



EUROPEAN UNION ELECTION FOLLOW-UP MISSION TO MALAWI

## EU ELECTION FOLLOW-UP MISSION

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## EXECUTIVE SUMMARY

- Having hosted EU Election Observation Missions, or EU EOMs, in 2004 and 2009, the European External Action Service (EEAS) selected Malawi to receive the first EU Election Follow-Up Mission, or EU EFM. The mission was tasked to assess the status of recommendations issued by earlier EU EOMs and to remind stakeholders of their pertinence. The EU EFM found that 2009 EU EOM recommendations were not implemented in practice, although much of their spirit had been translated into an EU-funded 5-year Strategic Plan for Malawi's Electoral Commission (MEC).
- Several complications acutely hampered preparation of Malawi's 2014 elections: Parliament had decided to consolidate national and local elections into a single day of polling, which triggered countless inconsistencies in legal framework, and MEC was contemplating migration to a novel voter registration system, even though necessary electoral cycle lead-time had elapsed.
- In order to resolve the resulting stalemate between MEC, technical assistance providers, and donors, the mission gathered national and international stakeholders at a roundtable, raising alert on imminent challenges, institutional responsibilities, and diminishing timeframes ahead of Malawi's 2014 elections. Having rehearsed EU EFM agenda and presentations with MEC commissioners the day before the roundtable, the event itself drew one hundred election stakeholders, including cabinet members and donor country ambassadors.
- Co-hosted by MEC and EU Head of Delegation, the two-day roundtable allowed recently appointed Commissioners and development partners to take stock of MEC's electoral cycle progress, while MEC's incoming Chairperson reassured stakeholders of the institution's determination to live up to Malawi's tightening election schedule. Transcribing and projecting debate findings in real time on screen, the roundtable adopted 41 Points of Consensus. Convoing a law reform Task Force, MEC operationalised one point of consensus before closing the roundtable. Along key 2009 EU EOM recommendations, the Task Force instantly began drafting electoral framework amendments for tabling with Parliament's February 2013 session.
- In spite of Malawi's current austerity budget, MEC had been considering migration to a novel and costly voter registration system. The final decision on which system to register voters to use is being delayed and at the same time MEC had not shared its operational plan and budget from donors and from electoral assistance providers. The roundtable kicked off stakeholder consultation on MEC's intention to procure novel voter registration technology, ultimately persuading the Commission to disclose both, operational plan and budget.
- Recent institutional trauma had paralysed MEC: In violation of its constitutional independence, late President Mutharika had collectively suspended the Commission for alleged embezzlement, a censure that effectively aborted conduct of 2010 Local Government elections. Instead of producing conclusive evidence and of prosecuting suspects, the late President collectively reinstated MEC staff in April of 2011. Yet, in breach of Malawi's Constitution, Local Government

elections were not held ever since 2000. After late President Mutharika's sudden death in April 2012, President Banda appointed new electoral commissioners, and the Judicial Service Commission nominated MEC's incoming Chairperson in October of 2012, barely a month before the EU EFM arrived.

- In summer of 2012, President Banda's newly formed People's Party briefly captured a legislative majority, mainly drawing on defectors from late President Mutharika's Democratic Progressive Party, DPP. This temporary majority has since dwindled, as a final Supreme Court decision on MPs' right to cross the floor draws near. The decision is prone to affect President Banda's ability to reconstitute a majority in the legislature. Nevertheless, 32 independent MPs habitually caucus with government, providing it with an *ad hoc* voting block.
- Opposition Malawi Congress Party, MCP strongholds concentrate in Malawi's central region, while DPP and United Democratic Front, UDF, dominate the South. Malawi's first-past-the post majoritarian electoral system renders prediction of Parliamentary election outcomes difficult, especially since in 2014, powers of incumbency will not carry the weight they did in 2009, which bodes well for future checks and balances, as well as for separation of powers in Malawi.
- Institutional and political upheaval has so far prevented MEC from looking thoroughly into reform of the outdated electoral framework. Nevertheless, previous Commissioners had produced a comprehensive electoral law reform package as the output of an EU sponsored review in February 2012. The package takes into account several key concerns raised by the 2009 EU EOM, and it inspired a November 2012 report by Parliament's Legal Affairs Committee.
- Per EU EOM's 2009 Final Report, the current legal framework for elections largely meets Malawi's international and regional obligations and commitments. Nevertheless, the EU EOM recommended aligning legal timelines for candidate registration and electoral dispute resolution, as well as fettering presidential discretion in the appointment of MEC Commissioners. Moreover, the EU EFM found that lack of public access to Malawi's legal framework for elections imperils legal certainty, a precondition for rule of law to take hold. The Law Commission's intranet library of statutes should hence urgently go online.
- The week before EU EFM arrival in Malawi, Parliament unanimously amended the Constitution to consolidate Local Government polls with Parliamentary and Presidential elections, to be jointly held on a single day in May 2014. In the words of Parliament's Legal Affairs Committee, the amendment created a "mess" of inconsistencies, which could bog down conduct of "Tripartite" elections. The roundtable hence prioritised timely legal framework harmonisation.
- While Malawians have last voted for Local Councils in 2000, and yearn to once again directly elect decentralised government, MEC has never before implemented an election of such logistical magnitude. The 2009 general elections drew 1177 candidates, whereas the Tripartite dimension could attract over 6000 contestants. Having organised last local elections in 2000, MEC underestimates challenges in the proofing and printing of up to 700 distinct ballots, as well as the

complexity of related candidate nomination disputes and results management bottlenecks. Regardless, the roundtable spontaneously pledged to abide by the May 2014 date for Tripartite Elections as its first Point of Consensus, even if time constraints for preparation of such elections were universally acknowledged.

- Exercising its constitutional mandate, MEC demarcated new parliamentary constituencies based on the 2008 census, but its boundary proposal was rejected by Parliament in 2009. Last elections thus followed 1999 boundaries, with constituency populations ranging from 5000 to 90.000. Such deviation perpetuates breach of Malawi's international obligations, as was highlighted by the EU EOM and other international observer missions in 2009. Since Parliament's prerogative claim to indefinitely block delimitation has yet to be challenged in the High Court, MEC announced in November 2012 that it will not redraw parliamentary boundaries for Tripartite elections in 2014, but focus on completing demarcation of Local Council wards instead. The EU EFM was thus invited to observe an exemplary MEC redistricting hearing in Kasungu. As part of its effort to approximate ward populations within each district, MEC seeks repeal of a 2010 legal amendment, which imposes inequitable delimitation criteria.
- After procuring a new optical-mark-recognition-OMR system for voter registration in 2008, freshly appointed MEC Commissioners decided in August 2012 to retire the inherited medium-tech system before the end of its life-cycle, and to replace it with high-tech direct field capture kits. Upon EU EFM arrival, MEC had published a consultancy tender to evaluate its current OMR system and voter list in January 2013. The current voter register hosts 6.5 million voter registration entries.
- While Malawi's neighbours have migrated to direct capture technology, its seamless introduction requires sufficient lead-time to allow conduct of mock field exercises and training. At this juncture of Malawi's electoral cycle, several factors mitigate against system migration: Only 17 months remain until 2014 Tripartite elections, precluding tender procedures that would satisfy donors; Malawi currently operates under an austerity budget; MEC has not explored synergy for dual-use of direct capture biometrics with other ministries; Malawi's rural areas lack power supply; and last but not least, migration would require a full re-registration of the entire voting population, whereas retention of the current medium-tech biometric system would allow for an update of the pre-existing voter roll. Such update could be confined to registering cohorts who came of voting age since last registration periods, and to recalling and reassigning those registered voters whose polling centre is being displaced by shifting ward boundaries.
- The roundtable hence set-out to sensitise stakeholders on risks and assumptions attached to precipitated voter registration system migration, albeit without overtly advocating for either alternative. While Malawi's regional peers have adopted comparable technology, and the mission supports data capture modernisation in principle, system migration requires commensurate planning and testing, which Malawi's current electoral cycle precludes. Ultimately, the EU EFM suggested consulting a preeminent regional biometric voter registration pioneer on the risks of precipitated system migration, a proposition EUD is currently pursuing by inviting the identified protagonist to Malawi.

- EU EOM 2009 recommendations also addressed MEC's inefficient results management system, which relies on transmission of local and regional results forms by fax to district tally centres. Regrettably, the voter registration system conundrum drowned out adequate debate of this critical 2014 challenge. Tripartite election results management must process an estimated 33.000 tally sheets, as compared to 11.000 in 2009, which entails additional staff training.
- The 2009 EU EOM further recommended internal MEC capacity building measures. In this context, the EU EFM has concluded that geographical dispersion of electoral Commissioners and Secretariat between Blantyre and Lilongwe, two cities separated by a 5-hour road commute, poses MEC's greatest handicap, draining the bulk of its human and financial resources. Introduction of a video-conferencing system could instantly free up MEC capacity.
- Late President Mutharika's media reprisals excavated 37 anachronistic statutory provisions, which erode Malawi's constitutional guarantees of freedom of expression and of the media. The roundtable recognized that this statutory legacy muzzles evolution of a conducive media environment for elections, and thus merits thorough repeal, even if 2009 EU EOM recommendations did not take issue with Malawi's legal framework for media. The roundtable hence pledged to petition Parliament directly to take up the idling Access to Information Bill, whose adoption would finally transpose Malawi's international and regional obligations under applicable UN and AU Conventions into its national legislation.
- Since introduction of multi-party democracy in 1994, public media have displayed consistent and heavy-handed bias in favour of incumbent presidents and ruling parties. The 2009 EU EOM hence recommended a regulatory mechanism of airtime quotas, so as to ensure equity and editorial neutrality during elections. Some roundtable participants, however, blame past excesses on persistent bad faith of public media editors, rather than on lack of regulation.
- Roundtable participants concurred that MEC should continue to exercise control over Malawi Communication Regulation Authority-MACRA during elections, so as to prevent regulatory double standards. The EU EFM finds this approach more suitable to Malawi's context, than that of the 2009 EU EOM, which recommended creating an independent statutory body vested with sanction powers. Such body might merit reconsideration in the far future, if and when it no longer runs the risk of cooption by government. The EU EFM emphasises that only timidly evolving private media freedoms should not be exposed to arbitrary sanction regimes.
- In light of private media's relatively balanced 2009 election coverage, the roundtable agreed that the sector should be allowed to self-regulate. Roundtable debate thus stopped short of addressing application of the Communications Act to private broadcast media, as was recommended by the 2009 EU EOM. Nevertheless, setting objective programme standards could limit MACRA discretion in sanctioning opposition media.



- Recognizing media challenges to adequately cover almost 700 races of Tripartite elections, roundtable participants agreed to explore capacitating media entities. Oblivious to the risk of allowing unlimited private money into Malawian politics and its inherent contamination of the media, some roundtable participants lamented that paid political adverts are condoned for Local Government elections, while they are banned for Parliamentary and Presidential races.
- Upon request by MEC Secretariat, EU EFM drafted a comparative table for the Commission's law reform Task Force, juxtaposing applicable provisions of Malawi's Constitution, election legislation, national law review findings, international observer recommendations, Malawi's international and regional obligations, and roundtable Points of Consensus, so as to expedite the Task Force's workflow. The Task Force met before the New Year, within a week of EU EFM departure, and it produced draft amendments for tabling with Parliament's February 2013 session, which currently await government approval. EU EFM also compiled an overview of biometric voter registration best practices. Both documents are annexed to this report.

## 1. BACKGROUND

In 2004 and 2009, the European Union deployed EU Election Observation Missions, or EU EOMs, to monitor Parliamentary and Presidential elections in Malawi. Both EU EOMs, as well as EISA, Commonwealth, and SADC Electoral Commission Forum Missions found that Malawi's elections largely met "international standards." Notwithstanding, each international observer mission issued recommendations to further improve Malawi's legal framework, boundary delimitation, election administration and operations, voter and candidate registration, level-playing field, regulation of media and of political finance, and electoral dispute resolution timelines.<sup>1</sup>

### 1.1 Mission Mandate

The present EU Election Follow-Up Mission was hence tasked with assessing the status, usefulness, and viability of EU EOM recommendations, as well as with programming a roundtable to reanimate debate on idle recommendations. Malawi's decision to consolidate national and local elections into a single day of polling in May 2014 moved EU EOM 2009 recommendations into a new context. The added dimension imposed a fresh set of priorities onto the EU EFM mandate and its roundtable agenda, so as to allow the mission to help mitigating risks that arise from the challenge of holding Tripartite elections.

### 1.2 Electoral Cycle Risks

Malawi's risks in holding Tripartite elections in May 2014 manifest on several levels: Malawi's election administration and stakeholders have decided to consolidate national and local elections, tripling the logistical tasks of prior electoral cycles. Moreover, 2014 will be the very first time Malawi takes on a challenge of such magnitude. Further, its eleven electoral commissioners were appointed very recently, and with only one exception, have no direct experience with managing a national electoral event. Further, Malawi's legal framework lacks a defined calendar of deadlines, rendering MEC decision making unpredictable to stakeholders. And finally, pressing legal framework harmonisation requires concerted political will of myriad government departments, jeopardizing its timely tabling and adoption.

Contrary to prior cycles, Malawi's 2014 Presidential elections could be closely contested, testing the limitations of MEC's amorphous results management and of the framework's sporadic results appeal calendar. Finally migration to a novel high-tech voter registration system will create additional risks to the process. System migration entails a complete new registration exercise, whereas retention of the pre-existing system would allow for a limited update of the register.

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<sup>1</sup> [EU EOM 2009](#) ; [EU EOM 2004](#) ; [Commonwealth 2009](#) ; [EISA 2009](#) ; see also comparative recommendation table in annex

## 2. POLITICAL CONTEXT

With constitutional reform introducing multi-party democracy in the early 1990s, Malawi switched from a Parliamentary to a Presidential system. Executive power concentrates in the office of head-of-state, who is elected by simple majority, without second round. Parliament can impeach the President, and cabinet is appointed among Members of Parliament. The Constitution initially envisioned an upper chamber, a provision that was subsequently repealed. Further, the Constitution considers the Presidency part of Parliament.<sup>2</sup> Since the introduction of multi-party democracy, no political party has been able to firmly entrench a permanent grip on the legislature over more than two cycles, since sizable opposition movements have periodically split off the dominant political force, spawning new parties. This dynamic bodes well for separation of powers to take hold. Malawi currently counts 40 registered political parties, few of which actively field candidates in elections.

### 2.1 The Presidency

In 1999, Joyce Banda was first elected Member of Parliament with the then ruling party, and re-elected in 2004, serving as Minister of Gender and Community Services. While in cabinet, Banda ushered key portfolio legislation through Parliament. During her second term in the National Assembly--now as a member of the opposition--Banda was nominated foreign minister by President Mutharika. In 2009, she switched party affiliation to DPP, easing her nomination onto the Vice-Presidential ticket.

Joyce Banda was thus directly elected Vice-President on the ticket of late President Mutharika in May 2009. Upon her predecessor's sudden death, and pursuant to the Constitution, she ascended to the Presidency on April 7, 2012. Her succession provoked controversy, since she had left Mutharika's Democratic Progressive Party to found the People's Party-PP in 2011, a secession that provoked heavy-handed government reprisals. Earlier attempts to deprive Banda of the Vice-Presidency were restrained by the High Court, and she was sworn in as President with tacit approval of the armed forces. President Banda thus became Malawi's first, and Africa's second female head-of-state. She had started her political career in civil society, advocating for and supporting the cause of women entrepreneurs.

### 2.2 Parliament

The 2009 legislative elections to Malawi's 193-seat unicameral Parliament netted the ruling DPP a legislative supermajority of 112 seats. MCP's 27 seats came in a distant second, while UDF took 18 seats and independent candidates garnered 32 seats. Despite DPP's supermajority, Malawi's high election turn-over stands out in the region, as only 30% of incumbents were re-elected, with some already eliminated at the primary stage. Malawi's intra-party democracy knows secret balloting in primary elections, even though the procedure is not mandated by political party regulation.<sup>3</sup>

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<sup>2</sup> Article 49 of the Constitution

<sup>3</sup> Reform of the Political Parties (Registration and Regulation) Act to that effect was put forward by both, the Malawi Law Commission and the Center for Multi Party Democracy, but meets resistance among the political establishment.

