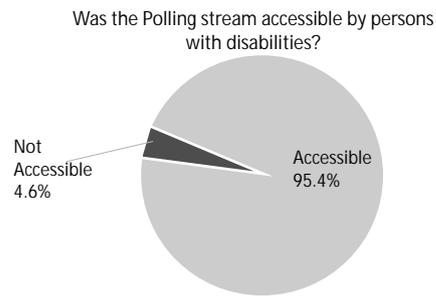


Source: Malawi Electoral Support Network (MESN)

Figure 4: Polling streams that achieved secret ballot setup

4.3.6. Accessibility of Polling streams by people with physical disabilities

The results in Figure 5 show that a majority (95 in every 100) of polling streams across the country were accessible by persons with physical disabilities. This could be attributed to the voices made by Disability Rights Groups in the country prior to elections time and a positive consideration by MEC on the same.

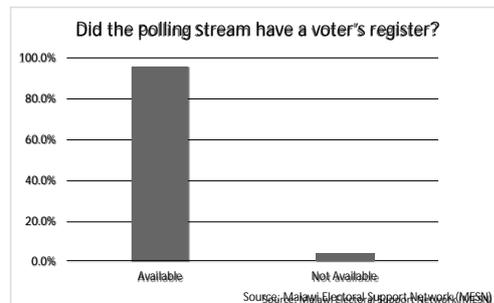


Source: Malawi Electoral Support Network (MESN)

Figure 5: Accessibility of polling streams by people with physical abilities

4.3.7 Availability of a voters' register

The results in Figure 6 indicate that in most (96 in every 100) of polling streams the voters' register was available during the polling day.

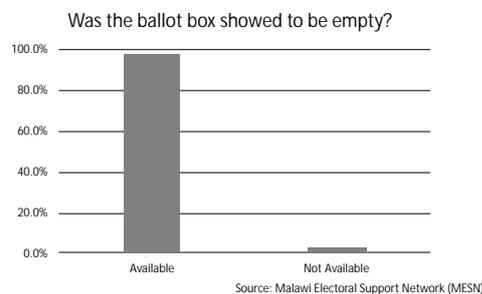


Source: Malawi Electoral Support Network (MESN)

Figure : Polling streams that had voters' register

4.3.8 Ballot boxes set up

All polling streams observed reported to have had 3 ballot boxes available. In addition, a majority (99 in every 100) of polling streams displayed empty presidential ballot boxes before sealing them for voting (see Figure 7).



Source: Malawi Electoral Support Network (MESN)

Figure : Centers that displayed empty presidential ballot boxes before voting

4.3.9. Ballot papers set up

The results have shown that a majority (99 in every 100) of polling streams had correct presidential ballot papers on the polling day. As for Parliamentary and Local Government elections, 97 in 100 and 95 in 100 of the polling streams, respectively, reported to have correct ballot papers.

4.4. Voting and Counting

4.4.1. Giving voting chance to persons with disability, nursing mothers and the elderly

The results have shown that most (94 in every 100) centres gave chance to persons with disability, the elderly and nursing mothers to vote first (see Figure 8).

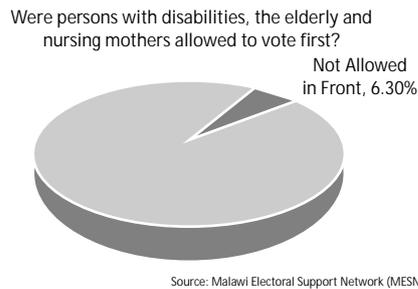


Figure 8: Stations that allowed persons with disability, the elderly and nursing mothers to vote first

4.4.2 Cases of missing names in voters' register and disallowed to vote

The results indicate that a good number (71 in every 100) of polling streams did not experience missing names in voters register; few (24 in every 100) centres reported between 1 and 10 missing names; some (4 in 100) reported between 11 and 50 missing names; while very few (2 in 100) had more than 50 cases (see Figure 9).

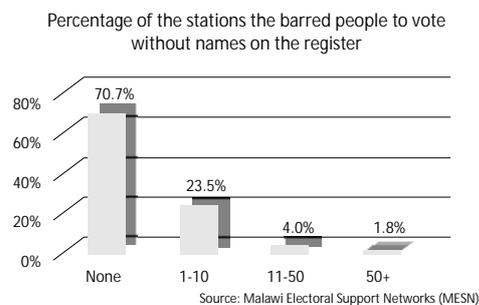


Figure 9: Cases of missing names and being barred from voting

4.4.3 Cases of missing names in voters' register and allowed to vote

The results have shown that just over half of the polling streams did not accept voting without names in the register, the rest allowed this in varying magnitude of number of voters, with 19 in every 100 polling streams in the South accepting between 11 and 50 people (see Figure 10).

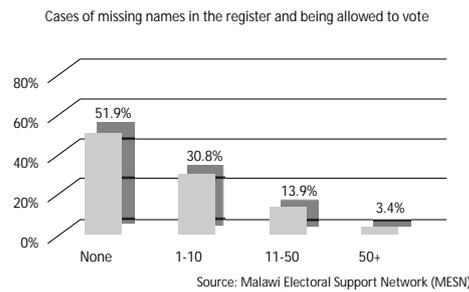


Figure 10: Cases of missing names in register and accepted to vote

4.4.4 Cases of No Voter ID and allowed to vote

The results have shown that just over half of the polling streams did experience cases of voting without voter ID, the rest reported some cases (see Figure 11). There were more centers in Central region that reported cases of 1 to 10 voters allowed without ID compared to other regions.

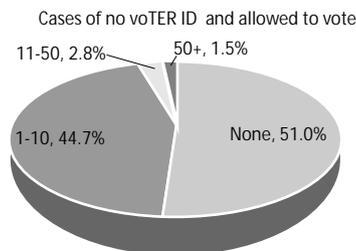


Figure 11: Cases of voting without Voter ID

4.4.5 Cases of voting with a finger already marked with indelible ink

The results indicate that a majority (91 in every 100) of polling streams did not have cases of voters whose fingers were already marked with indelible ink wanting to vote again (see Figure 12). Similarly, the results have revealed that in 95 of every 100 of the polling streams indelible ink was applied to a finger of every voter before s/he casted the ballot.

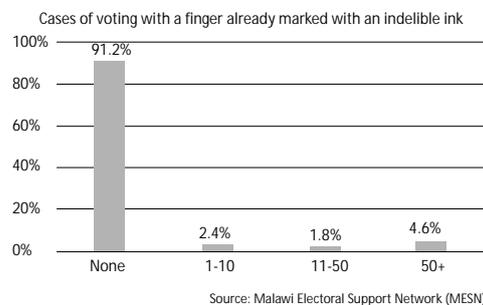


Figure 12: Centers that allowed voters with fingers already marked with indelible ink

4.4.6 Cases of assisted voting

The results have shown that only 9 in every 100 polling stations voters did vote without any assistance, the rest 91 in 100 stations voters were assisted (see Figure 13). The situation was worse in the Northern region where voters voted without assistance in only 5 of 100 stations. These results reflect low amount of civic education that was given to voters by various players before polling day. However, those who were assisted to vote were allowed to choose someone of their choice to help them in voting in 76 of every 100 stations. The results also have indicated that in 97 of every 100 polling streams, every voter was issued with three ballot papers (presidential, parliamentary, and local councillor ballots).

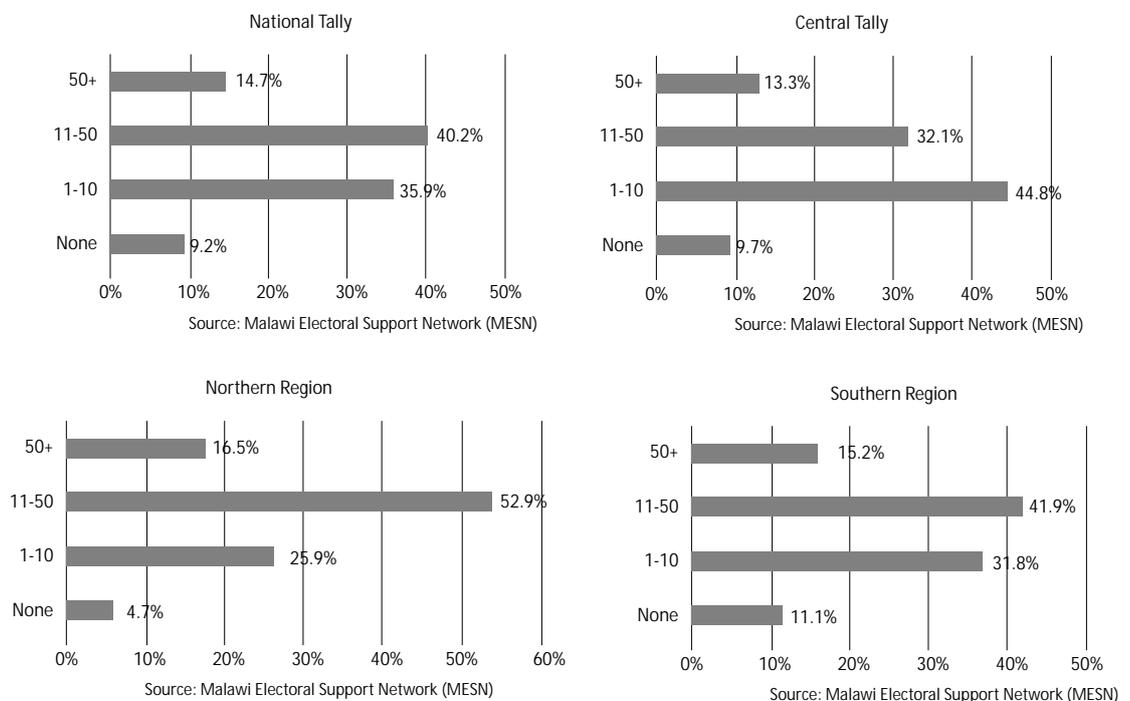


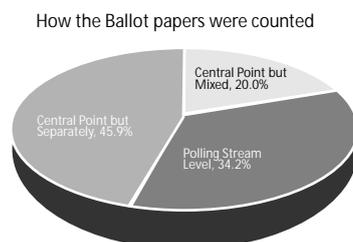
Figure 13: Cases of assisted voting

4.4.7 Attempted external influence on polling officials

The results have shown that a majority (96 in every 100) of polling streams did not experience any attempt to influence polling officials. Further, 96 in 100 polling streams did not experience disrupted voting process, and another 96 in 100 streams did not experience any intimidation on voters.

4.4.8 Counting process for presidential elections

The results have shown that in 34 of every 100 polling streams presidential ballot papers were counted at the stream, while in 46 of every 100 streams counting was done at a central location but for separate streams; and in 20 of every 100 streams counting took place at the central location and for mixed streams (see Figure 15).



Source: Malawi Electoral Support Network (MESN)

Figure 14: Location where counting of presidential ballot papers took place

4.4.9 Transparency in counting process of presidential ballot papers

The results indicate that in 99 of every 100 polling streams, counting of each presidential ballot paper was done transparently to all polling agents and observers. Further, 95 in every 100 streams presidential ballot papers were correctly sorted into different piles by candidate. In addition, there was no disruption of the counting of presidential ballots in 95 of every 100 polling streams. Furthermore, there was no external influence during counting of presidential ballots in 95 of every 100 streams.

4.4.10 PVT Observers' agreement with announced results

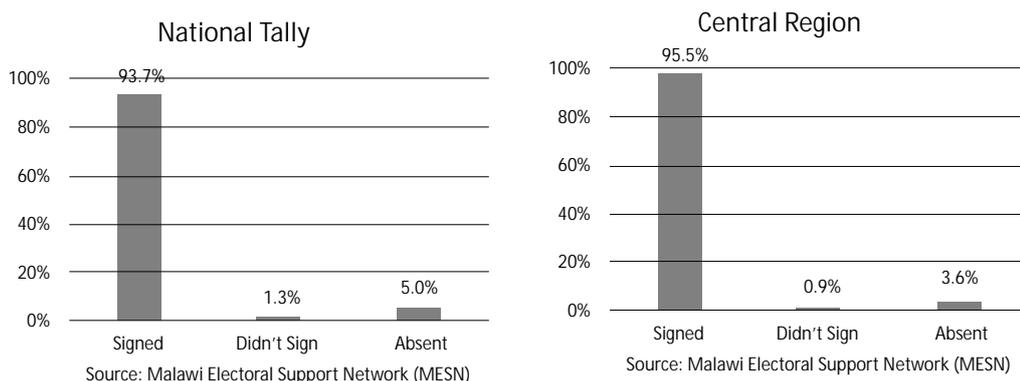
MESN's PVT Observers were satisfied with the announced presidential results in 96 of every 100 polling streams.

4.5 Presidential elections results

This section presents the presence and endorsement of the Presidential results by political party agents as observed across the nation and outcome of these elections.

4.5.1 Endorsement of presidential results by Democratic Progressive Party (DPP) agents

The results in Figure 16 show that DPP agents signed official results form in 94 of every 100 polling streams, but their part agents were not available in 12 of every 100 centres in the North.



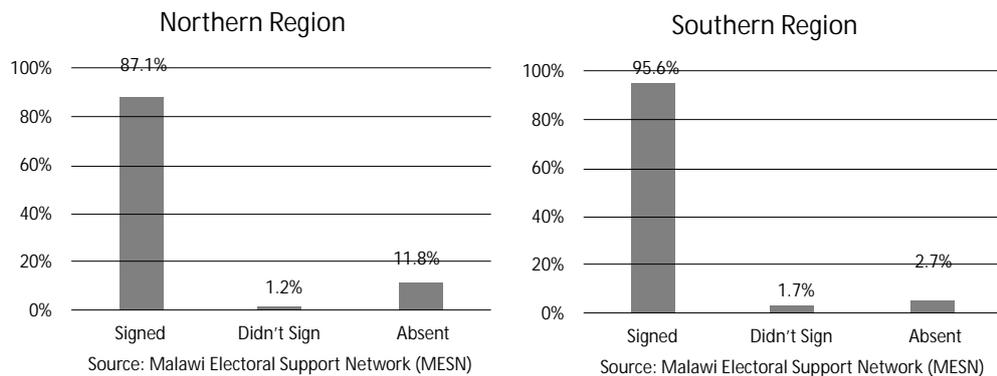


Figure 6: Endorsement of announced presidential results by DPP agents

4.5.2 Endorsement of presidential results by Malawi Congress Party (MCP) agents
 The results in Figure 17 indicate that MCP agents signed official results form in 87 of every 100 polling streams, and the party had no agents in 21 of every 100 streams from the South and 17 in 100 streams in the North.

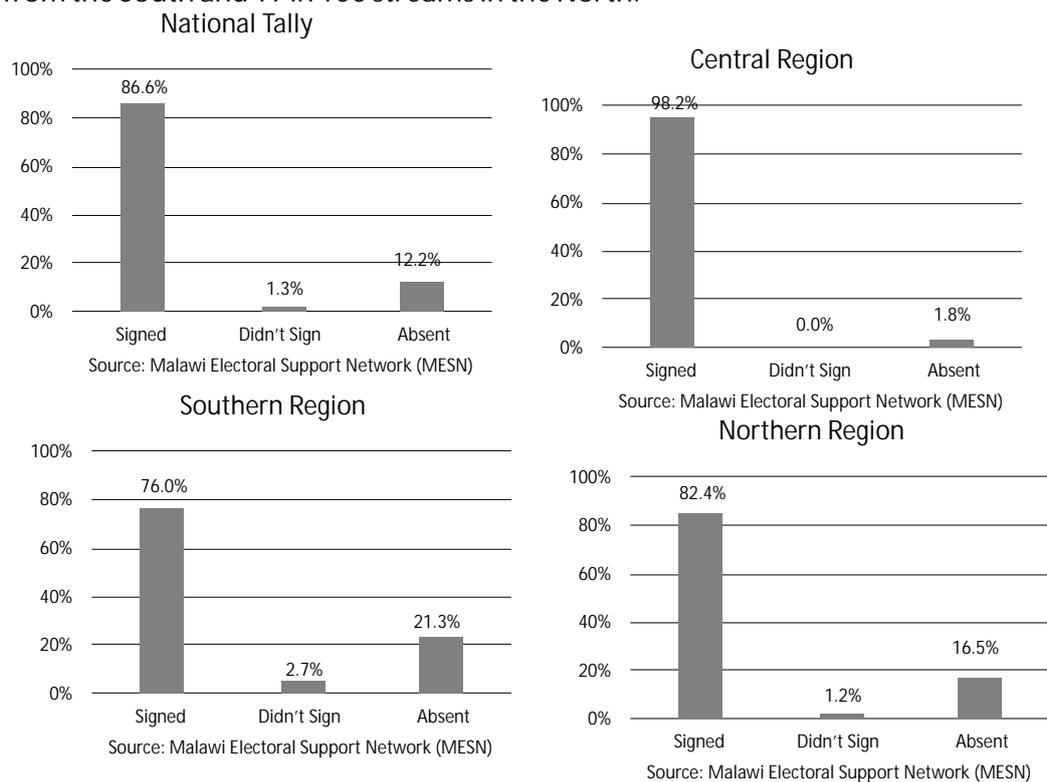


Figure 17: Endorsement of announced presidential results by MCP agents

4.5.3 Endorsement of presidential results by Peoples Party (PP) agents
 The results in Figure 18 show that PP agents signed official results form in 97 of every 100 polling streams. The party was adequately represented in stations from all the three regions of the country.