MCP strongholds concentrate in Malawi's central region, while DPP and UDF dominate the South. After Ms Banda's succession to the Presidency, 107 MPs spontaneously migrated to her People's Party, handing her a temporary legislative majority. Some have since abandoned PP, although one MP has crossed the floor from UDF to PP at the time of writing. PP's caucus currently counts around 90 MPs. The Constitution restrains commuting of MPs between parties during elected terms, but the High Court upheld MPs' right to cross the floor on grounds of the constitutional freedom to join political parties.<sup>4</sup> Loss in primary elections has motivated candidates to switch parties, or to run as independents, one of whom won October 2012 by-elections against PP's candidate of choice.

Regardless of formal party affiliation, the National Assembly appears to rally around the President's legislative agenda whenever its members deem it of self-interest, a tendency that allowed the unanimous passage of the Tripartite elections amendment of the Constitution. The present consensus has opened a window of opportunity to advance electoral reform in Parliament, especially if it aims to facilitate Tripartite polls. Independent MPs habitually caucus with government, so that electoral reform initiative would be assured passage, despite the present government's lack of an automatic majority. The roundtable hence aimed at assembling all stakeholders vital for drafting amendments along the event's Points of Consensus. Parliament had adjourned for the rest of 2012, and will resume session in February 2013, with currently 23 draft bills on its docket. Constitutional amendments, such as on voting age and on the right to stand for Local and Parliamentary elections at the same time, require a two-thirds majority, unless they are caught by Malawi's vaguely worded referendum entrenchment.<sup>5</sup>

## 2.3 Local Government

Malawi held its last Local Government elections in 2000. Successive governments and legislatures have thwarted timely conduct of Local Government polls, presumably to subdue accountability between national and local authorities. Directly elected Local Councillors are also feared as future challengers of Parliamentary seats, because of their proximity to constituents. Parliament thus imposed the Local Government (Amendment) Act 2010, introducing the right of MPs to vote in Local Councils of their constituency, an arrangement that remains controversial. Local Government is enshrined in the Constitution, and vested with power to solicit and locally expend national funds.

Local Government is also tasked with registering births and deaths, which makes it an interested party in the introduction of population databases, such as that of a new voter register. Democratic representativity in Local Councils is diluted by deliberative powers of traditional authorities, who are barred from standing for elective office under the Chiefs Act. Lastly, MEC delimits Local Council ward boundaries (*see infra, Boundary Delimitation*). Broad popular and political consensus underpins the imperative to abide by the Tripartite election schedule for 2014, sentiment that also found expression in roundtable Points of Consensus.

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<sup>4</sup> Section 65 of the Constitution; *Registered Trustees of Public Affairs Committee v The Attorney General*. The Supreme Court currently deliberates over a final appeal of the issue.

<sup>5</sup> Section 196 of the Constitution

### 3. THE LEGAL FRAMEWORK

While Malawi has ratified *inter alia* the International Covenant for Civil and Political Rights and the African Charter for Human and Peoples Rights, as well as the Charter's Protocol on the Rights of Women in Africa, it has not yet committed itself to the African Charter for Democracy, Elections and Governance, a key instrument establishing obligations for the holding of democratic elections.<sup>6</sup> Malawi is further politically committed to sub-regional instruments applicable to elections, such as the Principles for Election Management and Monitoring in the SADC Region.

Malawi's national legal framework organises conduct of elections through four main instruments: The Constitution of 1995, the Parliamentary and Presidential Elections Act of 1993 (PPEA), the Local Government Elections Act of 1998 (LGEA), and the Electoral Commission Act of 1998 (ECA). The Electoral Commission (Amendment) Act 2010 further defines the ratio between Local Government wards and Parliamentary constituencies. The Political Parties (Registration and Regulation) Act governs public funding of those political parties that obtain at least ten per cent of the popular vote.

The 2004 and 2009 EU EOMs recommended enhancing political finance transparency and setting a ceiling on campaign expenditure, which the Strategic Plan mainstreams by claiming enhanced enforcement powers for MEC.<sup>7</sup> The EU EFM attended a discussion forum proposing modernisation the Act, at which political party establishment vehemently voiced reservations against reform. The Law Commission also drafted a reform bill on Political Party regulation, which would impose mandatory intra-party democratic procedures and political finance transparency.

Lack of public access to Malawi's election Acts erodes legal certainty, a precondition for rule of law to take hold. Malawi Law Commission's state-of-the-art intranet statute book must thus be urgently brought on line,<sup>8</sup> and MEC must publish election laws on its homepage.<sup>9</sup>

#### 3.1 Roundtable Legal Framework Priorities

Sidestepping politically charged topics, such as modalities for appointment of MEC Commissioners, the EU EFM presentation set out to reinforce a sense of urgency to advance reform of uncontroversial provisions. Within this approach, EU EFM prioritised issues prone to trip up conduct of voter, observer and candidate registration; results announcement; and electoral dispute resolution. The bulk of these deficiencies can be remedied either by framework harmonisation, or by setting of legal timeframes.

<sup>6</sup> For a full list of Malawi's international and regional obligations, see [MoFA Homepage Treaties](#)

<sup>7</sup> See EU EOM Recommendation 16 in tabular annex

<sup>8</sup> For instance by bringing online the Gazette, or by linking the database to [www.malawiLii.org](http://www.malawiLii.org)

<sup>9</sup> <http://www.mec.org.mw/>

### 3.1.1 Harmonisation

Malawi's legal framework for elections has evolved piece-meal, with the 1993 PPEA preceding the 1995 Constitution, a sequence that caused inconsistencies between the two instruments, since Constitutional framers did not heed pre-existing legislation. LGEA and the ECA followed in 1998, with ECA detracting substantively from MEC's Constitutional independence, established three years earlier. LGEA mirrors the bulk of PPEA, yet departs from it on critical aspects. While some deliberate deviation was motivated by aligning LGEA with evolving international best practices, for instance by providing for national election observation, inadvertence caused most incoherencies, which now require harmonisation to accommodate the Tripartite consolidation. Some LGEA innovations were accompanied by simultaneous adjustment of PPEA, yet this ancillary effort remained sporadic, rather than exhaustive.

Various national review processes have thus identified at least 14 pending inconsistencies among framework components. As long as Local and National polls were held separately, those contradictions were mitigated by leniency. Consolidation of polls into a single event, however, requires thorough framework harmonisation to eliminate legal uncertainty over which instrument prevails. To deepen awareness of the gravity of legal uncertainty, the legal roundtable presentation directly juxtaposed conflicting legal framework provisions.<sup>10</sup>

Constitution	PPEA	LGEA
40(3) Save as otherwise provided in this Constitution, every <u>person</u> shall have the right to vote, (if) 77(2)(a) is a citizen of Malawi or, if not a citizen, has been ordinarily resident in the Republic for seven years;	15) Every <u>citizen</u> of Malawi residing in Malawi who on or before polling day attains the age of 18 years shall be able to register as a voter in an election	6) Every <u>citizen</u> of Malawi residing in Malawi who on or before polling day attains the age of 18 years shall be able to register as a voter in an election
77(2) at the <u>date of the application for registration</u> that person (b) has attained the age of eighteen years.	15) <u>on or before the polling day</u> has attained the age of eighteen.	6) <u>on or before the polling day</u> has attained the age of eighteen.

The bulk of essential interventions are not contentious, since they are of technical, rather than of political nature. Nevertheless, inconsistent provisions on Malawi's long-standing enfranchisement of non-citizen residents of Asian origin, as well as conflicting cut-off ages for voter registration could spark political debate.<sup>11</sup> For the more inclusive provisions to prevail, the Constitution would also require amendment. Provisions on election observation also diverge, with PPEA depriving national observers of the right to an effective remedy in case of denial of accreditation. Lastly, observation periods and candidate deposit refund thresholds differ among the two instruments:

<sup>10</sup> See power point presentation in annex

<sup>11</sup> For a full list of current framework inconsistencies, see Task Force Working Table in annex.

PPEA	LGEA
101) International Observation means (...)international organizations, non-governmental organizations, foreign governments and foreign personalities.	84) Observation means (...) observation by international organizations, international and <u>local</u> non-governmental organizations, foreign governments and foreign and local personalities.
103) begin from the <u>appointment of the Electoral Commission</u> and ending with the determination of the national result or the settlement thereafter of all election disputes.	86) begin at the <u>start of the registration process</u> and end with the determination of the national result or the settlement thereafter of all election disputes.
45) (candidate deposits shall be refunded, unless the candidate obtains...) <u>less than five per cent</u> of the valid votes cast.	37) shall, in the case of a candidate who <u>lost</u> , be forfeited.

The EU EFM stresses that rushed law reform risks that more restrictive provisions prevail, and that earlier liberal interpretation of ambiguities, such as the right to vote of resident aliens, might get jettisoned. In terms of harmonisation, the roundtable thus resolved to adopt the following points of consensus: establish eligibility by age of 18 at or before polling day; provide the right to national election observation by PPEA in harmonisation with LGEA; establish and define the offence of unduly influencing voters; harmonise PPEA and LGEA with Constitution on seven-year resident alien eligibility; and eliminate multiple candidacies between MPs and Local Councillors. The EU EFM is satisfied that conflicts of law would thus be resolved in favour of inclusivity.

### 3.1.2 Legal Timelines

The 2009 EU EOM had addressed legal timeframes in two recommendations, respectively relating to candidate registration and to complaints and appeals. The EU EFM presentation hence attempted to graphically illustrate the importance of staggered and clear cut-off dates, as well as legal loopholes that indulge delays in results announcement and appeals procedures, which in turn can hold hostage closure of the electoral process. To render the electoral calendar more predictable, the roundtable adopted the following points of consensus: address ballot proofing/nomination timeline; and consider revising polling hours.

Lack of successively staggered legal deadlines forms the Achilles heel of Malawi's framework for elections: While campaign period and campaign silence are defined, they precariously overlap with the cut-off for candidate registration. No timelines exist for submission of complaints and appeals against MEC decisions on voter and candidate registration, ballot design, or observer accreditation. Malawi's pre-electoral timeline could thus once again trigger glitches, as was observed by the 2009 EU EOM. The five-fold increase in candidate nominations expected for 2014 compounds this risk:

[illegible]

Malawi's post-electoral timeline provides neither legal certainty for aggregation and announcement of results, nor for appeals to the High Court, for swearing in of those elected, or for the refund of candidate deposits. In the event of a close Presidential election, Malawi could end up suspended in more than two months of appeals limbo, since High Court deliberation is capped only by practice direction of the Chief Justice, but not by the legal framework. Winning candidates are sworn in prior to final appeals rulings, without distinction of preliminary versus final results announcement.

[illegible]





With support from EUD in January 2012, MEC itself had held two consultative workshops on Electoral Law Reform. Participants of the first workshop consisted of MEC; leaders and representatives of political parties; a Justice of Appeal; the Deputy Chief Law Reform Officer at the Law Commission; an official from the Anti-Corruption Bureau; the Deputy Dean of the Faculty of Law of the University; and staff of the Electoral Commission.

The workshops issued recommendations for MEC to transmit to MoJ for drafting. Recommendations addressed: Appointment of electoral Commissioners; MEC's lack of jurisdiction over local government elections, which was not addressed by the subsequent constitutional Tripartite amendment of section 147; wider publication of MEC notices than through the *Gazette*; candidate and voter registration eligibility criteria and timelines; determination of the candidacy deposit amount; striking withdrawn candidacies off the ballot; District Commissioner discretion to prohibit campaign rallies; liberalisation of campaign regulation; reinforcement of public media regulation; effective remedies for party agents; more flexibility to adjust polling equipment; shortening of voting hours, while allowing MEC to exceptionally extend polling; ballot invalidation criteria; ballot chain-of-custody; complaints, appeals, and swearing in timelines; and lastly, the rights of national versus international observers.<sup>14</sup>

The reform workshop was held under the auspices of the former MEC Chairperson and Commissioners. Nevertheless, the EU EFM received its report from a current MEC Commissioner, so that it can be assumed that MEC's new leadership had been aware of the event's final recommendations. MoJ informed the mission that MEC never submitted the reform package for drafting, whereas the Law Commission conceded having received a letter from MEC initiating reform. In turn, the Law Commission requested MEC to submit a concept note, which never came forth, even though the January roundtable report could have perfectly served as such. Prevailing uncertainty over the Tripartite dimension, as well as replacement of Electoral Commissioners, may have let reform momentum wane in 2012.

Being an interested party in reform of the Parliamentary and Presidential Elections Act, the National Assembly's Legal Affairs Committee issued a report on the impact of the Tripartite amendment on the overall legal framework for elections. The Committee compared and thoroughly scrutinized Constitution, PPEA and LGEA, identifying no fewer than 14 inconsistencies that could impede the conduct of Tripartite elections. According to the Committee, harmonisation would have to address *inter alia*: alignment of electoral offences and the sanctions they attract; inking modalities for the three different polls; term of office of local councillors; voter registration eligibility; paid campaign advertising; campaign rally authorisation; and transfer of voter registration from one polling station to another.

Parliament's report finds that implementation of Tripartite Elections in 2014 might overburden scarce resources and electoral management capacity, which lead the Legal Affairs Committee to ultimately recommend postponing Local Council elections until 2019, despite popular expectations to the contrary. Moreover, the Committee relies on the need for framework harmonisation as a pretext to repeal the PPEA's ban on paid campaign advertising, so that MEC and other stakeholders would be well advised to approach Parliament's recommendations with caution.

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<sup>14</sup> Malawi Electoral Commission: Review of Laws that Regulate Elections in Malawi, Report of workshops for Political Leaders and Representatives of Civil Society Organisations and Faith-Based Organisations held on 10 and 12 January 2012 in Lilongwe, Malawi

MEC's Strategic Plan, a near-to-final draft of which was delivered at the time of EU EFM arrival, echoes the need for legal reform, although it envisions the amendment process to carry on until December 2013, and thus, contrary to regional commitments, to seep into the pre-electoral phase.<sup>15</sup>

UNDP plans to assist in drafting a set of so far non-existent regulations, in order to enhance MEC's enforcement powers. The legal framework, however, does not expressly vest the Electoral Commission with regulatory powers.<sup>16</sup> Moreover, Regulations *per se* cannot supersede unworkable statutory timelines or inconsistencies, rendering legislative action inevitable.

Despite obvious technical need for harmonisation, Malawi's procedural hurdles are prone to thwart timely law reform. Malawi's constitutional conventions require that each "line-ministry" instruct MoJ to draft legislation under its remit, i.e. in the case of the Local Government Election Act, the Ministry for Local Government, and in the case of the Electoral Commission Act, MEC itself. It remains unclear what ministry would be in "line" to initiate reform of PPEA, which may have motivated the Legal Affairs Committee to take initiative *ex officio*.

The Ministry of Justice advised the mission that simultaneous reform of several election-related Acts can be expedited by convening a drafting "Task Force." For the purpose of electoral framework revision, such Task Force would include Law Commission, MoJ, MoLG, MEC, civil society, police, and possibly political parties. The roundtable thus identified as expected outcome determination of dates, during which all line ministries and stakeholders would be available to join the Task Force, in order to draft amendments bill for tabling with Parliament's February session.

The roundtable ultimately attracted all institutions indispensable at the exercise, who agreed on the following procedural Points of Consensus: involve Parliament in law reform process; consult civil society in Law Review process; establish Task Force to consolidate review process as soon as possible, including MLGRD; Malawi Police; MESN; MoJ; MHRC; Law Commission; Parliament; MEC; CMD; MoF; Political Parties; MISA Malawi; Media Council; MACRA; PAC; and to bear in mind to give Parliament 28-day notice on Electoral Law Reform bill tabling.

A preparatory meeting at MEC, which the EU EFM was invited to attend, scheduled the Task Force to meet between December 26 and 29. The Task Force did indeed convene as scheduled, a week within mission departure, potentially allowing amendments to reach Parliament's February 2013 session.<sup>17</sup>

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<sup>15</sup> ECOWAS Protocol on Democracy Elections and Governance, (not binding on Malawi), section 2.1: No substantial modification shall be made to the electoral laws in the last six (6) months before the elections, except with the consent of a majority of Political actors.