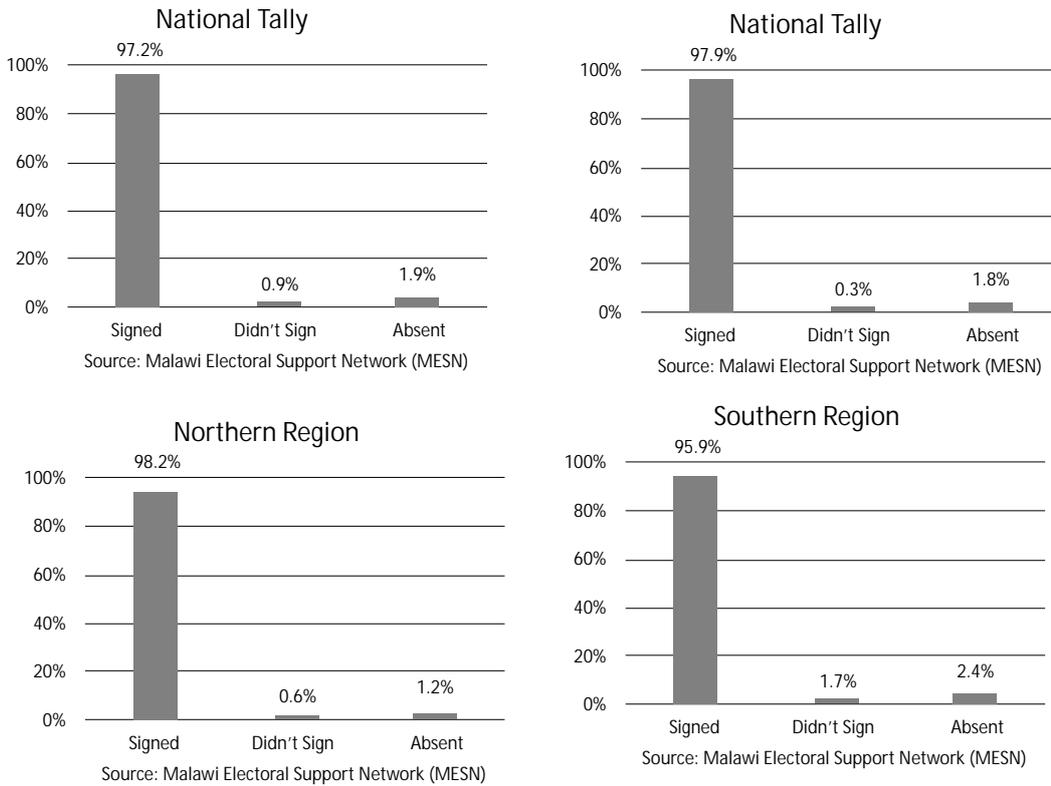


Figure 8: Endorsement of presidential results by PP agents

4.5.4 Endorsement of presidential results by United Democratic Front (UDF) agents

The results in Figure 19 show that UDF party agents signed official results form in 86 of every 100 polling streams. The party did not send agents in 34 of every 100 streams in Northern region.

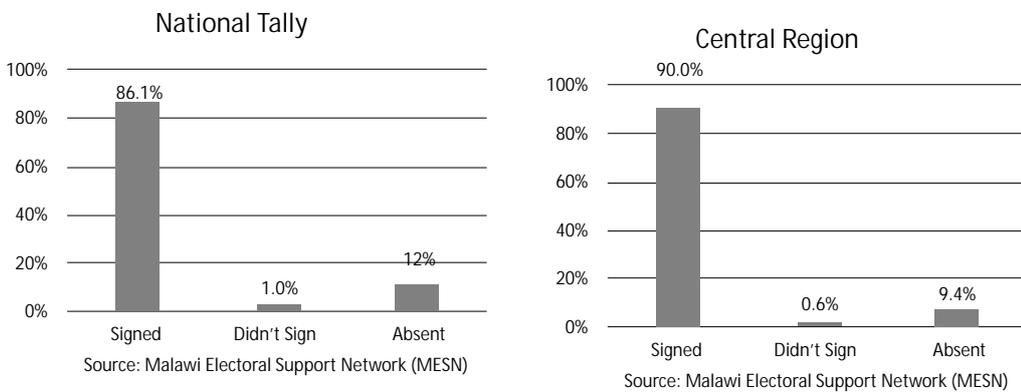
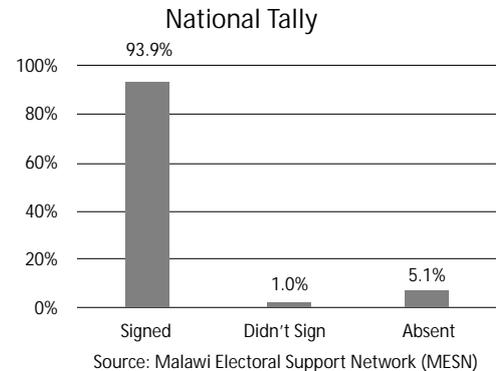
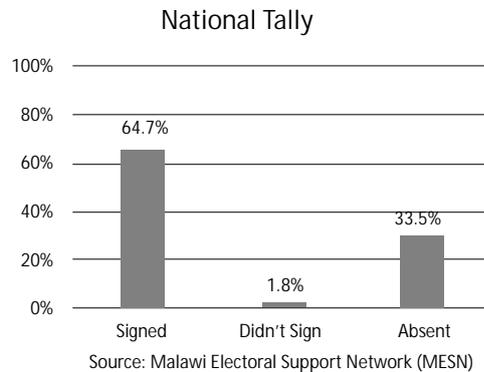


Figure 19: Endorsement of presidential results by UDF agents

4.5.5 Presence of NICE and other elections Observers at polling stream



MESN's PVT Observers noticed the presence of NICE observers in 97 of every 100 polling streams across the country. The Observers other than those of NICE or MESN were available in 61 of every 100 polling streams.

4.5.6 Presidential elections outcome

4.5.6.1 National Results

The results in Figure 20, with estimated voter turnout of 70.6%, show that former President Dr. Joyce Banda of PP got 20 in every 100 national votes (with expected minimum of 18 and maximum of 22 in 100 votes if every vote was valid and counted). Further, Dr. Lazarus Chakwera of MCP got 28 in every 100 votes (with expected minimum of 25 and maximum of 31 in 100 votes). In addition, Mr. Atupele Muluzi of UDF got 14 in every 100 national votes (with expected range of 12 to 16 in 100 votes). While President Professor Peter Mutharika of DPP got 36 in every 100 national votes (with overall range of 33 to 39 in 100 votes), The rest of the candidates got less than 5 in 1000 national votes each.

These estimates perfectly match the official results announced by MEC and made available at MEC's website; www.mec.org.mw where it indicates that former President Dr. Banda got 20 in 100 votes, Dr. Chakwera got 28 in 100 votes, Mr. Muluzi got 14 in 100 votes, Professor Mutharika got 36 in 100 votes, and each of the rest candidates got less than 5 in 1,000 votes.

MESN PVT Projection for the Presidential Results

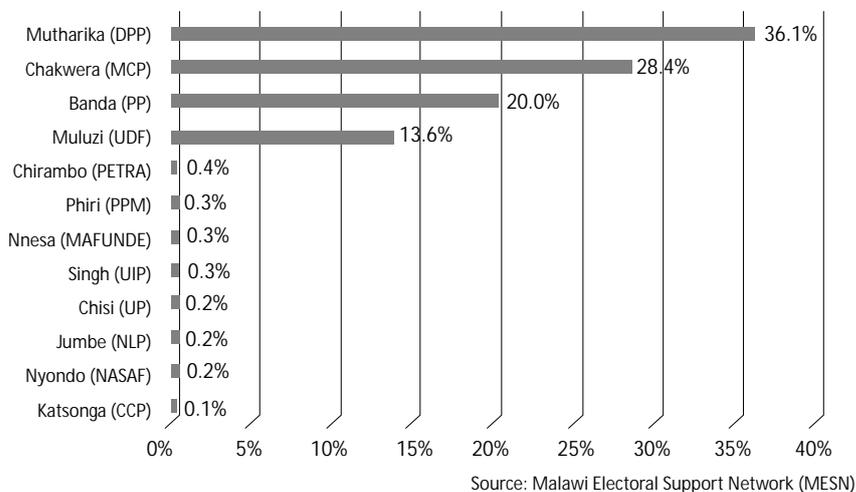


Figure : National outcome of presidential election

4.5.6.2 Regional Results

The vote counts by region showed that President Professor Peter Mutharika got most votes in the South followed by Mr Atupele Muluzi, while Dr. Lazarus Chakwera got most votes in Central region followed by Professor Peter Mutharika, and former President Dr. Joyce Banda got most votes in the North followed by Professor Peter Mutharika (Figure 21). Again, the regional trends and estimates matched those found by MEC.