<sup>16</sup> Section 121 of PPEA, as amended in 1998, state in pertinent part: *The Minister may, on the recommendation of the Commission make regulations for the better carrying out of the provisions of this Act.*

<sup>17</sup> See Task Force Terms-of-Reference in annex

## 4. ELECTORAL SYSTEM

Malawi applies the majoritarian or first-past-the-post system for the Presidency, obviating the need for a second round. The same system applies to the 193 seats in Parliament, as well as to Local Council elections. Electoral reform debate has so far not touched upon Malawi's choice of electoral system, except for a Law Commission proposal to elect the President by absolute, rather than simple majority, which would necessitate the occasional holding of a second round of Presidential elections. As of now, Malawi could hypothetically elect a President with less than 25% of votes cast, depending upon the number of candidates and their respective support. While costlier, an absolute majority would enhance democratic legitimacy of the head-of-state.

### 4.1 Boundary Delimitation

The choice of a purely majoritarian electoral system renders up-to-date boundary delimitation essential to guarantee equality of the vote. The Constitution mandates MEC to delimit boundaries every five years, which appears counterintuitive, since the demographic criterion refers to *eligible voters*, rather than to *registered voters*, and Malawi holds its population census only every ten years.<sup>18</sup>

Despite MEC's constitutional mandate to redraw boundaries, and contrary to 2004 and 2009 EU EOM, as well as Commonwealth Secretariat recommendations, the November draft of the Strategic Plan foresees Parliamentary boundary delimitation not until 2017. The MEC homepage, however, informs of planned redistricting for 2015, even though the next census will not be conducted until 2018. MEC has hence recently announced that it will retain existing constituency boundaries through the current cycle, although constituency populations deviate by a factor of ten.

While MEC's compromise may appear inevitable, in order to meet the tripartite constitutional election calendar, the decision perpetuates gross imbalance among parliamentary constituencies, and remains to be resolved by judicial review. Further, the mission was informed that MEC let expire its GIS software plotter licence. The 2018 census would open only an extremely short window to bring current parliamentary constituency boundaries in line with Malawi's demographic shifts, rapid population growth, and its international commitment to guarantee equality of the vote.<sup>19</sup>

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<sup>18</sup> Section 76 of the Constitution

<sup>19</sup> ICCPR, Gen. Comment 25, Article 21: Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors. The principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group (...)

It should also be noted that Malawi is the only country in the region that allows Parliament to intervene in the demarcation of its incumbent members' constituency borders, a constitutional provision that has allowed the legislature to block MEC's last delimitation proposal since 2008.<sup>20</sup>

EU EOM 2009 Recommendation 3 will thus likely be echoed by a potential EU EOM in 2014, as urban versus rural population discrepancies steadily increase. If and when parliamentary constituencies will be redrawn, the exercise will also entail readjusting ward boundaries to line up with revised parliamentary constituency shapes.

## 4.2 Delimitation of Wards

Local Councils govern each of Malawi's 28 Districts, 2 Municipalities, and 4 cities.<sup>21</sup> These 34 Local Government areas are sub-divided into sub-units, or wards, which each directly elect one Local Councillor. The seats of Councillors elected last in 2000 have fallen vacant in 2004, and have yet not been filled, since 2010 Local Government Elections have been aborted by MEC's suspension. Nevertheless, in 2010, Parliament reduced the number of wards, and hence that of Local Councillors, from 861 to 444.<sup>22</sup>

In December 2012, MEC began to display proposed ward maps in district councils for public consultation and comparison with findings of the 2010 Ward Demarcation Committee.<sup>23</sup> The EU EFM was invited to observe MEC's first related public hearing.<sup>24</sup> In order to cover the entire national territory by March 2013, MEC will split into two roaming units, a process which was initially planned to conclude two months earlier.<sup>25</sup>

Based on findings of its public hearings, MEC plans to amend boundaries of outlier wards with the highest population deviation, as well as those wards that currently straddle two constituencies. MEC's approach could increase the number of wards up to 500, potentially raising the number of Tripartite races to 700. MEC hence plans to increase the number of voter registration centres from 3.897 to up to 4.200, so as to comply with maximum distances between voters and centres, albeit within budget constraints.<sup>26</sup>

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<sup>20</sup> [EISA Regional Demarcation Data](#)

<sup>21</sup> Four cities, Blantyre, Lilongwe, Mzuzu and Zomba; two municipalities, Kasungu and Luchenza, and 28 districts

<sup>22</sup> According to the Electoral Commission Amendment Act 2010, Blantyre, Lilongwe Mzuzu and Zomba contain 30, 30, 15 and ten wards respectively, while all other parliamentary constituencies contain two wards each.

<sup>23</sup> MEC initiated this process from 5 to 17 of December 2012 with proposed wards in Kasungu District and Municipal Councils, Rumphi and Nsanje District Councils.

<sup>24</sup> First public hearing in Kasungu District and Municipal Councils on 19 December attended by all MEC Commissioners, MEC Secretariat, and local stakeholders, including Members of Parliament, Traditional Leaders, and Political Party Representatives.

<sup>25</sup> Interview of the MEC CEO published in the Daily Times, 22 December edition

<sup>26</sup> Registration Centres convert into Polling Centres on Election Day

## 5. ELECTION ADMINISTRATION

Malawi has chosen the “independent model” to administer its elections.<sup>27</sup> Throughout EU EFM deployment, media thus granted front page treatment to President Joyce Banda’s decision to place MEC under the remit of the office of the Vice President. The measure transpired as part of a wider cabinet reshuffle, and government statements insist that it did not imply infringement upon MEC’s constitutional independence, but merely aimed to guarantee operational support by the Vice Presidency, if and when requested by MEC. In turn, MEC’s Chairperson and Commissioners vehemently protested subordination to the executive branch. In light of MEC’s unconstitutional suspension by late President Mutharika in 2010, the Commission’s reaction appears justified. Moreover, it is founded in Malawi’s sub-regional commitment to *Principles for Election Management, Monitoring, and Observation in the SADC Region*, which state in pertinent part that, “the EMB should be accountable to the National Assembly/Parliament through, for example, the Public Accounts Committee, rather than a ministry, and should be required to report to the national legislature annually on its activities.”<sup>28</sup>

While Malawi’s 1995 Constitution unequivocally enshrines MEC’s independence, the 1998 Electoral Commission Act paradoxically holds MEC accountable to the Presidency.<sup>29</sup> The roundtable thus adopted a point of consensus that “MEC should not be required to report to the executive, but to Parliament,” and the Commission’s law reform Task Force set out repeal of ECA’s unconstitutionality in its reform agenda.<sup>30</sup> As the EU EFM wound down, President Banda retracted her delegation of MEC oversight to the Vice President, opening up a political window of opportunity for rectification of the legal framework.

Further, the 2009 EU EOM recommendation to check and balance the President’s discretionary power to appoint electoral commissioners by merely “consulting” with the parliamentary opposition could also be taken up by the Task Force. While MEC’s new Chairperson was nominated last October by the Judicial Service Commission, MEC Commissioners continue to be appointed by the President of the Republic, which detracts from public trust in their impartiality. The 2009 EU EOM addressed the issue along with other observer reports, as well as with January 2012 MEC workshop recommendations. An initial plan to invite the President to open the roundtable was thus abandoned, so as to avoid MEC-executive relations from overshadowing the agenda.

### 5.1 Election Commission and Secretariat

MEC is slowly re-establishing itself after the period of its collective suspension by late President Mutharika in 2010, a measure that violated MEC’s constitutional independence from the executive. No criminal charges have ultimately been filed against MEC members in the wake of a forensic audit.

<sup>27</sup> [International IDEA: Electoral Management Design Handbook](#)

<sup>28</sup> Principles for Election Management, Monitoring, and Observation in the SADC Region, Section 3.3

<sup>29</sup> Section 6, Electoral Commission Act 1998

<sup>30</sup> See Task Force terms of reference in annex.

Newly appointed Commissioners needed time to get a better understanding of the elections implementation and logistics as well as the challenges of consolidating Presidential, Parliamentary, and Local Council elections in a single day of polling. The task could further intensify, if the 2009 peak turn-out of 78.27 per cent, one of the highest in the region recurs in 2014, a plausible scenario because of the added attraction of the tripartite dimension.<sup>31</sup>

Falling only weeks after passage of the Tripartite Elections amendment, the roundtable offered a timely opportunity for new Commissioners to take stock of MEC's progress measured against electoral cycle benchmarks, merely 17 months before 2014 E-day. Nominated one month before the roundtable, MEC's incoming Chairperson asserted MEC preparedness vis-à-vis election stakeholders and the general public.<sup>32</sup>

Already in 2009, the EU EOM had recommended internal MEC capacity building.<sup>33</sup> Based on its direct observations, the EU EFM has come to the conclusion that geographical dispersion of MEC Commissioners between Blantyre and Lilongwe, cities separated by a five-hour commute, poses the Commission's greatest handicap, draining its human and financial resources.<sup>34</sup> Introduction of a video-conferencing system for both, Secretariat and Commission would instantly free up capacity. Savings from reduced MEC travelling allowances could accrue to salaries instead.

## 5.2 The Election Budget

In mid-2012, MEC submitted its annual budget to the Ministry of Finance, a procedural hurdle that skews MEC's *de facto* autonomy from the executive branch, undermining its *formal* constitutional independence. In the case of Malawi however, MEC carries a legacy of allegations of financial impropriety. While EU EOM 2009 recommendations addressed MEC's financial management capacity and probity, other observer groups refrained from doing so. The Strategic Plan foresees financial management and ethics capacity building, as well as transparency and internal audit mechanisms, and the EU EFM has been informed that expenditures are now tightly controlled.

In November 2012, MEC amended its draft election budget to cover the remainder of the electoral cycle, and to reflect the additional cost arising from the constitutional Tripartite amendment. During the Roundtable MEC informed that the current election budget amounts to 14.7 billion kwacha, or 35 million Euros, more than twice the 2009 election budget, information the EU EFM was able to share with donors.<sup>35</sup> The detailed budget wasn't however shared during the meeting. As a roundtable Point of Consensus, MEC committed to submitting its itemised budget to Parliament's mid-term review in February 2013.

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<sup>31</sup> [EISA Regional Turn-out Statistics](#)

<sup>32</sup> Extract from the Speech of MEC's Chairperson at opening of the 13-14 December roundtable: "(...) this meeting is historical in two contexts. First, this is my first substantive meeting with you, principal electoral stakeholders since my appointment (...). Secondly, it is the first meeting with electoral stakeholders immediately after the passing of tripartite elections bill (...)"

<sup>33</sup> Recommendation 4

<sup>34</sup> Five MEC Commissioners reside in Lilongwe, while six Commissioners and the Secretariat remain based in Blantyre. Limited space is available at MEC's Regional Election Office in Lilongwe, so outside space rentals are required for events in the capital.

<sup>35</sup> On 22 December 2012, the newspaper *Week End Nation* titled for the first time about Tripartite polls budget at K14BN with reference to K14.2BN announced by MEC CEO, information confirmed by the Ministry of Finance in the narrative.

## 5.3 Election Preparation

Upon EU EFM arrival, MEC delivered its 5-year Strategic Plan, the output of a project under the 10<sup>th</sup> European Development Fund EDF Democratic Governance Programme. Covering 2013-2017, the document was drafted in consultation with stakeholders, laying out budget estimates for activities by trimester, and assigning each task to respective MEC divisions.<sup>36</sup> The Strategic Plan also encapsulates the bulk of 2009 EU EOM recommendations, except for short and long term approaches to voter registration systems and for all aspects of polling. The Strategic Plan is due to be officially adopted by MEC in January 2013.

Further, in response to EU Follow-Up Mission deployment, MEC drafted an itemised update on the status of 2009 EU EOM recommendations.<sup>37</sup> The document is testimony to MEC's commitment to take into account EU EOM recommendations.<sup>38</sup>

In light of unanimous international observer recommendations on polling procedures, the Strategic Plan merits amendment to supplement this pivotal aspect.<sup>39</sup> Observer missions had voiced concern over closing hours, as well as over the maximum number of voters per polling station stream. MEC has announced that it plans to reduce the number of voters per stream from 1500 to 800, especially since 2014 offers voters three ballots, as compared to two in 2009.

## 5.4 Roundtable Priorities

In light of diminishing timeframes ahead, the mission sidestepped long-term goals enshrined in the Strategic Plan, to give priority to immediate imperatives on the road to Tripartite Elections in 2014. The mission's electoral operations module hence isolated three critical electoral cycle components: (i) operational plan and electoral calendar, (ii) choice of voter registration modality, and (iii) the impact of the Tripartite dimension on results management.

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<sup>36</sup> On 29 October 2012, MEC, under its former Chairperson, held a one-day consultative meeting with stakeholders on the electoral process to present its draft Strategic Plan in Blantyre.

<sup>37</sup> MEC delivered the document to EUD and EU EFM on 10 December 2012.

<sup>38</sup> See EU EFM Recommendations Logframe in annex

<sup>39</sup> 2009 EU EOM Recommendations 26 to 30



### 5.4.1 Operational Plan and Electoral Calendar

The EU EFM roundtable presentation graphically illustrated the interdependence of the legal calendar with operational planning, by displaying sequenced election milestones, so as to engender stakeholder and donor reflection on the rapidly closing electoral cycle.<sup>40</sup>

Per understanding reached the day before the roundtable, MEC responded to the EU EFM presentation with a status report on its election preparation, highlighting delivery of its operational plan,<sup>41</sup> which MEC's Chairperson announced would be made available to stakeholders by 16 December.<sup>42</sup> Malawi's commitment to abide by the May 2014 date for Tripartite Elections was adopted spontaneously as a Point of Consensus, even if logistical time constraints were universally conceded.

Further, MEC committed to more frequently meet, in order to advance on the following Points of Consensus: address MEC Operational Plan to UNDP and to donors, in order to allow drafting of the next generation Project Document; submit draft election budget to donors, to facilitate constitution of a basket fund; proceed with 2010 ward demarcation, while addressing demographic outliers on a case-by-case basis; and present MEC budget for mid-term review of Parliament in February 2013.

Closing the session, MEC's Chairperson announced that the Commission will present its budget and electoral calendar at the next National Election Consultative Forum, NECOF, during the third week of January 2013.<sup>43</sup> Timeframes announced by MEC at the roundtable marked the first such commitments towards stakeholders, since new Commissioners were sworn in.

The draft operational plan assigns around 200 activities to respective MEC departments for implementation between January 2013 and May 2014, some of which in coordination with assistance providers and Development Partners. A narrative rationale explains each item. Budget lines are referenced, presumably matching those submitted to MoF.

In terms of polling, MEC warehouses 21,000 ballot boxes, procured for the aborted 2010 Local Council elections. This supply still falls short of meeting the planned increase in number of polling stations, necessary to reduce the stream of voters to each station. MEC has informed the mission that it will shorten polling hours by closing at 4PM, a measure the 2009 EU EOM recommended, in order to provide daylight for counting. However, the measure merits reconsideration, since the Tripartite dimension will increase processing time of each voter, slowing down polling procedures. UNDP plans to support drafting of applicable Regulations. The statutory requirement to staff each polling station with at least five poll workers will exponentially increase training volumes and staff stipends in 2014.

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<sup>40</sup> See annex for the Key Notes Presentation.

<sup>41</sup> MEC Commissioner Emmanuel Chinkwita-Phiri, Chairperson of the Electoral Services Committee, Mr. Willie Kalonga, Chief Elections Officer of the MEC Secretariat and Mr. Muhabi L. Chisi, Head of ICT Department.

<sup>42</sup> MEC Chief Election Officer supplied the excel document to EU EFM on 20 December 2012.

<sup>43</sup> Forum for dialogue and mediation of electoral disputes, including inter-party conflicts

## 5.4.2 Voter Registration System Options

With Zimbabwe, Malawi is the only country in the region not to offer continuous voter registration,<sup>44</sup> an issue addressed by the 2009 EU EOM and Commonwealth recommendations.<sup>45</sup> Regardless, MEC's Strategic Plan stops short of distinguishing between permanent and periodic voter registration. In turn, the Strategic Plan contemplates procurement of new voter registration technology, albeit on condition of stakeholder consultation.