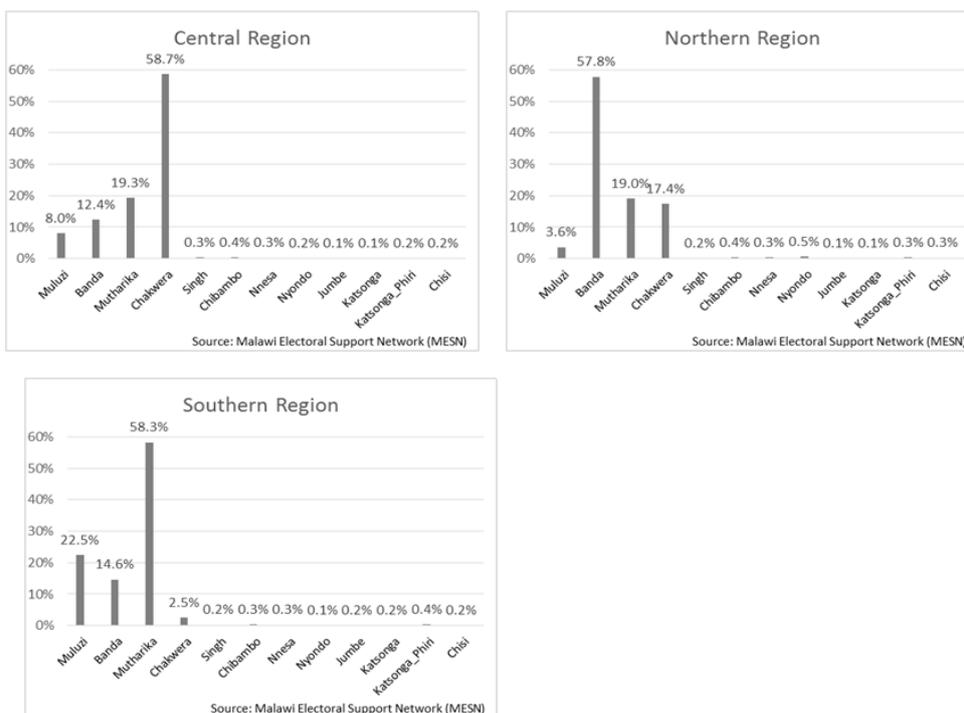


Figure : Regional outcome of presidential election

4.5.6.3 Reported incidents

The results in Figure 22 indicate that 48 in every 100 polling stations reported serious setup problems. These problems were mostly noticed in polling stations from Central and Southern regions. Serious voting problems were reported in 16 of every 100 polling stations.

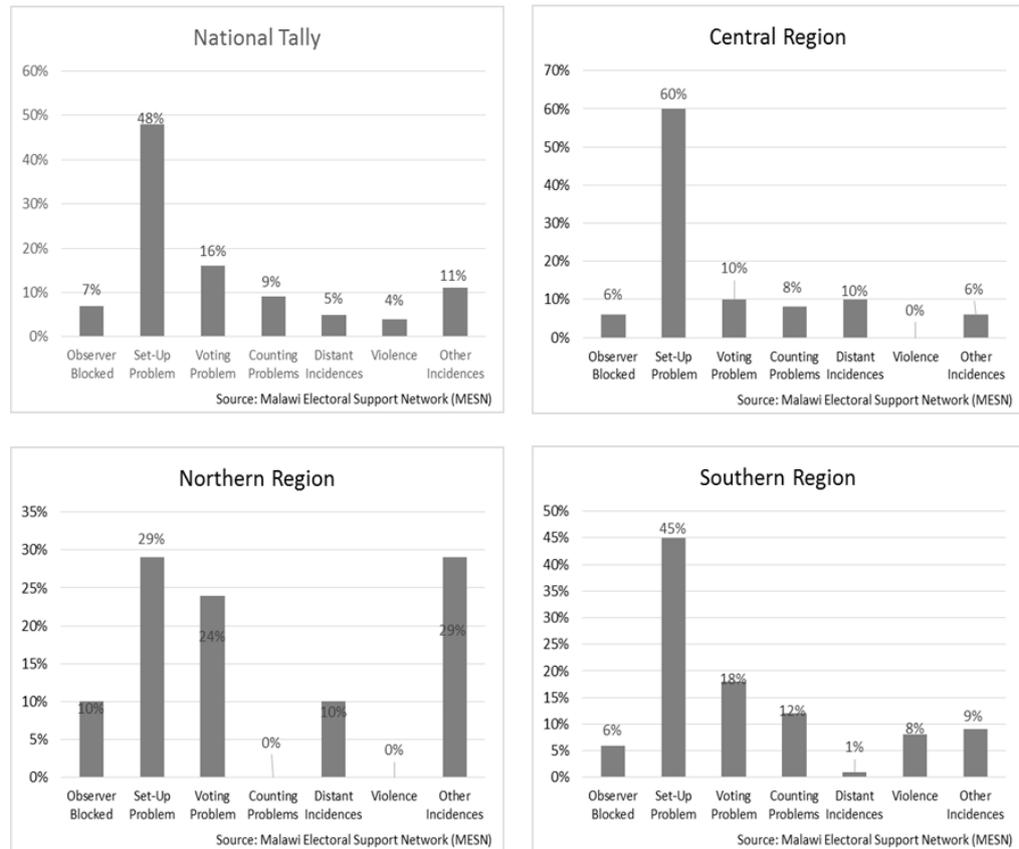


Figure : MESNE-day Critical Incidences Analysis

4.6. Court Injunctions

During the tallying of presidential results, MEC chairman admitted a number of anomalies in the processing of presidential results and a striking one was that in about 65 centers the number of votes cast was higher than the registered number of voters and announced the intention of a recount pending the decision of the High Court to undertake a full audit. The proposal then, through court injunction, was that MEC should not release the results until the recounting was done.

Instances of polling stations with over 100% of voter turn-out were not reported by MESN observers. These stations covered 2% of sampled polling stations and the discrepancies were small. A similar view is presented in the EU observers' statement that, 'the total number of valid votes at stake could not influence the order of the Presidential candidates in the final results.'

On 24 May, President Joyce Banda proclaimed that she had nullified the elections due to alleged massive irregularities, called for a fresh election to be held within 90 days, and ordered that the tallying of the results by the MEC be stopped. On the same day, the MEC together with the Malawi Law Society applied for a judicial review and were granted a court order preventing the execution of the President's decision, which allowed the MEC to continue with tallying. The court also issued an identical order on request of Peter Mutharika in a separate procedure on the same day.

Pursuant to Section 76 (5) of the Constitution, the High Court has authority to conduct a judicial review of MEC's decisions. Following the announcement of the MEC's intention to recount all presidential ballots and to withhold the announcement of the results pending the recount, which it was estimated would last up to one month, Peter Mutharika and Friday Jumbe (the presidential candidate for the New Labour Party) initiated two separate judicial review proceedings. On their request the High Court granted two injunctions effectively restraining the MEC from conducting the recount pending a final court decision. The court consolidated the two proceedings into one trial and admitted MCP, PP and UDF as interested parties. Despite the MEC's public claim that they sought an extension of the eight-day legal deadline for the announcement of the results, during the hearing the MEC made no case for such an extension.

The court hearing took place in a politically charged atmosphere and under intense media scrutiny, which created unrealistic expectations regarding the powers of the court to change the existing legislative framework and also gave rise to concerns that the judiciary was being used for political goals. Nevertheless, the court managed to conduct the hearing in an independent and expedient manner and based its ruling on the letter of the law, stating that whilst the MEC had the authority to take any measure necessary to determine the results, including recounting of the ballots, the statutory eight-day period for the announcement of the results could not be extended by a court's decision. The MEC subsequently announced the presidential election results within an hour of the proclamation of the ruling.

4.7. Announcement of Results

Malawi Electoral Commission announced final presidential election results, on 30 May 2014, shortly before expiry of the legal eight-day period for the announcement of the results, declaring Peter Mutharika of the DPP as the winner of the presidential race and endorsed by all 10 MEC commissioners. Notwithstanding the

rising political tension before the results announcement, presidential results were accepted by the leaders of the three other main political parties and generally across the country. The official figure for the national turnout for the presidential election was 70.78 per cent corresponding to 5,285,258 total votes cast – 7.5 per cent lower than the official figure for the 2009 elections. The official figure for invalid votes was 56,675 or 1.07 per cent.

4.8 PVT Estimates

For each of the four top vote-getting candidates, the official result as announced by the MEC falls within the PVT estimated range. The PVT estimated Dr. Joyce Banda should receive between 18.2% and 21.8% of the vote, and she received 20.2% of the vote according to MEC's official results. The PVT estimated Dr. Lazarus Chakwera should between 25.1% and 31.7% of the vote, and he received 27.8% of the vote according to MEC's official results. The PVT estimated Atupele Muluzi should receive between 11.9% and 15.5% of the vote, and he received 13.7% of the vote according the MEC's official results. The PVT estimated Prof. Peter Mutharika should receive between 32.7% and 39.3% of the vote, and he received 36.4% of the vote according to MEC's official results. Thus, MESN can confidently and independently verify the accuracy of the official results as announced by the MEC.

MESN PVT Estimates for Presidential Election (795 of 800 (99%) polling stations reporting with 922,219 valid votes cast)						
Candidate	Party	Estimate	Precision (MoE)	Estimated Range within which Official MEC Results should Fall	Official MEC Results	Match
Dr. Joyce Banda	PP	20.2%	+/-1.8%	18.2% to 21.8%	20.2%	✓
Dr Lazarus Chakwera	MCP	28.4%	+/-3.3%	25.1% to 31.7%	27.8%	✓
Kamuzu Chibambo	PETRA	0.4%	+/-0.1%	0.3% to 0.5%	0.4%	✓
Prof John Chisi	UP	0.2%	+/-0.1%	0.1% to 0.3%	0.2%	✓
Friday Jumbe	NLP	0.2%	+/-0.1%	0.1% to 0.3%	0.2%	✓
Aaron Katsonga	CCP	0.2%	+/-0.1%	0.1% to 0.3%	0.1%	✓
Mark Katsonga Phiri	PPM	0.3%	+/-0.1%	0.2% to 0.4%	0.3%	✓
Atupele Muluzi	UDF	13.7%	+/-1.8%	11.9% to 15.5%	13.7%	✓

Prof. Peter Mutharika	DPP	36.0%	+/-3.3%	32.7% to 39.3%	36.4%	✓
George Nnesa	MAFUNDE	0.3%	+/-0.1%	0.2% to 0.4%	0.2%	✓
James Nyonda	NASAF	0.2%	+/-0.1%	0.1% to 0.3%	0.2%	✓
Abusa Helen Singh	UIP	0.3%	+/-0.2%	0.2% to 0.5%	0.2%	✓
Total		100.2%				

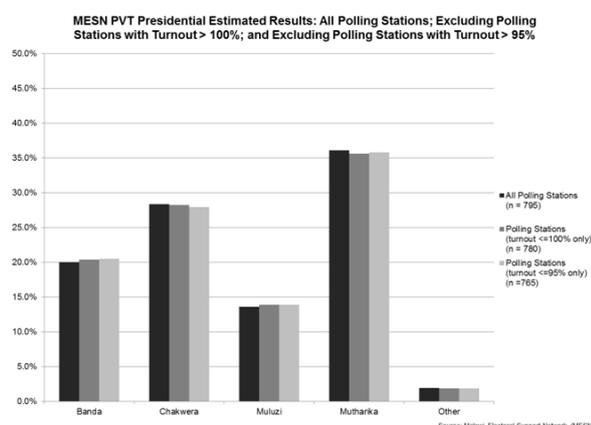
Source: Malawi Electoral Support Network (MESN)

Note: Precision based on 99% confidence level

Figures may not sum to 100% due to rounding

Appendix D provides full PVT estimates and MEC official results for all 12 presidential candidates

Similarly, the MEC announced official turnout for the presidential election at 70.8%, which falls within the PVT estimated range of from 68.7% to 72.5%.



Concerns were raised about the possibility of polling stations with turnout of over 100%. MESN's PVT Observers did report that there were polling stations with turnout of over 100%, but this affected only 2% of all sampled polling stations and in most cases these were only small discrepancies. MESN PVT Observers reported another 2% of polling sampled stations with a turnout of between 95% and 100%. However, these polling stations with high turnout did not benefit any particular political party. The data from the PVT demonstrates that if the results for all of these polling stations were thrown out it would not change the outcome of the presidential election. MESN, however, would not recommend the votes from these stations be disregarded, unless further investigation reveals there are problems with those votes.



Chapter 5

Women's Participation

WOMEN PARTICIPATION

5.1 Background:

Ensuring gender equality and women's participation is critical to a democratic system of governance. The Convention for the Elimination of All Forms of Discrimination Against Women, to which Malawi is a party, calls for all parties to grant women equal rights with men. The Malawi Constitution not only prohibits discrimination on the grounds of sex (section 20), but also provides specific provisions on the rights of women. In Section 24 (1) the Constitution states that women have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status which includes the right to be accorded the same rights as men in civil law; to enter into contracts; to acquire and maintain rights in property, independently or in association with others; to a fair disposition of property that is held jointly with a husband; to acquire and retain custody, guardianship and care of children; and to acquire and retain citizenship and nationality, among others.

In 2004, out of a total of 1,246 candidates, only 154 or 12.4 per cent were female. Noticeable was the low numbers of female candidates in the large parties with a national character, such as the MCP, the NDA, the PPM and the UDF. Lack of party support was the major cause for women standing as independents. The majority of women who stood as independents had earlier been rejected by their political parties or had lost to men in the primaries, because their party executives and members preferred male candidates. The 2009 elections saw a number of breakthroughs in terms of women's participation in the democratic process. A total of 238 women contested the Parliamentary elections, representing 20.3% of the total number of candidates, and there was one female presidential candidate. In addition to the appointment of Malawi's first female vice president, the elections saw 41 women winning Parliamentary seats and a solid turnout from female voters. These achievements have largely been attributed to the joint campaign of civil society groups, international development partners and the government, popularly known as the 50/50 campaign – targeting 50% female representation in Parliament, which was however not achieved. The largest slice of funding for the campaign, aimed at helping female candidates campaign more effectively during the election period, came from DFID and the UNFPA. Another breakthrough was the appointment of 11 women to cabinet positions, representing 26% of the cabinet team – compared to seven out of 42 (or 17%) in the previous cabinet. It was expected that the existence of a female vice president and more female MPs would

raise the profile of women's, and children's, issues in the country although there is still much work to be done to give women a bigger role in Malawi's government, and indeed to reduce the marginalization of women across society.

The nomination lists for the 2014 tripartite elections show that 2 females were nominated for the presidency, 257 for parliament – increase from 238 in 2009, and 417 for ward councilor. The percentage of the female presidential candidates is therefore 16.6%, and 19.9% for parliamentary candidates, and 17.3% for ward councilors. The percentage of female candidates in the parliamentary race has in fact gone down slightly from 20.3% in 2009 though there has been a minimal and less impressive increase in the absolute numbers. The percentage decline is on account of the increase in the numbers of male candidates.

Political parties do not have quotas or affirmative policies for female representation. Male dominance and the view that politics is “dirty” (where abusive language and violence are norms) deter some women from putting their names up for nomination. The fee requirement for nomination, MK100,000 for female parliamentary candidates and MK15,000 for female ward councilor candidates may be prohibitive for some women, especially those unemployed and those in the rural areas.

Women in the 2014 TPE participated as voters, officials, and candidates. It is heartening to note that the number of women registered voters was higher than men and a higher number of women actually voted compared to men. However, the same was not the case with women's nominations and election. The 50:50 Campaign aimed at increasing the representation of women in parliament and in councils (MPs and Councilors). This was keeping in line with provisions of the Malawi Constitution, SADC Protocol on Gender and Development which sets the target of 50% and other international instruments. The campaign raised the expectations for women candidates and the public at large. However, the 2014 TPE did not yield the desired results for women. The reasons for this are discussed in Section 5.3.

5.2. Results by party

2009 Results			2014 Results		
Political Party	Successful female candidates by party	%	Political Party	Successful female candidates by party	%
DPP	31		DPP	8	
Independents	7		Independents	11	
MCP	3		MCP	6	
UDF	1		UDF	2	
			PP	5	
Total	42 + 1 by-election = 43	22%	Total DROP of 5.5%	32	16.5%

5.3. Challenges facing women's participation

- a. There are many obstacles to women's equal participation in elections in Malawi, including gender stereotypes, psychological and traditional barriers, and inequalities in education, training and resources.
- b. Political parties are dominated by male candidates, leaving little opportunity for women to enter the political process through established political groups.
- c. Other barriers to women's participation and performance are built into political structures for example the electoral system.
- d. The 50:50 campaign was defeated right at the start as women constituted far less than 50% of the number of candidates in the parliamentary and local government elections
- e. Support to the 50:50 campaign initiatives began rather late. There was not enough time to the polling day to implement empowerment activities that should have made a difference.