### 5.4.2.1 The Current OMR System

Malawi's present voter registration system produces voter ID cards with colour photographs, which are currently used as the most widely accepted form of identification for millions of Malawians, for instance when opening bank accounts. In 2008 however, the current optical mark recognition OMR system incurred loss of completed paper forms during transport to centralised scanning facilities. Further, forms were not consistently filled in with accuracy, causing scanning errors.

In 2008, 5.93 million Malawians registered to vote using this process. During the 2009 elections, voters whose registration forms were lost, had dropped off the OMR generated voter list, but were allowed to "vote off the list," as long as they produced their voter ID. MEC's reluctance to publically address voter registration glitches in the wake of the 2009 elections compounded public concern over the OMR error rate and thus fuelled disproportionate suspicion of the voter list's accuracy and inclusiveness, even though biometric data was collected on paper and by photograph, and scanned into the register.

Problems incurred in 2008 did not discourage MEC from using OMR for a legally mandated voter registry update prior to aborted 2010 Local Government elections, nor from successfully conducting further OMR updates preceding a number of by-elections. Further, MEC's ICT Department mastered large-scale manual data entry error rectification. In the course of these interventions, MEC was also able to recover data, which was scanned into memory, but not synchronised into the database in 2008.<sup>46</sup>

The voter register currently counts 6.5 million entries, even though it is not continuously open for registration. Deceased voters can only be identified and cleansed from the register, if relatives lodge objections upon list display. Considering that MEC does not interact with other state agencies to maintain the register's integrity, accuracy and currency, it can be assumed that the list has kept obsolete entries active, ever since voters initially registered between August 2008 and January 2009, and to a lesser extent since the register was updated between August and December 2010, and again for by-elections up until 2012.

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<sup>44</sup> [EISA Regional VR Statistics](#)

<sup>45</sup> EU EOM Recommendation 14, see table in annex

<sup>46</sup> Essentially by lack of commitment and professionalism of some registration officers, rather to intentionally disenfranchise voters

The OMR system collects photographs along with inked voter thumb prints on paper registration forms. Even though this process produces only low grade biometric image data, MEC was able to identify duplicate entries, yet its enquiry stopped short of criminal investigation, and no entries were deleted from the register. In other words, MEC's ICT department did not fully exploit its costly biometric data servers to assure the voter list's integrity.

In late November 2012, after completing constituency-wide updates of the voter registry for two by-elections, MEC launched an expression of interest for a two-week consultancy to review the existing voter registration system.<sup>47</sup> MEC's belated VR review bespeaks its neglect during the 2009 post-election period, when VR system review should ideally be conducted. .

In terms of reference of the current audit, one single expert's capacity could be stretched thin over merely two-weeks, so that mission findings might not be conclusive,<sup>48</sup> at least when measured against longer duration of similar evaluations.<sup>49</sup> Lastly on 21 December, MEC informed the EU EFM about a 1-month delay in the selection of the consultant, so that the audit itself might not launch until mid-January of 2013.<sup>50</sup>

Retaining the OMR system would entail increasing the number of registration centres from 3.897 to approximately 4.200, by splitting some centres to each serve different wards. Voters registered in such centres would have to be recalled for reassignment to their respective ward of residence. Within any updating exercise of the current register, cohorts who have come of voting age since the last registration period would also have to enter the existing database. Lastly, voters who wish to transfer to polling centres in their wards of residence, rather than remain registered at their place of employment or business, would have to be processed according to the legal framework.

#### 5.4.2.2 Migration to Direct Capture Biometrics

In August 2012 and prior to arrival of its new Chairperson, MEC decided to procure a novel VR system, which is included MEC's November amendment of the initial budget, submitted by MEC to the Ministry of Finance in June.<sup>51</sup> Up until the roundtable, neither MEC, nor GoM had informed Development Partners, or national stakeholders of its plan to migrate to a new system.

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<sup>47</sup> The deadline for bid submission lapsed on 10 December 2012

<sup>48</sup> Per Terms of Reference

<sup>49</sup> In Senegal, five experts spent four months on the audit of the voter registry, offering successive assessments in 2010/11, while in Mali, four experts concomitantly spent one month for a VR audit in 2012.

<sup>50</sup> On 15 December, MEC's Evaluation Committee made recommendations on technical bids. On 17 December, the MEC Internal Procurement Committee (IPC) examined these recommendations and requested clarification from the designated government agency, taking into account government funding on this component of the electoral cycle. MEC is due to meet on 4 January 2013 to select a consultant, which will require a "non-objection" motion by the designated government agency.

<sup>51</sup> The budget submitted in July 2010 by previous commissioners covered 2012-2013 only.

Taking into account the exponential burden of implementing up to 700 simultaneous elections, introduction of novel technology, merely 17 month before E-day and without field testing, carries irreversible risks. While direct data entry of a new system eliminates scanning flaws, it remains exposed to myriad external factors, including to human error, to deficient planning in procurement and training activities, and to logistical constraints, not to mention software glitches, which already plague the current system. Lastly, retiring existing medium-tech equipment before the end of its shelf life and after use for only one electoral cycle throws up concerns of electoral economy.

Absent an election calendar and an itemised budget, the EU EFM relied on elements of MEC's Operational Plan, as well as on direct discussions with the Chair of MEC's Electoral Services Committee to piece together a hypothetical timeline for introducing a new biometric voter registration system: (i) February-May 2013: procurement of new biometric voter registration kits for digital field capture of voter data; (ii) June-August 2013: approximately three months of voter registration field activities;<sup>52</sup> and (iii) deployment across four zones, each for a period of 14 days with three-day intermissions to complete logistical requirements, such as data verification and consolidation.<sup>53</sup>

Since such schedule leaves no margin of manoeuvre, the EU EFM took licence to impart regional lessons learned with MEC. The mission emphasised *inter alia* the risk of rushing the tendering process, as well as the utility of conducting preliminary mock exercises in the field, in order to test the new system against diverse environments, a measure that consumes at least two additional weeks.<sup>54</sup>

Furthermore, introducing a novel high tech system requires a full registration exercise, since existing OMR and fresh BVR data cannot be merged. MEC's budget suggests that it plans to acquire 1.200 kits for roaming over 14 days, staggered into four phases, which adds up to 67.200 days of registration. If one extrapolates the proposed VR operation against the target registration of 7 million voters, 105 voters would have to register per kit per day. Experience shows that MEC's vision leaves no margin of error, nor does it plan for contingencies, such as equipment failure.<sup>55</sup>

Having disengaged from Developing Partners up until now, and facing onset of the rainy season in December 2013, the window for voter registration in the field has shrunk to less than nine months, and may have already pushed MEC beyond a point-of-no-return. Moreover, MEC's failure to synergise with national counterparts, such as the National Registration Bureau,<sup>56</sup> along with its cavalier planning, has diminished prospects of introducing a novel VR system into the 2014 electoral cycle.

Lastly, while MEC's Strategic Plan aspires to establishing an accurate, current and "relevant" voter register by 2014, in line with 2009 EU EOM recommendations,<sup>57</sup> the document falls short of exploring aspects of electoral economy and sustainability, and of defining activities to achieve this objective.

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<sup>52</sup> In line with the ward delimitation exercise, which entails opening new registration centres

<sup>53</sup> Not mentioned in the MEC draft Operational Plan shared with EU EFM on 20 December

<sup>54</sup> EU EFM recommended to MEC use of its Secretariat resources to conduct comparative risk analysis of retaining OMR versus introducing BVR systems. On 20 December, MEC's CEO conceded need for assistance in BVR planning.

<sup>55</sup> Kenya registered up to 60 voters per day with comparable technology

<sup>56</sup> Malawi lacks a civil register, although introduction of one has been envisioned since the mid 1990s.

<sup>57</sup> EU EOM 2009 Recommendations 14 and 15

Per understanding reached the day before the roundtable, MEC responded to the EU EFM presentation with a status report on its election preparation,<sup>58</sup> disclosing its August 2012 decision to migrate to a novel biometric voter registration system, albeit contingent on Ministry of Finance approval.<sup>59</sup> Apart from its desire to modernise, MEC's reasoning to acquire novel biometric VR technology rests on its assertion that a fresh and full re-registration is inevitable. To support this notion, the Chairperson of MEC's Electoral Services Committee stated that a mere update of the voters list for 2014 does not allow reassigning voters to polling centres that have shifted with new ward boundaries. The number of wards was halved in 2010, and MEC continues to finalise boundaries and inform affected voters. However, MEC's argument discounts the option of a partial voter recall, and MEC's draft Operational Plan stops short of exploring such solution.

At the roundtable, MEC further reported that it has examined biometric VR systems on field visits to Mozambique, Namibia, Sierra Leone and Tanzania. Answering questions from the roundtable, MEC revealed that its two OMR vendors blamed each other for glitches in converting scanned voter data for import into the database, which lead it to conclude that its current VR system is no longer viable.

In turn, civil society pointed out MEC's failure to consult it prior its August 2012 decision to commit Malawi to novel technology. The approach endorsed by EU EFM, notably to keep both options alive—namely refurbishing existing technology and procuring novel technology— was adopted by default, since no consensus emerged for either system retention, or for migration. The plenum thus resolved three points of consensus: evaluate OMR system and current voter list by expert consultant in December 2012, and invite DPs to second an international expert to partake in evaluation of the current system; consultation with Ministry of Home Affairs on dual use of new system for the purpose of national ID; and looking into leasing options. Two points were deferred to 2013, notably the choices outlined in the table below:

Option A	Option B
New full registration exercise for 2014 necessary for assigning voters towards?	Update of existing voter list of approximately 6.5 million registered Malawians?
Procurement of direct biometric capture VR system? Funding risk, equipment failure risk mitigated by paper trail? Risk of human error based on insufficient training? Risk of keeping with electoral calendar while migrating to new system.	Retain current optical mark recognition (OMR) system, which was procured in 2008, at least as a contingency plan.

Since UNDP had already offered its on-site expertise to provide a second opinion on MEC's pending OMR audit report, EU EFM discouraged recruitment of another external biometric voter registration expert. Instead, EU EFM suggested inviting a preeminent regional biometric voter registration pioneer. To this end, Malawi EUD currently pursues the long-standing Chairperson of the Ghana Electoral Commission GEC, Dr. Afari-Gyan.<sup>60</sup>

<sup>58</sup> MEC Commissioner Emmanuel Chinkwita-Phiri, Chairperson of the Electoral Services Committee, Mr. Willie Kalonga, Chief Elections Officer of the MEC Secretariat and Mr. Muhabi L. Chisi, Head of ICT Department.

<sup>59</sup> Information first disclosed at the roundtable. In August 2012, MEC's new Chairperson had not yet been nominated.

<sup>60</sup> In 2011, GEC introduced a biometric voter registration system, coupled with regionally unprecedented polling station level AFIS verification of voters.

Further, EU EFM encourages MEC Commissioners and Secretariat to subscribe to EC-UNDP-Joint-Task-Force for Electoral Assistance's recent release of the e-learning Portal "ICT and Elections Management." The online course could be customised to the Malawian context as group session and enriched with an online lecture.<sup>61</sup>

### 5.4.3 Results Management

International missions observing the 2009 elections found flaws in all steps of MEC results management,<sup>62</sup> a system which Malawi has used at least since 2004, with District Officers faxing individual result forms, albeit short of an orchestrated consolidation mechanism at intermediate level, and absent a reliable communication system. Due to time constraints, MEC aborted a plan to modernise results transmission tools for 2009. That year, media saved the day by embedding the Commission's ICT department in a broadcast studio to capture results aggregation on live cameras. In 2009, results were thus consolidated transparently, which enhanced public trust in MEC's performance.

For 2014, MEC's Strategic Plan stipulates modernisation of results transmission and announcement.<sup>63</sup> The consolidation of up to 700 races into one single electoral event entails counting 33.000 polling station results and accurately attributing polling station level tallies to up to 6.000 candidates. Operational challenges in 2004 and 2009 pale compared to the complexity and scale of tripartite results aggregation. The table below lists key figures impacting on results management. Lastly, the current framework's loose results announcement schedule risks that straggling polling stations or constituencies hold national results announcement hostage. Increased polling station staff recruitment and training presents additional challenge.

PPE 2009	Designation	PPE-LGE 2014 estimated
5.93 M	Registered Voters	Over 7 M
1+193=194	Elections (separate single ballot papers)	1+193+up to 500=<700
1.177	Candidates	Up to 6.000
6.774	Polling Stations (Streams)	Over 11.000
13.548	Ballot Boxes - Tally Sheets	Over 33.000
45-50.000	Polling Staff	70-80.000

The roundtable's Election Operations presentation closed with emphasis on exponential demands that the Tripartite dimension imposes on Malawi's current results management system. Yet, debate on voter registration options drowned out commensurate contemplation of acute challenges in managing results. While MEC will inevitably need to decentralise results management, procrastination persists, also in terms of stakeholder consultation on the issue. MEC's Operational Plan remains equally vague about how to master this critical challenge.

<sup>61</sup> [EC-UNDP-JTF E-Learning Portal](#)

<sup>62</sup> EU EOM 2009 recommendation 12

<sup>63</sup> Specific activities on this matter contained in strategic goal #5 of pillar #3 of the SP are: (i) develop regulations transmission from polling stations to MEC headquarters, (ii) conduct pilots for the IT results transmission, and improve on the current results transmission system, (iii) communicate clearly on procedures of announcement of results and (iv) propose an amendment of the governing the complaints and appeal procedures to make it realistic.

## 6. CANDIDATE REGISTRATION

Compared to 1,177 candidates in 2009, the roughly 700 contests of Tripartite elections could attract over 6,000 candidates. Yet, Malawi's current framework allows for candidate registration to seep a full month into the 60-day campaign period. In 2009, MEC had started registering candidates early, which disadvantaged incumbent MPs, who could only register—and begin campaigning—once Parliament dissolved on March 20.<sup>64</sup> EU EOM 2009 Recommendation 1 addressed the issue, and the January roundtable took up the general need to harmonise electoral timelines, but the MEC Strategic Plan does not expressly address current gaps in legal deadlines.

Adjusting timelines becomes all the more pressing, as belated proofing of 700 different ballots risks an increase in previous mismatches of photos, symbols, name spelling and party affiliation. Malawi's legal framework falls short of formalising procedures for related disputes, nor does it determine a mode to establish the order in which candidates appear on the ballot. The framework also lacks a minimum period for candidate registration submissions, nor does it impose deadlines on the setting of candidate deposit amounts, or for their refund (*see pre-electoral timeline table supra*).

## 7. GENDER

Representation of women in Parliament has steadily and significantly increased, culminating with 22.3 per cent in 2009, despite the absence of affirmative action measures. Within the region, Malawi falls behind those countries that have introduced quotas, but compares very favourably with peers that have refrained from doing so and that also apply the simple majority system, which statistically disadvantages women candidates.<sup>65</sup> It should be noted that the percentage of women elected into Parliament surpasses the percentage of female candidates, which could lead to the conclusion that facilitating candidacies, such as waiving registration fees for women, might automatically further boost the number of women elected to Parliament.<sup>66</sup> In 2009, women candidate support hence was effectively coordinated by the 50/50 campaign.

Malawi presented statistics in its 2010 report under CEDAW, which reveal 46% women representation in urban Local Councils, contrasted by only 15% in rural Local Councils. CEDAW statistics predate 2009 Parliamentary election results, and its findings on women participation in Local Government must be based on LGE results from 2000.<sup>67</sup> The Tripartite dimension could open up the field to an incoming generation of women candidates, although higher female illiteracy in rural areas continues to be a handicap.

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<sup>64</sup> See pre-electoral timeline graph in annex

<sup>65</sup> Botswana 6,5%; DRC 8,4%; Madagascar 9,45%; Botswana 7,9%; Ghana 8,3%; Kenya 9,8%; Zambia 14%; United States Senate 20%; United Kingdom 22,3%. [International Parliamentary Union Gender Statistics](#).

<sup>66</sup> Among 1177 candidates, 237 were women, representing 17,6%, as compared to 22,3% of women elected.