5.4 Recommendations

- a. Gender empowerment initiatives should focus on working on the entrenched and institutionalized patriarchal practices in all domains in order to progressively liberate and empower women
- b. Political parties must be impressed upon to open up and devise ways of

including women in positions within the parties and as candidates in winnable constituencies

- c. Consider changing the electoral system to proportional representation if political parties are ready to adopt quota for inclusion of women on electoral lists
 - d. 50:50 campaign activities should be continuous. This would allow for the internalization of the campaign concept and goal among Malawians and thereby foster change of attitude.
 - e. Activities of the 50:50 Campaign should go beyond just increasing numbers of women and should also begin to address retention of female MPs as a good number of those who won in 2009 lost their seats in 2014
 - f. Activities of the 50:50 campaign should also start to address issues of actual women's influence in elected bodies or decision making structures.
 - g. Consider adopting quotas (reserved seats for women) in Parliament and local government councils because this is a policy of exact goals and exact means.
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Chapter 6



Non-partisan Election
Observation - Local and
International Observers

NON-PARTISAN ELECTION OBSERVATION- LOCAL AND INTERNATIONAL OBSERVERS

Non-partisan election observation is an independent, systematic and comprehensive evaluation of the legal frameworks, institutions, processes and the political environment related to elections; impartial, accurate and timely analysis of findings. It is the characterization of the findings based on highest ethical standards for impartiality and accuracy and offering of appropriate recommendations for obtaining genuine democratic elections; and advocating for improvements in future elections. The recommendations are aimed at removing impediments to full citizen participation in electoral and political processes.

Recently election observation has been greatly influenced by advances in Information, Communication Technology (ICT). Observers are using technologies such as Cellular phones, satellite phones, tablets, gadgets, internet etc to transmit results of the observation process. The use of ICT has greatly assisted in getting results fast. The issue of getting results fast has become a key issue in election observation because sometimes Electoral Management Bodies(EMB) have delayed the announcement of final results for reasons best known to them or sometimes for no valid reasons at all.

During the May 2014 tripartite elections civil society organizations in Malawi continued to play a critical role of election observation throughout the entire electoral process. Local groups such as NICE, CCJP, MESN and PAC deployed observers. These groups were supported international observer groups from African Union, Commonwealth, SADC, and European Union.

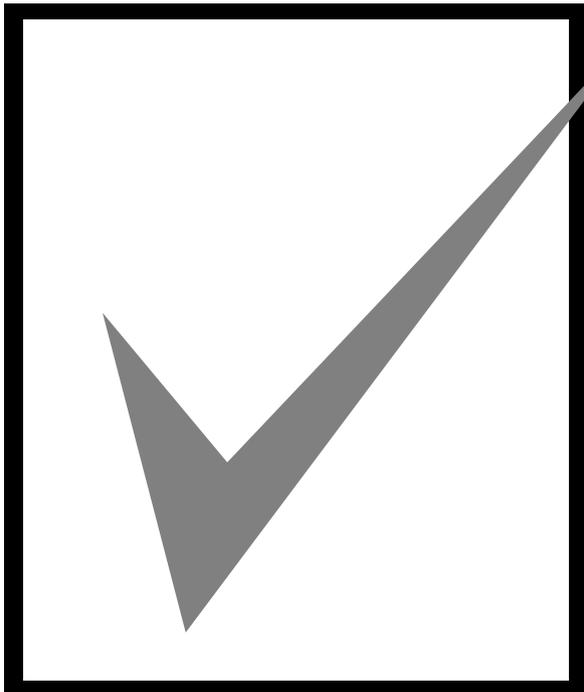
The primary purpose of non-partisan election observation operation is to guarantee the integrity of an electoral process. It promotes public confidence in the electoral process. Observation is also used to verify the accuracy of the results.

An effective election observation embraces a broad mandate that begins with the legal framework and concludes with resolving electoral complaints.

Recommendations

- a. Institutions and organizations should make a firm commitment to stay involved, not only by observing consecutive elections, but also by staying engaged in between elections.
 - b. Need for capacity building of CSO observers and political party monitors.
 - c. Institutionalisation of party monitors: Political parties might have to
-

- consider establishing the positions of party monitors in their organisational structures to ensure more commitment and professionalism. The ad hoc manner in which they are often picked does not bring adequate returns to the party and the nation at large.
- d. International observers must be required to establish long term relationships with local observer groups to get in touch with the situation on the ground.
 - e. Local observer groups should be adequately supported by government and development partners throughout the 5-year electoral cycle.
 - f. Local observer groups should diversify their funding base.
 - g. Institutions and organizations should make a firm commitment to stay involved, not only by observing consecutive elections, but also by staying engaged in between elections.
 - h. Need for capacity building of CSO observers and political party monitors.
 - i. Institutionalisation of party monitors: Political parties might have to consider establishing the positions of party monitors in their organisational structures to ensure more commitment and professionalism. The ad hoc manner in which they are often picked does not bring adequate returns to the party and the nation at large.
 - j. International observers must be required to establish long term relationships with local observer groups to get in touch with the situation on the ground.
 - k. Local observer groups should be adequately supported by government and development partners throughout the 5-year electoral cycle.
 - l. Local observer groups should diversify their funding base.
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Chapter

7

Recommendations
and Conclusion

RECOMMENDATIONS AND CONCLUSION

7.1. Recommendations

- a. Review and reform the entire legal framework thoroughly to ensure that courts have a minimal role in election administration and to ensure that the application of law safeguards the interests of voters and promotes the credibility of the electoral process.
 - b. Open up the chairmanship of the Electoral Commission to other professions because there is no justification for limiting the privilege to Judges only. The 2007 Law Commission report recommended that the chairmanship of the EC should not be restricted to judges. To achieve this requires the amendment of section 75(1) of the Constitution.
 - c. Harmonise the eligibility criteria for candidates to require the same type of citizenship for candidates for all three elections.
 - Design a better way of recruiting Commissioners of the Electoral Commission rather than nominations by political parties. Provide in the Electoral Commission Act a formula whereby the term of office for the Electoral Commissioners does not expire at the same time for all of them as is currently the case. Terms should expire at different times to ensure institutional memory.
 - Constituency demarcation to be carried out efficiently and regularly as stipulated in the Constitution.
 - Registration of voters should be linked to the National Identity programme to cut on costs and other inefficiencies. Biometric Voter Registration should be considered as an option for registration because the Optical Mark Registration is not serving our electoral purposes very well.
 - The official campaign period should be extended to give the EC authority to regulate campaigns (which take place anyway) at an earlier stage of the election cycle. There is no justifiable reason for aligning the official campaign period to the dissolution of parliament.
 - There should be a law banning any form of hand-outs for campaign purposes.
 - Announcement of the presidential results should be done within 7 days, Parliamentary results within 14 days and Local government
-

results within 21 days.

- A law should be put in place to guide the Electoral Commission in the case of withdrawal or death of candidates' especially presidential running mates.
- MEC's financial independence to be secured.
- MEC to be able to secure employment of temporary staff from the open market with clear contracts.

Following are the recommendations based on the STO/PVT's conduct performance during the 2014 tripartite elections:

7.1.1 For MESN:

- a. Time frame for recruitment & training: There should be adequate time for PVT Observers' training sessions.
- b. Planning and Coordination: There is need for proper preparations for future elections.
- c. Enhanced Communication within the network: There is need to inform and involve Network member organizations on the programs before implementation.
- d. Institutional memory: MESN should have a clear database for its activities.
- e. Building relationships: MESN has to continuously engage with MEC and other partners on electoral issues.

7.1.2 For MEC and CSOs:

- a. Voter Registration process to avoid delays and errors. Much time and effort be invested in preparing the voters register so that it captures names of all voters who registered.
- b. Debate on voter registration method OMR, MBR etc. to begin in good time.
- c. Voter registration process to be continuous..
- d. Civic and education to be conducted fairly uniformly across the country in order to be effective.
- e. Political parties and candidates participating in the elections should consider sending their agents/monitors in all polling streams across the country to increase their confidence in the elections outcome.
- f. Civil Society Organisations should in future seriously get engaged in every process of the elections for timely advice to MEC, be it accuracy of the voters roll and delivery of polling materials, rather than closely monitoring events on the polling day only.
- g. MEC should consider starting distribution of polling materials two weeks before elections day so that they are assured of timely delivery of these

materials and timely opening of polling centres on the polling day.

- h. MEC, Political parties and Civil Society Organisations should have enough time and resource to conduct Civic and Voter Education.

7.1.3 For Women's Representation

- a. 50:50 Campaign activities should be continuous. This would allow for the internalization of the campaign concept and goal among Malawians and thereby foster change of attitude; encourage the women to still take part though many have lost, etc . This would also ensure easy retention of the incumbent elected women, as they would be targeted with various interventions.
- b. Special training for women candidates on campaign methods and techniques.
- c. Engagement with political parties should be stepped up to influence considerable women's participation at party level e.g. Party Manifesto/ Constitutional change that would clearly define women's participation

7.2. Conclusion:

MESN's assessment of the 2014 tripartite elections is that the electoral processes have largely been held in conformity with legal framework in Malawi and the international standards of conducting elections. Though the electoral process faced many hiccups and hurdles at the end of the day a new government has been formed.