<sup>67</sup> [Malawi's Submission to OHCHR](#)

Furthermore, Malawi's Ministry for Gender has committed to tabling the Gender Equality Bill, which has languished since 2001, with Parliament's February 2013 session. The bill is unavailable online, and the website of the Gender Ministry was inactive during EU EFM deployment. The draft is unlikely to contain affirmative action for elective office, despite Malawi's AU obligation to introduce positive measures to assure equal women participation in elections. Malawi is state party to CEDAW, the Protocol to the African Charter of Human and Peoples Rights on the Rights of Women in Africa, and it is a signatory to the SADC Declaration and Gender and Development.

## 8. HUMAN RIGHTS

Malawi is slowly emerging from the shadow of recent human rights abuses committed by the government of late President Mutharika. A new Chairperson was appointed to Malawi Human Rights Commission-MHRC, who attended and contributed to the EU EFM roundtable. Furthermore, MHRC's legal counsel was appointed member to MEC's law reform Task Force, ensuring that amendments conform to Malawi's international and regional human rights commitments. Unnoticed by international election observation missions in 2009, MEC has developed a unique and highly sustainable tool to guarantee secrecy of the vote for the visually impaired. The tool is preconditioned on effective voter information of the blind on the order in which candidates rank on the ballot. The presiding polling officer provides visually impaired voters with a cardboard sleeve that enables tactile location of the desired ballot field for check marking. The device was developed by IFES.<sup>68</sup>

**MALAWI ELECTORAL COMMISSION**  
PRESIDENTIAL ELECTIONS 2009  
CHISANKHO CHA PULEZIDENTI 2009

Candidate Name and Photo	Party Name and Symbol	Mark One Choice
BINGU Bingu wa Mutharika Chisankho Chachikulu	Democratic Progressive Party (DPP)	
CHISAMBA Kamukwa Walter Chisankho Chachikulu	People's Transformation Party (PTPA)	
GONDWE Lawrence (MCA) Chisankho Chachikulu	New Rainbow Coalition (NRC)	
MASAU Stanley Edgington Chisankho Chachikulu	Malawi Congress Party (MCP)	
NYASULU Gwera Dindi Chisankho Chachikulu	Alliance for Democracy (AFORD)	
NYONDO James Mbonse Chisankho Chachikulu	Independent	
TEMBO John Zenas Ungache Chisankho Chachikulu	Malawi Congress Party (MCP)	

**Instructions to the Presiding Officer/Assistant Presiding Officer for the use of this ballot paper template**

Ask the voter if they would like to use the template to allow them to mark their own ballot paper in private.

If the voter states that she/he would like to use the template:

1. Briefly describe to the voter how the template will work.
2. Advise the voter that the independent holes in the template will match the places on the ballot paper where they are required to place an X against the name of the candidate they want to vote for.
3. Advise the voter that the template will only work if used correctly.
4. Explain to the voter that the name and party affiliation of each candidate will be read out to her/him in the order as they appear on the ballot paper.
5. Tell the voter how many candidates are on the ballot paper.
6. Advise the voter to show all the names to be read out even if their candidate is read out first or early.
7. Advise the voter that she/he should make a mental note of the position of the candidate that she/he wishes to vote for when she/he hears that candidate's name.

Once the voter has understood the instructions:

Read out the name of each candidate by first stating the position on the ballot paper followed by the name of the candidate as it appears on the ballot paper and then the party the candidate represents or the word independent if the candidate is an independent candidate.

Ask the voter if she/he knows what position the candidate of their choice is on the ballot paper and remind them not to say that position or the name of the candidate.

If the voter indicates that she/he has understood:

1. Fold the ballot paper in half and tell again then unfold it.
2. Advise the voter that the ballot paper has holes in it so that she/he can mark it after hearing it is correct that it is folded correctly.
3. Advise the voter to remove the ballot paper from the template once she/he has voted and to fold the ballot paper along the same folds before they leave the voting booth.
4. Place the ballot paper in the template and hand the template to the voter and assist the voter to the voting booth and ensure the voter locates the box.

The voter should be assisted from the voting booth to the ballot box to enable them to place the ballot paper in the ballot box themselves.

<sup>68</sup> IFES Beta Version



## 9. MEDIA

### 9.1 Media Environment

Malawi's Constitution guarantees freedom of expression, freedom of the press, and freedom of opinion.<sup>69</sup> Nevertheless, Malawi's statute book does not yet fully reflect its obligations under the International Covenant on Civil and Political Rights, ICCPR, the African Charter on Human and People's Rights, ACHPR, the UN Convention to Combat all Forms of Corruption UNCAC, or even fundamental rights and freedoms, as enshrined in Malawi's own 1995 Constitution.

Freedom of speech in the media, however, was generally respected during the 2009 election period, and journalists were at relative liberty to cover campaigns of candidates and parties. Yet, since the elections, late President Mutharika's government had severely curtailed media freedom. In 2010, government indirectly banned civil servants from advertising with private media house Nation Publications Limited NPL. Fearing government reprisal, private companies subsequently also shied from placing ads with NPL.

In late 2010, Media intimidation entailed *inter alia*: government attempts to close the *Weekend Times*, an effort which was ultimately restrained by the courts; President Mutharika's direct threats to close newspapers that reported on the food security situation in the country; and physical assault on reporters by the police and members of the ruling party and their allies.<sup>70</sup> Parliament also passed an amendment to section 46 of the Penal Code that empowered the Ministry of Information to ban news stories it deemed contrary to public interest. As a result, Malawi registered the historically steepest single year drop of any country in the 2011 Reporters without Borders press freedom index, plunging from rank 79 to 146. The measures had a chilling effect on the media that had not thawed by the time the EU EFM arrived.

Even though President Banda abolished this last amendment upon taking power, abuses of the Mutharika era beg the repeal of 37 further provisions that imperil constitutional guarantees of freedom of the media and of expression, as catalogued by media watchdog MISA Malawi.<sup>71</sup> The provisions criminalise sedition and protect names, emblems, and places.<sup>72</sup> In consultation with civil society, MISA Malawi drafted an Access to Information Bill and policy, and is now lobbying Parliament and line-ministries for its adoption. So far, the bill awaits tabling, in spite of Malawi's international obligation under UNCAC, and even though Malawi's Constitution itself guarantees access to information.<sup>73</sup> Media activists remain skeptical of government's sincerity to allow debate of the bill.

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<sup>69</sup> Sections 35, 36 and 37

<sup>70</sup> Harassment of journalists included the beatings of nearly 20 reporters during the July 20, 2011 demonstrations, arson attacks on the vehicles of an independent radio station, and an increasing number of arrested journalists.

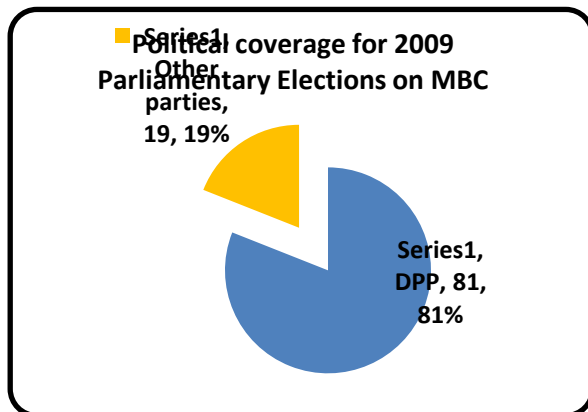
<sup>71</sup> MISA Malawi report on Media legislation in Malawi, 2011

<sup>72</sup> In August 2010, authorities arrested Reverend Levi Nyondo, secretary general for Livingstonia Synod of the CCAP Church, on charges of sedition. The charges stemmed from Nyondo's eulogy at the funeral of former Minister of Health Moses Chirambo, who died just days after being dismissed from the government. Nyondo had criticized government policies, including the quota system used in university admissions, claiming that it was ironic for Mutharika's government to praise Chirambo posthumously, when it had removed him from the cabinet. Nyondo's case was suspended after his lawyers challenged the constitutionality of the sedition offense.

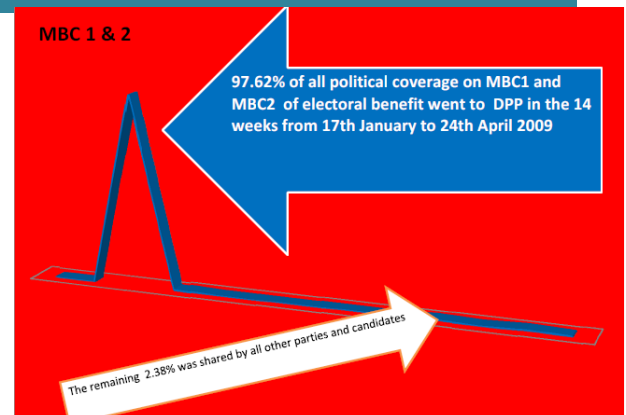
<sup>73</sup> Article 37 of the Constitution

Albeit overlooked by 2009 EU EOM recommendations, deficiencies in Malawi's legal framework thus thwart one of MEC's Strategic Plan goals, namely "to create a conducive environment, in which all stakeholders are treated equally and have unhindered access in electoral processes."<sup>74</sup> The roundtable, however, recognized that Malawi's anachronistic laws stifle evolution of the desired conducive media environment, leading to a Point of Consensus to lobby the executive and petition Parliament to take up the Access to Information Bill, by-passing cabinet.

## 9.2 Public Media



EU EOM Media Monitoring 2009



MEC Media Monitoring 2009

**Example of Public Broadcast airtime distribution scheme from Ivory Coast, as shown by EU EFM at Malawi roundtable:**

**Daily News edition** 30 minutes / Coverage of candidates activities prohibited Election coverage limited to election organisation and civic education

**Daily news edition dedicated to Presidential Election**  
30 minutes/ 3 minutes per candidate Order of appearance determined by drawing lots before the campaign started

C 1	C2	C3	C 4	C5	C6	C7	C8	C9	C10
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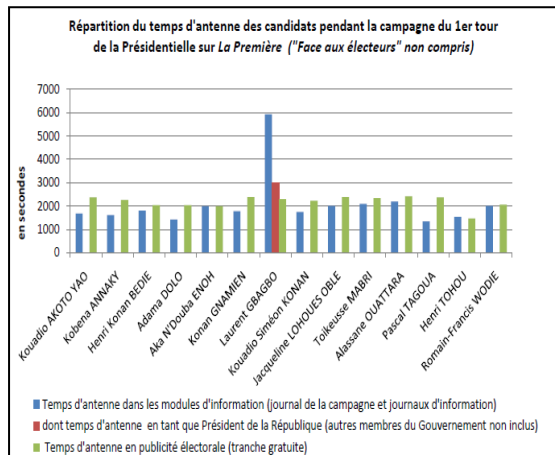
**Airing of the political parties spots** 30 minutes/3 minutes per candidate Order of appearance determined by drawing lots before the campaign started

C 1	C2	C3	C4	C5	C6	C7	C8	C9	C10
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<sup>74</sup> Strategic plan, Pillar 1, Goal 3

**Strength:** all candidates received equal treatment in the daily news editions devoted to Presidential election as well as to broadcast spots

**Weakness:** incumbent president received overall a much larger coverage as the scheme did not provide any limitation for the coverage of the presidential activities on daily news editions during the election campaign



Malawi Broadcasting Corporation MBC and Television Malawi TVM, Malawi's two public Broadcasters, have displayed persistent and heavy bias in favour of incumbent presidents and their ruling parties, ever since first multi-party elections were held in 1994.

With an average airtime share of 85% granted to late President Mutharika and his DPP for the 2009 Presidential and Parliamentary Elections, media experts and political observers assessed MBC and TVM bias as unprecedented.<sup>75</sup> Moreover, only MBC's signal reaches remote areas of the country, and it holds a quasi-monopoly in airing content in local languages, which amplifies the impact of its bias, heavily tilting the electoral playing field.

Way beyond 2009 elections, public media continued to openly serve as government mouth piece, laying early ground work for President Mutharika's re-election bid in

2014. Public media also misinformed the public on demonstrations planned for 20 July 2011, insinuating opposition rallies advocate for LGBT rights. The sudden death of President Mutharika and his succession by Joyce Banda, who has shown herself more mindful of press freedoms, has yet to comfort news editors, who continue to tow the government line, while denying equitable airtime to opposition voices.

PPEA, which forms the cornerstone of the legal framework for media during elections, has indulged such excesses, holding that, "the content of the news shall be professionally determined by the Malawi Broadcasting Corporation", while paradoxically mandating MEC "to ensure equal news coverage of the campaigning by all political parties" on MBC.<sup>76</sup> Further, MEC's mandate to ensure equal news coverage contradicts the 1998 Communications Act, which requires all broadcasters, irrespective of their public or private ownership, to "ensure equitable treatment of political parties and election candidates."<sup>77</sup> Finally, MEC lacks a clear mandate to compel public broadcasters to air campaign spots, limiting it to the role of mediator.<sup>78</sup>

Upholding unrestricted editorial freedom, Malawi's public media regime for elections is suitable for media landscapes that are populated with independent minded and self-assured professionals. Yet, this is not yet the case in Malawi, as editorial decision makers continue to be appointed by the executive, which instils a culture of political subservience, residual of the single-party era.

<sup>75</sup> MEC media monitoring unit report, April 2009; 2009 EU EOM final report; 2009 Commonwealth EOM final report

<sup>76</sup> PPEA s60 (1.b) and (1.c)

<sup>77</sup> Section 45(f) repeated in Section 51(3a) asking for "balance and equitable reporting during any election period"

<sup>78</sup> PPEA s63 (2). In 2009, MBC refused to participate in the scheme developed by MEC to provide for free airtime for party political broadcasts on the private radio stations Capital and Zodiak.

MBC and TVM management concede that its news coverage is unsatisfactory, claiming that their hands are tied, as they are directly accountable to the Ministry of Information. The EU EFM was also informed that Parliament has withheld public broadcast subsidies since 2010, effectively thinning out network budgets by up to 50 per cent. TVM points out that their news staffs simply lacks resources to cover the full political spectrum during campaign periods. Yet, MEC's Strategic Plan does not contemplate election period funding for public media, which operates in an economy that offers only marginal ad revenue. The President of the Parliamentary Media Committee intimates that the austerity budget cannot accommodate such expenditure.

The 2009 EU EOM final report homed in on this key shortcoming, targeting the extreme bias of the public media with two recommendations.<sup>79</sup> The first suggests imposition of airtime quotas, while the second proposes introduction of a regulatory mechanism that defines editorial equity and neutrality during elections. The January 2012 EUD-sponsored roundtable on Electoral Law Reform further recognized the need for legislative action in recommending that "both section 63 of PPEA and section 47 of the LGEA should be amended, either to vest MEC with editorial control over election broadcasts on MBC during the official campaign period, or to prohibit MBC from covering or broadcasting any campaign news, advertisements or materials, unless MEC expressly requests such coverage."

Roundtable debate showed that editorial bias of public media remains of prime stakeholder concern. Participants agreed that MBC and TVM should equally treat all electoral contestants, since both broadcasters receive public subsidies. And MEC's Strategic Plan aspires in Objective 3 "to develop regulations that augment the electoral law to enhance the level playing field."

Nevertheless, some roundtable participants favor more stringent regulation, while others blame bad faith on the part of public media editors. Discussion hence never touched upon imposing equal coverage formulas on MBC and TVM news programmes. Yet, stakeholders agreed that MEC should "purchase equal broadcast airtime for presidential candidates in 2014 at favourable rates in order to level the playing field." This wording implies airtime purchases from both, public and private media, rendering the measure akin to media subsidies during the election period, rather than to equal airtime guarantees on MBC and TVM.

Further Points of Consensus call on MBC to recognize its role as a public broadcaster; on MEC to organize debate for Presidential candidates; and lastly, to capacitate MBC with adequate budget and equipment to provide coverage of the entire political spectrum.

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<sup>79</sup> EU EOM 2009 Recommendations 19 and 20

## 9.3 Media Regulation Bodies

Election Observation Missions unanimously voiced in 2009 that neither the Malawi Communications Regulation Authority MACRA, nor MEC took adequate action to correct public media bias, despite their legal mandate to ensure equitable access to public broadcasters. Both institutions derive their respective mandate from different legal instruments, which allowed one to defer enforcement to the other. In 2009, MEC Chairman, Dr. Justice James B. Kalaile was quoted claiming that “it was not MEC business” to address media access complaints, highlighting MEC’s lack of in-house legal counsel to bring infringements to court. He suggested instead that aggrieved political parties take direct action at Court.