The process with constant support from stakeholders like MESN was transparent. The challenges encountered must serve as a lesson to all electoral stakeholders to strengthen management and oversight mechanisms, and should be worked on diligently so that they do not resurface in future elections. The lessons learnt from this should guide future elections to enhance the integrity and quality of elections.

The 2014 presidential election has been challenging for Malawi and for its democratic institutions. All elections test our collective resolve to democratic principles, but highly contested elections test them even more. Though concerns on polling day have been noted there is also a consensus that those failings did not affect the outcome of the presidential election.

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 - MESN Press statements of 10th, 23rd January 2014, 18th & 21st March 2014, May 29th 2014.
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 - MESN, 2014, Post Elections conference report.
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APPENDICES

Appendix A: MESN Statement on Official Presidential Results

MESN Statement on Announcement of Official Presidential Results by the MEC

MESN PVT VALIDATES MEC'S OFFICIAL RESULTS

Delivered in Blantyre – 31 May 2014

Yesterday, 30 May 2014, the Malawi Electoral Commission (MEC) announced the official results for the presidential election. The Malawi Electoral Support Network (MESN), as part of our comprehensive observation effort for the 2014 Tripartite Elections, conducted a Parallel Vote Tabulation (PVT) exercise to provide independent verification of the accuracy of those results. The results announced by MEC track closely with data obtained by the PVT, and thus, MESN can state with confidence that despite the challenges which plagued the tallying process the official results for the presidential election are an accurate reflection of ballots cast.

The 2014 Tripartite Elections were observed by more than 10,000 observers drawn from Malawi, Southern Africa, across the continent and the broader international community. Not only MESN, but also the National Initiative for Civic Education (NICE), the Southern African Development Community (SADC), the African Union (AU), the Commonwealth, and the European Union (EU) all have acknowledged shortcomings in the MEC's conduct of the elections, but all have also clearly stated that these did not fundamentally undermine the integrity of the process.

Further, political parties deployed thousands of party agents to polling stations to witness setup, voting and counting. Most importantly, they were given an opportunity to sign the official presidential results form (MEC.060c). At the vast majority of polling stations agents from DPP, MCP, PP and UDF were present and signed these forms, showing across the political spectrum that despite the challenges on Election Day the process worked (see Appendix 3 for information on political party polling agents at polling streams signing the official results).

As MESN stated in its preliminary statement on 24 May, the 2014 Tripartite Elections have not been a step forward. In particular, there were serious challenges with: the production of the voter's register; the delivery of materials to polling stations; and the tallying of results. While these issues did not ultimately undermine the credibility of the process, neither did they build public confidence in our democratic

institutions. This was Malawi's fourth election since the re-introduction of multiparty politics, and Malawians deserve better.

Following the elections there must be serious soul searching by all stakeholders, meaningful electoral reform, and tangible actions to ensure the 2019 elections meet the expectations of the Malawian people. As a first step, MESN urges the MEC to immediately release polling station results for all three elections (presidential, parliamentary and local councilor). This will help enhance transparency and start the process of rebuilding public confidence in the MEC.

PVT Findings

For each of the four top vote-getting candidates, the official result as announced by the MEC falls within the PVT estimated range. The PVT estimated Dr. Joyce Banda should receive between 18.2% and 21.8% of the vote, and she received 20.2% of the vote according to MEC's official results. The PVT estimated Dr. Lazarus Chakwera should receive between 25.1% and 31.7% of the vote, and he received 27.8% of the vote according to MEC's official results. The PVT estimated Atupele Muluzi should receive between 11.9% and 15.5% of the vote, and he received 13.7% of the vote according to MEC's official results. The PVT estimated Prof. Peter Mutharika should receive between 32.7% and 39.3% of the vote, and he received 36.4% of the vote according to MEC's official results. Thus, MESN can confidently and independently verify the accuracy of the official results as announced by the MEC.

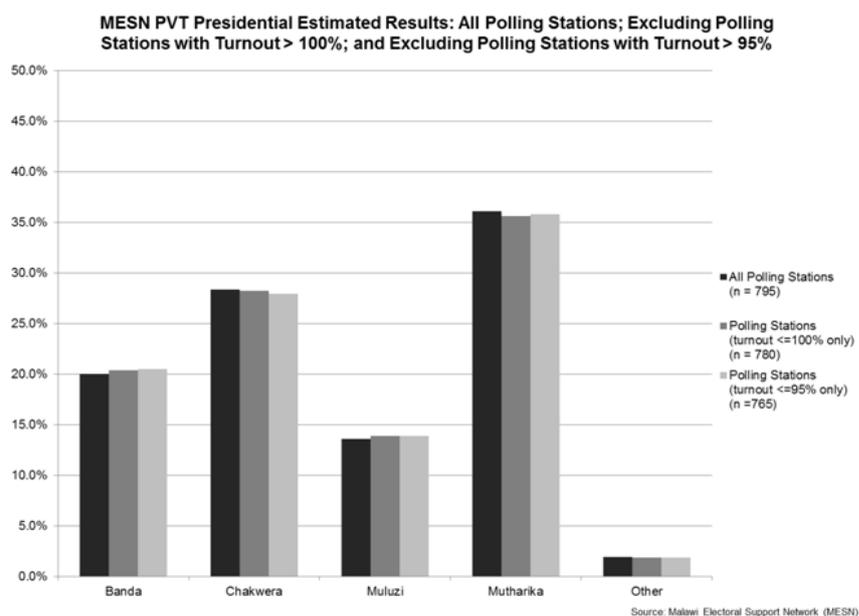
MESN PVT Estimates for Presidential Election (795 of 800 (99%) polling stations reporting with 922,219 valid votes cast)						
Candidate	Party	Estimate	Precision (MoE)	Estimated Range within which Official MEC Results should Fall	Official MEC Results	Match
Dr. Joyce Banda	PP	20.2%	+/-1.8%	18.2% to 21.8%	20.2%	✓
Dr Lazarus Chakwera	MCP	28.4%	+/-3.3%	25.1% to 31.7%	27.8%	✓
Atupele Muluzi	UDF	13.7%	+/-1.8%	11.9% to 15.5%	13.7%	✓
Prof. Peter Mutharika	DPP	36.0%	+/-3.3%	32.7% to 39.3%	36.4%	✓
Other		2.1%	+/-0.9%	1.2% to 30.%	1.8%	✓
Total		100.2%				

Note: Precision based on 99% confidence level

Figures may not sum to 100% due to rounding

Appendix D provides full PVT estimates and MEC official results for all 12 presidential candidates

Similarly, the MEC announced official turnout for the presidential election at 70.8%, which falls within the PVT estimated range of between 68.7% to 72.5%.



Concerns have been raised about the possibility of polling stations with turnout of over 100%. MESN's PVT Observers did report that there were polling stations with turnout of over 100%, but this affected only 2% of all sampled polling stations and in most cases these were only small discrepancies. MESN PVT Observers reported another 2% of polling sampled stations with a turnout of between 95% and 100%. However, these polling stations with high turnout did not benefit any particular political party. The data from the PVT demonstrates that if the results for all of these polling stations were thrown out it would not change the outcome of the presidential election. MESN, however, would not recommend the votes from these stations be disregarded, unless further investigation reveals there are problems with those votes.

PVT Methodology

MESN deployed 800 trained and accredited PVT Observers to a representative random sample of polling stations, representing more than 1.3 million registered voters, located across all three regions, all 28 districts and all 193 constituencies (see Appendix 1 for distribution of MESN's PVT Observers). MESN's PVT Observers arrived at polling stations at 5am and observed the entire process starting with the setup of polling stations through voting and finally counting and the announcement

of results for the polling stations. MESN PVT Observers recorded the official results as announced by the presiding officer and transmitted these to a central data centre by coded text message.

All PVT reports were verified for accuracy and have since been checked against the original paper PVT checklists. PVT Observers did not count any ballot papers themselves nor did they ask any voter how he/she voted. The PVT did not rely on any information from print or electronic media. It is an entirely independent exercise conducted solely by MESN with the intent of providing independent information on the accuracy of the official result of the presidential election regardless of the outcome.

The PVT methodology is based upon well-established and widely-accepted statistical principles. PVT's are a common tool of citizen observation and have been conducted across Africa, including: Ghana, Kenya and Zambia. The PVT is not new to Malawi. The methodology was employed here in 1999 by the Church NGO Consortium and 2009 by MESN – in both cases the PVT verified the accuracy of the official results (see Appendix 2 for examples of results verification using PVTs from Africa).