MACRA also abdicated its statutory duty to sanction errant media, with the sole exception of sending armed police to revoke the licence of Joy FM for breach of the campaign silence on Election Day. Joy FM strongly supported opposition leader Dr Bakili Muluzi and his UDF party.<sup>80</sup> Singling out opposition media had fuelled national and international stakeholder suspicion that MACRA remains beholden to the incumbent executive. The Communication Act of 1998 is thus seen as a root cause of bias, since it subordinates both MACRA and public broadcasters to the Ministry of Information. Furthermore, MACRA and MBC entertain a cosy relationship, softening the regulatory body’s stance towards MBC bias. The entanglement spurs public broadcasters to cover government, rather than Parliament or other democratic institutions. Lastly, MACRA does not issue reasoned decisions when rejecting license applications, and no appeal lies against denial of a license.

In 2010, MACRA spearheaded review of the Communications Act. According to the authorities, the review aims to enhance MACRA’s operations and to boost broadband connectivity, and with it the ICT industry. But given steps taken to muzzle media in Malawi’s recent past, rights advocates remain sceptical. MACRA restrained two private radio stations from broadcasting live from the 20 July 2011 opposition demonstrations. It has also delayed issuing a license to one church organization that occasionally opposes government. Private broadcasters also indicated that they have encountered difficulties in drawing foreign currency from the central bank for equipment purchases, even though licensing fees to MACRA must be paid in foreign currency.

Stakeholders concur that MACRA should continue to monitor media compliance with electoral framework, so as to avoid overlapping mandates with MEC. Yet media organisations expressed discomfort about vesting MACRA with sanction powers, unless its independence can be guaranteed, and future government abuses prevented. The roundtable ultimately agreed that MEC would continue to exercise its control over MACRA during election periods, while reform of MACRA’s statutes should be explored by MEC’s law reform Task Force.

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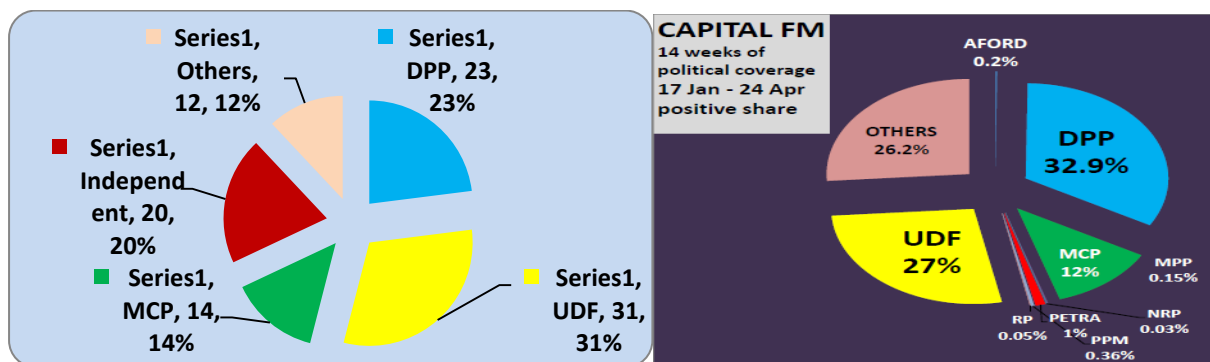
<sup>80</sup> Joy FM license was revoked a first time by MACRA on 16th October 2008 on three grounds: that the radio was owned by a politician as prohibited by section 48 (7) of the Communication Act; that the radio changed ownership without informing the MACRA; that the radio failed to provide the MACRA with broadcasting material upon request.

Roundtable Points of Consensus thus recommend that: MEC work with MACRA under an MoU to enhance enforcement of legal framework; Task Force to liaise with MACRA to ensure that review of the Communications Act keeps up with Electoral Law Reform for 2014, and to vest MACRA with commensurate power of sanction; to make MACRA directly accountable to Parliament; that the Task Force ascertain that its MoU clarifies obligation to monitor broadcast media during elections from MEC to MACRA.

Overall, the EU EFM finds the roundtable approach more suitable to the Malawian context, than that of the 2009 EU EOM, which recommended creation of an “independent statutory authority for the audiovisual sector,” vested with “statutory powers to adequately deal with complaints against programming and ensure that editorial standards are maintained.” While already operating in Senegal, Ghana, or South Africa, such body appears premature in the Malawian context, at least until and unless its independence is truly guaranteed and upheld.

## 9.4 Private media

As compared to previous elections, 2009 EU EOM and Commonwealth missions analysed private media coverage of the electoral campaign as an “encouraging development.” Overall, and with the exception of Joy FM, private newspapers and radio stations offered relatively impartial and balanced coverage of electoral contestants. MEC and Malawi Media Council, a self-regulatory body, jointly adopted a media code of conduct, which media outlets signed in 2008. The instrument commanded significant respect:



EU EOM Media Monitoring of Capital FM

MEC 2009 Media Monitoring of Capital FM

MEC does not seem to support clarification of the Communications Act pertaining to private broadcast media, as was recommended by the 2009 EU EOM. The Act lacks a clear mandate of how MACRA should enforce its general obligation “to ensure equitable treatment of political parties and election candidates by all broadcasting licensees during any election period.”<sup>81</sup> Yet, setting objective programme standards could reduce risk of arbitrary application of the sanction regime by MACRA. The roundtable concurred that private media should be allowed to self-regulate, although some stakeholders denounced impunity of corrupt journalists.

<sup>81</sup> Communications Act s45(1)

The roundtable thus reached Points of Consensus to: maintain the concept of equitable treatment by private media; hold MEC workshops on code of conduct for media during elections with Task Force to shape content; MEC to consider reinforcing its media code-of-conduct by promulgating it as regulation; and Media Council and other stakeholders to ensure media abide by code-of-conduct when covering elections.

## 9.5 Media Capacity to cover 700 Races of Tripartite Elections

Poor financial resources and equipment of media outlets depress the quality of the election coverage and open the door to breach of journalistic ethics. Government does not subsidize private media, which is to the preference of media organizations, considering the strings it would attach.

Radio stations earn revenue with advertising and sponsored programs, yet the bulk of income stems from just a handful of companies, as well as from the public sector and international NGOs. For print media, news stand sales bring steady income, but require investment. In 2011, leading print media houses added new services to attract more revenue. Since copy sales alone cannot sustain editorial independence, Blantyre Newspapers Limited launched a courier service, and the Nation Publications Limited forged partnerships with competitors to offset production and distribution costs of its free newspaper. Few private media outlets pay decent reporter salaries, while others barely remunerate at all. Low salary scales breed self-censorship, as poorly paid journalists are more likely to accept cash for coverage, or for their silence.

As in 2009, MEC plans to recruit stringers to provide media with news footage on elections, as well as from the campaign trail. Yet, the stringer system could get overwhelmed by 700 simultaneous election campaigns. Recognizing media challenges to adequately cover the Tripartite elections, roundtable participants agreed to explore capacitating media entities. Oblivious to the risk of allowing unlimited private money into Malawian politics and its inherent contamination of the media, some roundtable participants lamented that paid political adverts are condoned by LGEA, while they are banned by PPEA.

The roundtable hence agreed on the following points of consensus: hold MEC workshop to explore ways and means to capacitate media to adequately cover 2014 Tripartite Elections; MEC to hire stringers as in 2009 and in the Mzimba by-elections for 2014 to ensure coverage of candidates who would otherwise not have been covered; and MEC to purchase equal broadcast airtime for presidential candidates in 2014 at favourable rates, in order to level the playing field.

## 10. THE ROUNDTABLE

Malawi Electoral Commission agreed to co-chair the roundtable with EUD, so invitations were co-signed by the MEC Chairperson and Head-of-EUD.<sup>82</sup> Thirteen MEC Commissioners and Secretariat staff undertook the five-hour commute from Blantyre headquarters to Lilongwe to attend the event. One hundred representatives of government, Parliament, Malawi Human Rights Commission, MEC, Malawi Law Commission, Malawi Communication Regulation Authority (MACRA), Malawi Police Forces, civil society, development partners, EUD, EEAS, DEVCO, political parties, media organisations, and faith-based organisations attended.<sup>83</sup> High ranking guests included the Minister of Justice, the Chair of Parliament's Legal Affairs Committee, the Chairperson of the Malawi Human Rights Commission, and Ambassadors of the United Kingdom, Ireland, France and the United States.

The event also doubled as the first plenary MEC meeting since the appointment of its new Chairperson in October. EU EFM chose the Presidential Hotel conference room as venue, since the mission was invited to observe an earlier successful roundtable on political finance reform taking place there, which allowed experts to ascertain the facilities' suitability. EU EFM terms-of-reference initially envisioned the roundtable to run over two full days, but one-and-a-half days ultimately accommodated the agenda.<sup>84</sup> The shorter timeframe kept presenters and moderators at brisk pace throughout contributions and discussion, preventing fatigue from settling in, although some stakeholders imparted that they would have preferred two full days of debate.

### 10.1 Methodology

The day before the roundtable, a preliminary meeting with MEC's Chairperson, five of its Commissioners, and Senior Secretariat allowed EU EFM and EUD to conduct a mock presentation of the three experts' power points. Rehearsing presentations enabled experts to incorporate Electoral Commission feedback. In turn, familiarising themselves fully with the proposed content of the event put MEC Commissioners at ease, and allowed early alignment of MEC and EU points-of-view.

After joint opening remarks by the MEC Chairperson and the Head-of-EUD, EEAS explained mission mandate and rationale. Programming content for the roundtable had to consider information gaps between MEC Commission and Secretariat, resulting from recent replacement of MEC's ten new Commissioners, as well as from nomination of MEC's incoming Chairperson this past October. Broad topics were hence subdivided along key problem areas raised by the 2009 EU EOM, which EU EFM complemented by taking aboard current concerns expressed by donors, national stakeholders, and the UNDP election assistance project. Along the areas of expertise of its three members, the EU EFM offered presentations on the legal framework for elections, on electoral operations, and on media regulation.

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<sup>82</sup> See facsimile invitation letter in annex

<sup>83</sup> See List of Attendees in annex

<sup>84</sup> See full agenda in annex



Each expert prioritised between two and three sub-topics, whose timely implementation prior to the holding of Tripartite Elections in May 2014 were deemed essential. Legal discussion homed in on framework harmonisation and on setting of binding timelines; election operations focussed on the electoral calendar, voter registration options and on results management; and the media module aimed to distinguish between regulation of public broadcast and private media, after preliminary discussion of Malawi's media environment.

The EU EFM avoided prescribing solutions, by limiting presentations to practical illustration of Malawi's historical election problems, as well as by emphasising approaching electoral calendar milestones. Non-partisan national moderators were carefully handpicked after consultation with stakeholders and with MEC. HE Ambassador Roosevelt Gondwe, former MEC CEO and Clerk of Parliament agreed to moderate the legal framework module; Augustine Magolowondo, co-author of MEC's Strategic Plan, volunteered to moderate the electoral operations module; and Wisdom Chingwede, a popular national talk-show host, moderated the media session. Days in advance, EU EFM Experts provided moderators with their power point presentations, as well as with pertinent background documents.

Moderators invited the Minister of Justice, MEC, the Malawi Broadcasting Corporation, and MACRA to respond to expert presentations before opening the floor to the plenum. Members of Parliament most actively contributed to the debate, with civil society remaining subdued, despite its solid attendance. The legal framework module invited the Law Commission and Parliament's Legal Affairs Committee to present findings of respective law reviews, before EU EFM made its own presentation.

Throughout debate, EU EFM experts transcribed potential points of consensus, projecting the evolving working live on screen for participants to follow. EU EFM experts simultaneously amended points of consensus, as objections arose from the floor. At the end of each debate session, moderators recapitulated points of consensus for last objections. Final points of consensus were adopted by negative resolution, and were distributed to participants by email, along with EU EFM and guest speaker power points, as well as with key national background documents.

## 10.2 Programmatic Risk Logframe

When choosing among sub-topics raised by 2009 EU EOM recommendations for EU EFM roundtable presentations, inherent risks had to be assessed:

Topic	Risk	Expected Outcome
Legal Framework Reform	Less inclusive provisions prevail when harmonising different instruments	Stakeholders resolve to amend constitution, as well as relevant Acts of Parliament, so as to maximise franchise
Biometric Voter Registration	MEC uses roundtable to "sell" BVR to stakeholders by implicating EU	Stakeholders resist rushed procurement of BVR and MEC agrees to revisit its August "decision"
Media Regulation	Overregulation and exposure to arbitrary sanctions of media during and beyond electoral period. Repeal PPEA's prohibition of paid political advertising.	Introduction of equal airtime apportionment among presidential candidates in public media, while preserving editorial freedom of private media

### Annex 1: Roundtable Invitation Letter



7 December 2012

Dear Sir/Madam

The close cooperation between the Malawi Electoral Commission and the European Union spans more than two electoral cycles, and was marked by the deployment of two EU Election Observation Missions to Malawi's Parliamentary and Presidential Elections in 2004 and in 2009.

In spirit and continuity of their longstanding bond, Malawi Electoral Commission and The European Union Delegation cordially invite you to an Electoral Stakeholder Roundtable to discuss upcoming milestones along the path towards Malawi's landmark tripartite elections in 2014.

The aim of the roundtable is to bring together members of the Malawi Electoral Commission, Government, Law Commission, civil society, faith-based organisations, media, Malawi Police Service, political parties and the international community, in order to exchange views and identify priorities arising at the current stage of the electoral cycle.

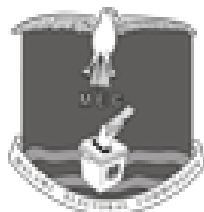
The roundtable will take place at the Presidential Hotel's second floor conference room on Thursday-Friday (morning session), December 13 -14, 2012.