Because the methodology involves collecting official results from a representative random sample, the PVT provides an estimated range within which each candidate's percentage of the vote should fall within rather than a specific percentage of the vote for each candidate. The PVT methodology relies upon a sample to enable the highest standards to be employed in the recruitment and training of observers. This ensures the PVT provides the most reliable and accurate data possible.

The logic of the PVT is straight forward. If at any point in the official tallying process the results are manipulated in any way by anyone, then the PVT will expose this rigging as the official results will not be consistent with the PVT estimates. However, if the PVT estimates match the official results, then the contestants and the public should have greater confidence that the official results truly reflect the ballots cast at polling stations.

Conclusion

The 2014 presidential election has been challenging for our country and our democratic institutions. All elections test our collective resolve to democratic principles, but highly contested elections test them even more. Twelve candidates

stood for president, but only one could win. Thus, from the outset eleven candidates and their supporters were destined to be disappointed with the results. The failings of the MEC have not made this disappointment any less bittersweet, but those failings did not affect the outcome of the presidential election.

If any candidate or political party feels aggrieved, they should follow the proper legal channels. All candidates and their supporters should continue to adhere to their obligations under the MEC's Code of Conduct for Political Parties and Candidates which stipulates that they "shall publicly declare their commitment to accept the results of any election or challenge the results in court under the Electoral Law, Parliamentary and Presidential Elections Act, Local Government Elections Act and the Constitution, as may be amended."

With the MEC's announcement of the official presidential results on May 30, 2014, the Malawian people have spoken. The winner should be magnanimous in victory and reach out to their former competitors to work together to improve the lives of all Malawians. At the same time, those candidates who were unsuccessful should remember that these are not our last elections, but only another step in our democratic development. Malawians will go to the polls again in 2019 and candidates and parties will have another opportunity to convince voters the policies are best for the country.

MESN calls on all candidates, their supporters and the general public to show political maturity; to remain calm and to maintain the peace. MESN continues to observe the process and will issue additional statements as appropriate as well as a final report on the entire process for the 2014 Tripartite Elections.

Appendix B: Job Description of Observers

PVT Observers will be deployed to a representative random sample of polling stations on Election Day and will send in reports via text message (SMS) using their mobile phones. It is absolutely critical that every single PVT Observer observes on Election Day and observes at his/her assigned polling station. This will allow MESN to provide rapid and accurate information on the conduct of the elections and to verify the accuracy of the official results.

A PVT Observer has the following responsibilities, including:

- a. Attend his/her assigned training on the specified date at the specified location/venue.
- b. Participate in BOTH Simulation Exercises (Sat 17 May and Mon 19 May) by sending in his/her Simulation Exercise report via text message (SMS) using his/her cell phone.
- c. Go to his/her assigned Polling Station on Election Day Tuesday 20 May. Every PVT Observer must observe at his/her assigned Polling Station. MESN will check the locations of PVT Observers on Election Day and those that are not at the correct polling centre will not receive their honorarium.
- d. Arrive at his/her assigned Polling Centre by 5:30AM (to witness the setting up of the Polling Centre).
- e. Observe setup, voting and counting at one and only one polling stream (PVT Observers must not move between polling streams at centre with two or more streams).
- f. Record the official presidential results for the entire Polling Station (at polling stations with multiple streams it is critical that PVT Observers record the results for the entire Polling Station).
- g. Complete a PVT Checklist according to the instructions and at the assigned time.
- h. Send in their observation reports via text message (SMS) using their mobile phone based on the information and instructions on the PVT Checklist (each PVT Observer will need to send in five text messages (SMSs) during the day)
- i. Ensure all five observer reports are received by the PVT Data Centre – preferably on Tuesday 20 May, but by no later than 9:00am on Monday 21 May.
- j. Remain non-partisan at all times (PVT Observers must be strictly neutral while at Polling Centres and cannot wear any party or candidate materials or say anything advocates for a particular party or candidate).
- k. Not interfere in the process (The MEC Polling Officials are in charge of the Polling Centre and while PVT Observers can observe the process and

interact with the MEC Polling Officials they must not interfere with their work).

- l. Remain at his/her assigned Polling Centre until the counting of ballots is completed and the results for the entire Polling Centre are posted (this may be very late).
- m. Travel to MESN's regional office on Thursday 22 May to submit his/her completed PVT Checklist to receive his/her honorarium.

As compensation each PVT Observer will receive from MESN MK10, 000 as an honorarium to cover his/her costs of volunteering. In addition he/she will receive from MESN MK5, 000 airtime for to send in observation reports via text message (SMS). In addition, MESN cover the costs of participating in the training (including travel, accommodation and food). Transport will also be provided for submitting your completed checklists.

Appendix C - MESN PVT Observer – Conditions of Service

In compensation for serving as a PVT Observer and fulfilling all of the responsibilities outlined in the MESN PVT Observer Job Description, MESN provided the following compensation to PVT Observers:

- a. Cover expenses to attend the PVT Training on assigned date:
- b. Return transport allowance provided (see schedule)
- c. Two nights' accommodation paid
- d. Select meals provided
- e. MK6,000 for per diem for additional meals and incidental expense;
- f. MK1,000 airtime for texting practice at PVT training

Provide funds to deploy as a PVT Observer on Election Day (provided at PVT training):

- a. MK2,000 for logistical preparations
- b. MK5,000 in airtime for communication

Provide an honorarium upon submission observation forms and accounting materials at regional centre on 22 May:

- a. Return transport allowance provided to submit forms and accounting (see schedule)
- b. MK10,000 as an honorarium for serving as a PVT Observer.

PVT Observers who do not observe at their assigned polling station or who fail to submit all five of their PVT Checklist reports on Tuesday 20 May or at least by 09h00 on Wed 21 will forfeit their honorarium.

MESN reserves the right to dismiss any individual who fails to uphold this code of conduct without compensation. Such decisions will be solely at the discretion of MESN.

Appendix D: Code of Conduct

This is the Code of Conduct for persons that will volunteer for the Malawi Electoral Support Network (MESN) as an observer in any capacity for the 2014 Tripartite Elections. By signing this Code of Conduct, observers agree to be bound by the provisions of this code. MESN reserves the right to dismiss any individual who fails to uphold this code of conduct without compensation. Such decisions will be solely at the discretion of MESN.

- a. All observers shall be volunteers nominated by a member organization of MESN.
- b. All observers shall undergo training by MESN before observing on Election Day.
- c. All observers must adhere to MESN's Code of Conduct at all times starting with recruitment and ending once MESN has issued its final report on the 2014 Tripartite Elections (expect in June).
- d. All observers shall recognize the overall authority of the Malawi Electoral Commission (MEC), but remain accountable to MESN for all observation related activities.
- e. All observers shall respect the authority of the MEC polling officials at the polling centers. It is the MEC polling officials who are in charge of the polling centre.
- f. All observers shall conform to the requirements of the Electoral Act, the Electoral regulations promulgated and the directives of the Malawi Electoral Commission (MEC).
- g. All observers shall maintain strict impartiality in the conduct of their duties. They shall at no time publicly indicate or express bias or preference with regards to any political party or candidate.
- h. All observers shall refrain from giving any form of assistance to any party in connection with the elections. They will refrain from communicating with voters with a view of influencing how they vote.
- i. All observers shall refrain from carrying, wearing, or displaying any article of clothing, emblem, colors, badges or any other items denoting support for any party or candidate.
- j. All observers shall remain sober whenever carrying out duties for MESN.
- k. All observers shall maintain secrecy with reference to any matters related to the electoral process or the observation effort except for report to MESN structures.
- l. All observers on Election Day shall carry, wear or otherwise prominently display observer paraphilia (such as t-shirt) and any MEC accreditation badge.

- m. All observers shall refrain from speaking with the media. Only the MESN Board and Secretariat are authorized to speak with the media.
- n. All observers shall refrain from any corrupt practices, such as, but not limited to, taking bribes or other favors.
- o. All observers shall refrain from carrying or displaying arms or weapons of any kind during the conduct of his/her duties.
- p. All observers shall not abuse funds or any other resources provided to them by MESN for the purposes of observation.

Official Affirmation

I, the undersigned, do solemnly pledge to adhere to all the terms of the Malawi Electoral Support Network (MESN) Code of Conduct from now through the end of MESN's observation effort and in particular on Election Day.

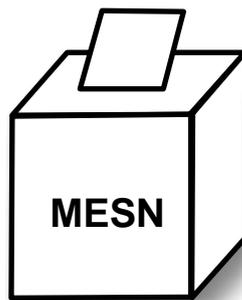
Name

Voter ID Number

Date

Signature

MALAWI ELECTORAL SUPPORT NETWORK



Democracy, Elections, Governance

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