Yours Sincerely

Justice Maxon Mbendera, SC  
Chairperson of the Malawi  
Electoral Commission

Alexander Baum  
Ambassador and Head of Delegation  
European Union Delegation to Malawi

## Annex 2: Agenda



### Critical Steps towards Tripartite Elections 2014

Electoral Stakeholder Roundtable, Lilongwe, 13-14 December 2012

Presidential Hotel Conference Centre

Agenda 13.12.2012

Time	Activities
8:30-9:00	Prayer Introduction by the MEC CEO <b>Welcome Speeches</b> Acknowledgments
9:00-9:15	Mission Mandate
9:15-9:30	Group Picture Answers to the Media
9:30-9:45	Tour de Table Agenda Presentation
9:45-10:05	<b>2007 Process of the Constitution Review</b> , by the Law Commission
10:05-10:30	<b>Revision of the Legal Framework for Elections</b> by EU EFM
10:30-10:45	Coffee Break
10:45-13:00	<b>Revision of the Legal Framework for Elections</b> MEC Discussion Summary by the Roundtable's Chairs Comments
13:00-14:30	Lunch
14:30-15:00	<b>Elections Operation Milestones</b> by EU EFM
15:30-15:45	<b>Elections Operation Milestones</b> Comments by MEC
15:45-16:00	Coffee break
16:00-17:30	<b>Election Operations Milestones</b> Discussion Summary, by the Roundtable Chairs
17:30-17:45	<b>Summary of the Day</b>

## Agenda 14.12.2012

Time	Activities
8:30-8:35	Prayer
8:35-10:30	<b>Media Regulation</b> EU EFM Presentation MEC Comments Discussion Summary
10:30-10:45	Coffee break
10:45-11:45	<b>Electoral Cycle Points of Consensus</b>
11:45-12:00	<b>Closing Ceremony with the Media</b>

## Annex 3: List of Participants

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## Annex 4: Speech by the MEC Chairperson



### **SPEECH BY JUSTICE MAXON MBENDERA, SC CHAIRMAN OF THE MALAWI ELECTORAL COMMISSION DURING A STAKEHOLDERS ROUND TABLE DISCUSSION ON ELECTORAL OBSERVATION RECOMMENDATIONS ON 13 DECEMBER 2012 AT BINGU WA MUTHARIKA INTERNATIONAL CONFERENCE CENTRE, LILONGWE SALUTATIONS**

My fellow Commissioners

Cabinet Ministers

Your Excellency, Ambassador Alexander Baum

The Chief Elections Officer, Mr. Willie Kalonga

The EU Head of Division for Democracy Support and Elections and your team

Honourable Presidents and Leaders of Political Parties

Distinguished members of the Civil Society

Distinguished Participants

Members of the Press

Ladies and Gentlemen

Good morning

I have the pleasure to welcome you all to this important and historical meeting today. This meeting is important because it has brought together all the relevant stakeholders and institutions that matter in as far as elections in Malawi are concerned with a view to reflect on the previous elections. The focus is on the challenges that existed or continue to exist in the conduct of acceptable elections and the proposed recommendations that were advanced by independent observers in order to deliver credible elections. Your presence here, demonstrates this importance and seriousness you are giving to electoral issues and I together with my fellow Commissioners do not intend to take this for granted. We are really grateful for your participation and looking forward to your valuable contributions for the two days we are here. Distinguished Ladies and Gentlemen, I have said this meeting is also historical in two contexts. First, this is my first substantive meeting with you, principal electoral stakeholders since my appointment in October

2012 as Chairman of the Commission. Secondly it is the first meeting with electoral stakeholders immediately after the passing of the tripartite elections bill which most of us have been looking forward to and this meeting is being held at this magnificent hotel in addition some of us have set our feet on these premises for the first time today. I have no doubt therefore that this meeting will bear rememberable fruits of our democracy. Ladies and Gentlemen, we are all aware of the idiom that “Rome was not built in a day”. On the same understanding, we should all appreciate that the success of the 2014 Tripartite Elections will not be achieved in one day. It will be the culmination of a series of our daily efforts, and this meeting is just part of that. Let me make it clear here that it should not be seen as the responsibility of the Commission alone. We all have a role and an important one for that matter to play for the success of elections in Malawi. The meeting focuses on three thematic areas of legal framework where areas that require reviewing have been identified. Then the electoral operations. Under this theme, the meeting will discuss other areas that have been a subject of concern and agree on the way forward. Finally, the meeting will look at media coverage. The idea is to come up with the best practice in election management in order to level the playing field. It should be pointed out, Ladies and Gentlemen that although the meeting has been facilitated by the European Union (EU) as a follow up to the 2004 and 2009 EU Elections Observer Mission, the recommendations made were similar to those of other missions. The meeting therefore, is tackling all the issues raised by the various 2009 Election observer missions which include Malawi Electoral Support Network (MESN), Electoral Institute of Southern Africa (EISA), and Commonwealth Observer Mission among others. We really have to put our best in these preparations since this will be the first time Malawians have gone to the polling to elect three representatives at the same time. There is need for massive civic and voter education to enable the voter make informed choices on the 20th May 2014. You have to take this responsibility as you always do and this time around you need to put in more effort than before. As you will note from the presentations, there are also other new areas for improvement that have been identified and proposed, it will therefore be important that we come up with practical solutions. I have no doubt we will do just that. Distinguished Ladies and Gentlemen, every day we should be asking ourselves what can we do to make the elections in 2014 a success and thereafter you should think of what Malawi Electoral Commission can do to make the elections a success. When you come up with such ideas, please do contact the Commission. We will leave the door open for contributions from any stakeholder to bring in their ideas. We will take a very participatory approach in the management of the elections and electoral processes.

Your Excellency, Ladies and Gentlemen, the Commission is in the final stages of the formulation of its strategic plan. As most of you are already aware, the strategic plan attempted to incorporate most of the recommendations from observer groups on the best electoral practices. With your support, the delivery of the tripartite elections will be a success. Distinguished Delegates, I would like to assure you that the Malawi Electoral Commission will carry out activities in an honest and truthful manner; take all reasonable measures to prevent willful wrong doing by our staff/officials; and ensure compliance and respect for electoral laws and laws of the country. In terms of independence, which is guaranteed by the Constitution of the Republic, MEC will operate freely in its own best judgment without taking directives from or being controlled by any person or authority. Realising that we are to serve the nation, MEC shall at all times ensure that all electoral activities are open to the public, judicial and governmental scrutiny, and to be responsive to the views and concerns of voters and other stakeholders. Let me take this opportunity to inform you that as part of the operationalisation of the strategic plan where regular consultation with

stakeholders is key to the success of the forthcoming elections, a meeting is being planned during the first two weeks of January to consult you on the activities that will be lined up for the elections. We will endeavor to meet you our stakeholders on all major activities in the electoral cycle through the National Elections Consultative Forum (NECOF), which we are reviving. The quality and credibility of our consultations will also play a crucial role in determining the credibility of the 2014 elections. It is my hope and that of the entire Commission that you will continue to make yourselves available for these meetings which are aimed at strengthening and consolidating our democracy.

As most of you are already aware, the Strategic Plan attempted to incorporate most of the recommendations of observer groups on the best electoral practices. With your support, the delivery of the tripartite elections will be a success. Distinguished Delegates, I would like to assure you that the Malawi Electoral Commission will carry out activities in an honest and truthful manner; take all reasonable measures to prevent willful wrong doing by our staff/officials; and ensure compliance and respect for electoral laws and laws of the country. In terms of independence, which is guaranteed by the Constitution of the Republic, MEC will operate freely in its own best judgment without taking directives from or being controlled by any person or authority. Realising that we are to serve the nation, MEC shall at all times ensure that all electoral activities are open to the public, judicial and governmental scrutiny, and to be responsive to the views and concerns of voters and other stakeholders. Let me take this opportunity to inform you that as part of the operationalisation of the strategic plan where regular consultation with stakeholders is key to the success of the forthcoming elections, a meeting is being planned during the first two weeks of January to consult you on the activities that will be lined up for the elections. We will endeavor to meet you our stakeholders on all major activities in the electoral cycle through the National Elections Consultative Forum (NECOF), which we are reviving. The quality and credibility of our consultations will also play a crucial role in determining the credibility of the 2014 elections. It is my hope and that of the entire Commission that you will continue to make yourselves available for these meetings which are aimed at strengthening and consolidating our democracy.

Ladies and gentlemen, the Malawi Electoral Commission recognizes that the tripartite elections will bring new challenges and more responsibilities but we are determined to deliver our best. We have been conducting elections for close to 20 years now and we have accumulated enough experience that we believe will help us hold a tripartite election that shall be a model to the SADC region and even beyond. Some have raised concerns that time may not be enough, but as a Commission we are saying that the remaining months are adequate if all stakeholders can do what is expected of them in time. As a commission we are coming up with innovations and embracing technologies that will improve our operations and help us deliver elections on time. Before I resume my seat, allow me to thank the European Union for the financial and material support that has enabled us to gather here. The EU has been a good neighbour whom you can rely on whenever you need help. There are other programmes that the Malawi Electoral Commission is implementing under the Democratic Governance Programme (DGP) of the EU, including the Strategic plan I have talked about. Let me also reveal here that the EU has committed to facilitate directly the realisation of some of the recommendations by providing financial support. We are extremely grateful for that. Once again, I to thank you all for coming and I wish you fruitful deliberations. Distinguished Ladies and Gentlemen, I have the honour and privilege to declare this meeting opened. May God bless you all and bless our nation Thank you very much.

Commission we are saying that the remaining months are adequate if all stakeholders can do what is expected of them in time. As a commission we are coming up with innovations and embracing technologies that will improve our operations and help us deliver elections on time. Before I resume my seat, allow me to thank the European Union for the financial and material support that has enabled us to gather here. The EU has been a good neighbour whom you can rely on whenever you need help. There are other programmes that the Malawi Electoral Commission is implementing under the Democratic Governance Programme (DGP) of the EU, including the Strategic plan I have talked about. Let me also reveal here that the EU has committed to facilitate directly the realisation of some of the recommendations by providing financial support. We are extremely grateful for that. Once again, I to thank you all for coming and I wish you fruitful deliberations. Distinguished Ladies and Gentlemen, I have the honour and privilege to declare this meeting opened. May God bless you all and bless our nation.

Thank you very much.

## **Annex 5: Points of Consensus Adopted by the Roundtable**

### **Legal Framework Reform**

- **Involve Parliament in law reform process**
- **Address ballot proofing/nomination timeline**
- **Establish and define offence of unduly influencing voters**
- **Consult civil society in Law Review process**
- **Revisit delimitation criteria for wards**
- **Separation of powers between Local Councils and Parliament**
- **Allow parallel vote count**
- **Consider revising polling hours**
- **Establish Task Force to consolidate review process as soon as possible: MoLGRD; Malawi Police; MESN; MoJ; MHRC; Law Commission; Parliament; MEC; CMD; MoF; Political Parties; MISA Malawi; Media Council; MACRA; PAC**
- **Establish eligibility by age of 18 at or before polling day**
- **Harmonise PPEA and LGEA with Constitution on seven-year resident eligibility**
- **Eliminate multiple candidacies between MP and Local Councillors**
- **Bear in mind to give Parliament 28-day notice on Electoral Law Reform bill tabling**
- **Provide the right to national election observation in PPEA in harmonisation with LGEA**
- **MEC should not be required to report to executive, but to Parliament**

### **Electoral Operations**

- **Abide by May 2014 date for Tripartite Elections**
- **Proceed with 2010 Ward demarcation, while addressing Council member shortfalls on a case-by-case basis**
- **Circulate draft operational plan with stakeholders signed into present roundtable on Monday, December 16**
- **MEC commits to sharing budget and electoral calendar at National Election Consultative Forum NECOF meeting in January 2013**
- **Present budget in mid-term review of Parliament in February 2013**
- **Evaluate OMR system and current voter list by expert consultant in December 2012, and invite DPs to second international expert to partake in evaluation**
- **Consultation with Ministry of Home Affairs on dual use of new system for the purpose of national ID**
- **Looking into leasing options**

### Points to be resolved in early 2013:

- **Option A:** New full voter registration exercise for 2014 necessary for assigning voters to wards?
- OR
- **Option B:** Update of existing voter list of approximately 6.5 million registered Malawians?
- **Option A:** *Procurement of direct biometric capture VR system? Funding risk, equipment failure risk mitigated by paper trail? Risk of human error based on insufficient training? Risk of keeping with electoral calendar while migrating to new system*
- OR
- **Option B:** *Retain current optical mark recognition (OMR) system, which was procured in 2008, also as a contingency plan*

### Media

- Hold MEC workshops on code of conduct for media during elections with Task Force to shape content
- MEC to ensure that all its core activities are publicised
- MEC workshop to explore ways and means to capacitate media to adequately cover 2014 tripartite
- MEC to work with MACRA under MoU to enhance enforcement of legal framework
- Enable MBC to recognize its role as a public broadcaster
- Media Council and other stakeholders ensure media abide by code-of-conduct when covering elections
- Capacitate MBC with adequate budget and equipment to provide coverage of the entire political spectrum
- MEC to hire stringers as in 2009 and in the Mzimba by-elections for 2014 to ensure coverage of candidates who would otherwise not have been covered
- Stakeholders to lobby the executive and petition Parliament to pass Access to Information Bill
- MEC to purchase equal broadcast airtime for presidential candidates in 2014 at favourable rates in order to level the playing field
- MEC to organize debate for Presidential candidates
- Review MEC strategy for civic and voter education as soon as possible
- MEC to consider reinforcing its media code-of-conduct by promulgating it as regulation
- Task Force to liaise with MACRA to ensure that review of the Communications Act keeps up with Electoral Law Reform for 2014, and to vest MACRA with commensurate power of sanction
- Task Force to ascertain that MoU clarifies obligation to monitor broadcast media during elections from MEC to MACRA
- Make MACRA directly accountable to Parliament
- Maintain the concept of equitable treatment by private media
- Petition Parliament to take up Access to Information bill by-passing cabinet

## Annex 6: MEC Law Reform Task Force Terms-of-Reference



### TERMS OF REFERENCE FOR THE TASK FORCE ON THE HARMONIZATION OF ELECTORAL LAWS

#### 1.0 BACKGROUND

The Electoral Commission is a Constitutional body created under Section 75 of the Constitution of the Republic of Malawi with a specific mandate to conduct and manage all elections in Malawi i.e. Parliamentary, Presidential, By-Elections, Local Government and Referenda.

For it to conduct its business, Parliament enacted enabling Acts; the Parliamentary and Presidential Elections Act and the Local Government Elections Act.

Section 76 of the Malawi Constitution specifically empowers the Commission to conduct free, fair and credible elections and to promote public awareness of the electoral matters through the Media and other effective means and to conduct civic and voter education.

Recently, the Parliament amended the Constitution to allow for the tripartite elections. Thus, Parliamentary, Presidential and Local Government Elections will be conducted at the same time unlike in the past.

Other institutions have made efforts to scrutinize the electoral laws; such institutions as Parliament, MESN and the MEC and also on issues as raised at the Roundtable discussions Process with stakeholders which was held at Crossroads Hotel from 13 to 14 December, 2012 where some actionable issues were identified.

In an effort to effectively conduct the tripartite elections, the Electoral Commission has undertaken responsibility to review the laws that deal with elections so that there should be no contradictions amongst these pieces of Elections Legislation.

In the recent past, Parliament passed a resolution tasking the Electoral Commission to spearhead the harmonization of the Electoral Laws to allow for the effective and efficient conduct and holding of Tripartite Elections. MEC will discharge this duty in direct liaison with the Law Commission, Ministry of Local Government and Ministry of Justice.

Owing to the above, the Taskforce was formed to ensure that it comes up with the proposed amendments to harmonize the legal framework for tripartite elections. The membership of the Taskforce is as follows: Robert Phiri from Public Affairs Committee, Hastings Bota from the Ministry of Local Government, Vales Machila from Media Council of Malawi, Aubrey Chikungwa from MISA Malawi, Peter Chasweka from Police, Kizito Tenthani from CMD, Dr. Dalitso Kabambe from Ministry of Finance, Alison Mbango'ombe from Law Commission, Steve Duwa from MESN, Amassodor Roosevelt Gondwe from CPECP, Reyneck

Matemba from Ministry of Justice, Fegus Lipenga from MACRA, Grace Jere from Human Rights Commission, Hon. Kezzie Msukwa from Parliament and representation of Malawi Electoral Commission which Chairs and holds the Secretariat of the Taskforce.

## **2.0 AIMS**

The main aim of the Taskforce is to scrutinize and harmonize the current Electoral Laws and identify the gaps in the legal time lines for elections that need to be filled to pave way for a better environment in the holding of tripartite elections.

## **3.0 OBJECTIVE**

- To review various recommendations made by stakeholders on elections and isolate critical issues that require amendment of the law.
- To propose amendments that will align the electoral laws with Malawi's international and regional obligations and commitments on elections
- To propose amendments for a bill which would be considered for tabling in the February 2013 sitting of Parliament.
- To synchronize electoral laws

## **4.0 SCOPE OF WORK**

The Taskforce Force shall undertake responsibility to reviewing the work done by several stakeholders on elections (see annex) and also Malawi's international and regional obligations and commitments to creating a coherent framework to holding Tripartite Elections.

## **5.0 REPORTING ARRANGEMENTS**

The Taskforce shall report directly to the Chairperson of the Electoral Commission.

## **6.0 RESOURCES FOR THE TASKFORCE**

The MEC shall be responsible for all the material and financial support in relation to all Taskforce sanctioned activities in liaison with development partners.

## **7.0 EXPECTED OUTPUT**

The Task Force shall, at the conclusion of its work, produce a set of draft amendments of the Electoral framework for a draft bill to Parliament.

## **8.0 TIME FRAME**

The Task Force is expected to work and produce its proposed amendments by 4<sup>th</sup> January, 2013 and present it to the Chairperson of MEC on 8<sup>th</sup> January, 2013.

1<sup>st</sup> meeting of the whole taskforce:

**Dates : 26 to 29 December, 2012**

**Venue: Zomba Kuchawe/Liwonde**

**Duration: Two and Half days**



# Elections Alert

5 2 0 1 4

## Parallel vote count proposed

BY MACDONALD THOM

**E**LECTORAL stakeholders to a two-day meeting in Lilongwe last week agreed that there should be a parallel vote count in the forthcoming 2014 tripartite elections.

A list of consensus points released at the end of the meeting on Friday also shows the stakeholders agreed that Malawi Electoral Commission (Mec) should not be required to report to the executive arm of government, but to Parliament.

These and many other proposals have been referred to a taskforce that has been appointed to oversee the harmonisation of the Presidential and Parliamentary Elections Act and the Local government Act.

"Allow parallel vote count; consider revising polling hours; establish Taskforce to consolidate Constitution review process as soon as possible; harmonise PPEA and LGEA with Constitution on seven-year resident eligibility; eliminate multiple candidacies between MP and local councillors; Mec should not be required to report to executive, but to Parliament," read some of the consensus points.

It, however, remains to be seen how other stakeholders will react to some of the points of consensus made at the conference.

Prior to 2009 elections, Malawi Electoral support Network (Mesn) proposed that it should have a parallel tally centre to that of Mec to check on vote rigging.

However, Mec shot down the idea, saying it was the only legally mandated body to do a vote count of the general elections.

The taskforce, which is expected to consolidate the review process and be ready with the recommendations before the

## ...Taskforce to consolidate points of consensus



MBENDERA—We need a legal framework

next meeting of Parliament, comprises Ministry of Local Government, political parties, the Law Commission, Mesn, Ministry of Justice and Malawi

Human Rights Commission (MHR).

Other members of the taskforce are Misa Malawi, Media Council, Ministry of

Finance, Parliament, Mec, Malawi Communication Regulatory Authority (Macra),

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THE DAILY TIMES, Wednesday, December 19, 2012

## Parallel vote count proposed



OFFICIAL COUNTING—Electoral staff counting votes in 2009 polls.—File picture

BY SIMEON MAGANGA

From page 11

the Public Affairs Committee (Pac) and the Malawi Police.

Mec chairperson Judge Maxon Mbendera said the taskforce that has been put in place will finalise the points of consensus.

"These issues have been referred to a taskforce for finalisation. They need to consult with each other and work on those points of consensus. There has been a broad understanding of what has to be done for 2014 elections, but the issues are now being referred to others to work on them," Mbendera said.

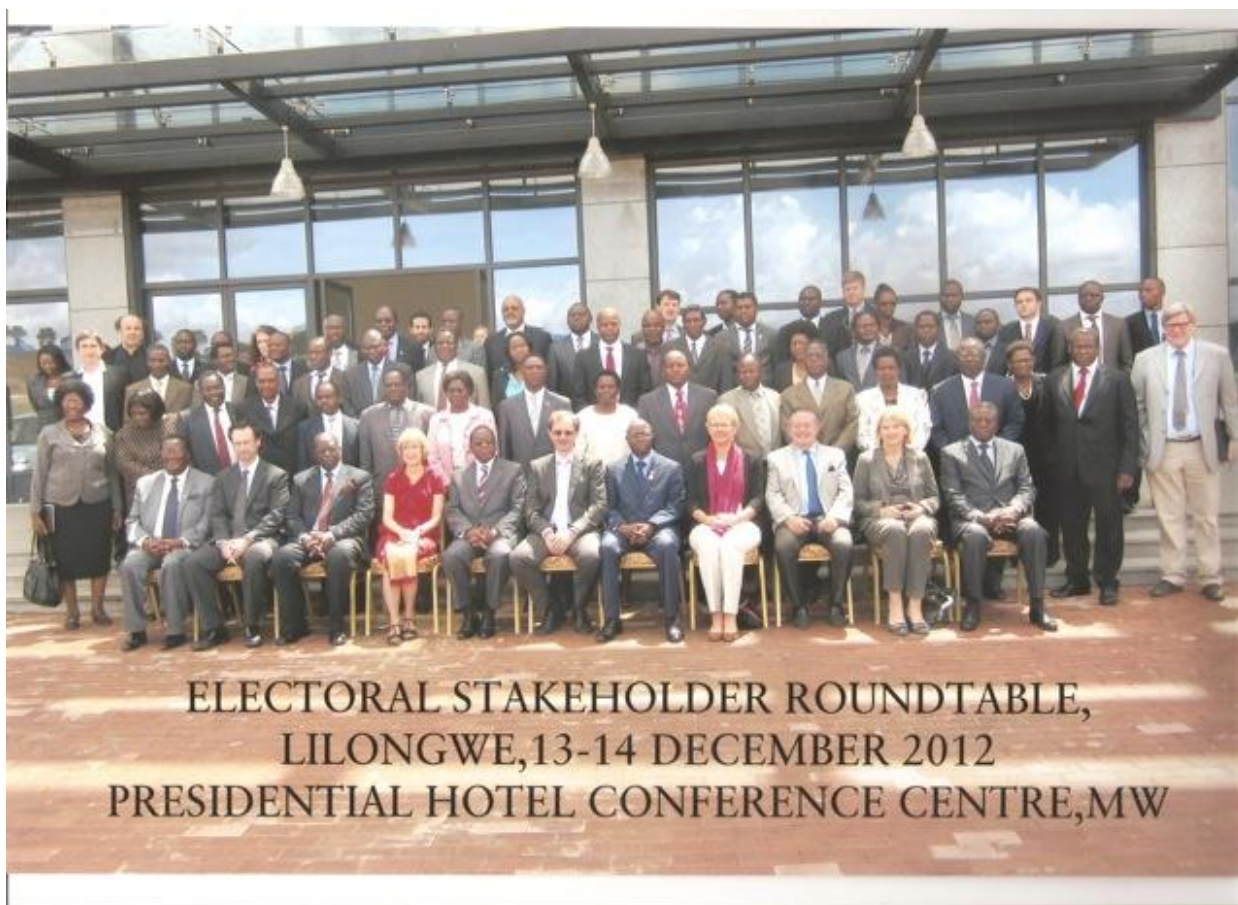
He, however, said at the moment they are prioritising the legal framework that will see the

harmonisation of Presidential and Parliamentary Election Act and the Local Government Elections Act.

"We can seek whatever we want, but it will not necessarily be possible to do it unless the legal framework is in place. We are hoping that by next meeting of Parliament that comes in January or February, the taskforce will have worked on the legal framework, so that those issues are dealt with and Parliament passes the law that enables the harmonisation to take place," Mbendera said.

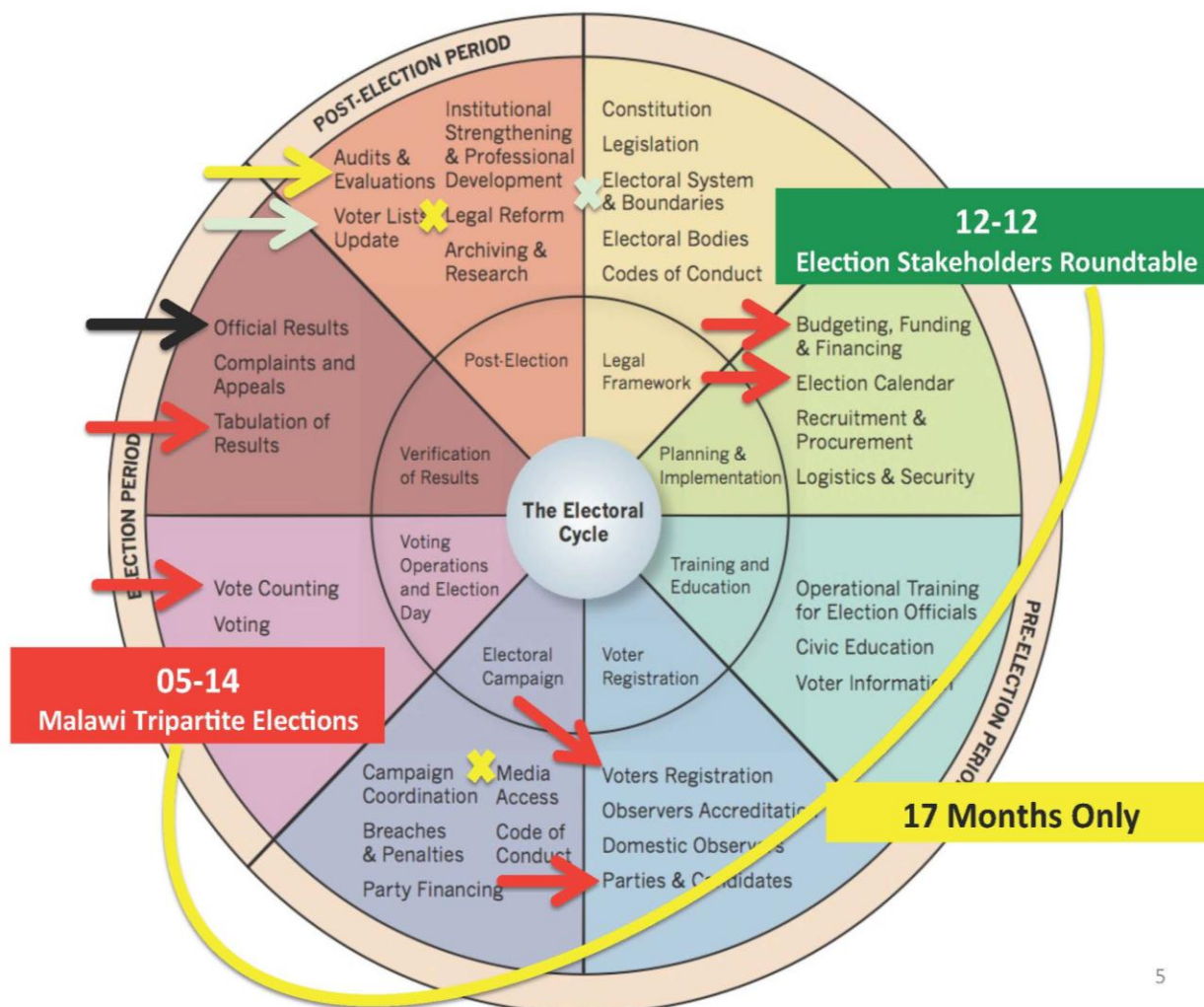
Apart from the legal framework, stakeholders to the conference also looked at electoral operations as well as the role of the media in elections.

## Annex 8: Roundtable Group Photo





## Annex 9: The Electoral Cycle



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### Biometric Voter Registration Overview

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#### **1. Introduction of High Technology in the Electoral Cycle**

4. Effective Electoral Assistance: Moving from Event-based Support to Process Support
5. ICT Infrastructure and the Capacities of Partner Countries
6. Impact of Introducing New Technologies

#### **2. Formulation of the Biometric Voter Registration System**

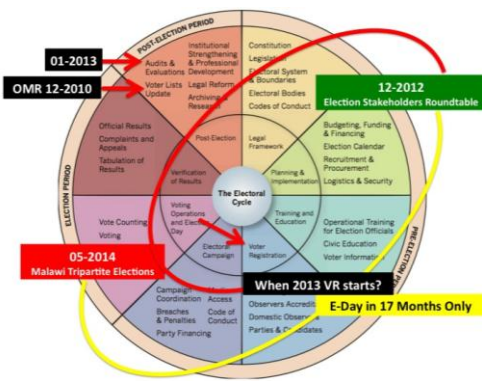
7. Biometric Voter Registration Fact Sheet
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#### **3. Malawi's Electoral Cycle versus Zambian Case Study**

11. Status of Malawi Electoral Cycle towards Voter Registration Process
12. Zambian Case Study

#### **4. Bibliography**

## Biometric Voter Registration Overview

<p><b>Voter Registration</b></p> <ul style="list-style-type: none"> <li>Provides a process for establishing <b>identity and eligibility to vote</b> that is easy to use by members of the electorate and <b>safeguards against fraud</b>;</li> <li>Establishes a voter registration process that is <b>accurate and inclusive</b> of all eligible voters, including those first coming of age to vote;</li> <li>Sets forth an <b>easily accessible process for citizens to check</b> and correct the voter registry;</li> </ul>	<p><b>VR (Cont.)</b></p> <ul style="list-style-type: none"> <li>Allows representatives of political parties, candidates and civil organizations to monitor the voter registration process and <b>to verify the accuracy of the voter registry and its voter lists</b>; and</li> <li>Produces voter lists that <b>facilitate ease of voting, prevent disenfranchisement and avert illegal voting</b>.</li> </ul>	<p><b>Request for International Assistance</b></p> <ul style="list-style-type: none"> <li>With the increasing use of information technology leading to an <b>enormous expansion in cost</b> in what was already an expensive exercise, <b>requests for assistance</b> from international partners such as UNDP and the EU for High technology voter registration solutions are increasing, <b>which is not without controversy</b>.</li> </ul>
<p><b>Embracing Technology</b></p> <ul style="list-style-type: none"> <li>The best circumstances to embrace technology <b>are not when donor budgets have to be spent shortly before an election</b> (best way of maximizing risk, minimizing benefit and compromising sustainability);</li> <li>New systems are <b>best introduced in the first half of an inter-election period</b>, rather than the second half;</li> <li>Good decision-making requires a <b>careful and critical analysis</b> of underlying problems and objectives;</li> </ul>	<p><b>Malawi 2010-2014 Electoral Cycle</b></p> 	<p><b>Embracing Technology (Cont.)</b></p> <ul style="list-style-type: none"> <li>A fascinating debate persists as to whether it is appropriate to introduce a level of technology that is aligned with <b>the existing capacity of the partner country</b> or whether such capacity should be increased for the purposes of introducing a technological upgrade that can serve the partner country <b>beyond the immediate needs of the electoral event</b>.</li> </ul>
<p><b>Status of Malawi Voter Roll</b></p> <ul style="list-style-type: none"> <li><b>August-December 2007:</b> Conduct of novel OMR Voter Registration followed by late objection period in April 2008 – <b>5.93 million registered voters</b>;</li> <li><b>August-December 2010:</b> Update of the Voter Registration in view of 2010 LGE (aborted);</li> <li>Current Voter Registry: <b>6.5 million voters</b>;</li> <li><b>2014 Voter Roll:</b> registration of new eligible voters, consideration of transfers, ward delimitation and new voter registration centres. Deceased voters remain on the list.</li> </ul>	<p><b>Challenges for novel BVR System in Malawi</b></p> <ul style="list-style-type: none"> <li>Field capture must wrap up before onset of rainy season in November 2013.</li> <li><b>No coordination</b> with neither national civil registry bureau, nor national census, or boundary delimitation exercise;</li> <li><b>No planning</b> for continuous voter registration;</li> <li>Risk to engage in a <b>vendor driven exercise</b>;</li> <li><b>Limited Human Resources</b> (see 2007-2008);</li> <li><b>Poor Infrastructures</b> (transportation, fuel shortage, communication).</li> </ul>	<p><b>Zambian Case Study</b></p> <ul style="list-style-type: none"> <li>A <b>cross-institutional joint strategizing process</b>;</li> <li>An <b>early analysis</b> of technical specifications, market research, testing and validation of various kinds of biometric registration kits, and an analysis of associated risks to the process;</li> <li><b>Specifications development and bidding period took place during the last quarter of 2009, with the final kits arriving in Lusaka in May 2010.</b></li> </ul>

## Voter Registration Concept

1. National Democratic Institute (NDI) didactic checklist for evaluating voter registration and voter lists process and the fundamentals about a voter registry/voter rolls:

### Excerpt from “Checklist for evaluating a legal framework for democratic elections: voter registration and voter lists”, NDI Guide.

**Goals:** Ensure eligible citizens a genuine opportunity to exercise the right to vote, prevent ineligible people from voting and block multiple voting.

#### Criteria or indicators:

- Set clear criteria, consistent with international principles, for eligibility to vote;
- Provides a process for establishing identity and eligibility to vote that is easy to use by members of the electorate and safeguards against fraud;
- Establishes a voter registration process that is accurate and inclusive of all eligible voters, including those first coming of age to vote;
- Sets forth an easily accessible process for citizens to check and correct the voter registry;
- Allows representatives of political parties, candidates and civil organizations to monitor the voter registration process and to verify the accuracy of the voter registry and its voter lists; and
- Produces voter lists that facilitate ease of voting, prevent disenfranchisement and avert illegal voting.

### Excerpt from “Building Confidence in the Voter Registration Process”, NDI Monitoring Guide

- A voter registry contains much more than just the names of people eligible to vote. It usually has information such as: voters’ names, gender, birth dates, addresses, assigned polling station and unique voter identification numbers;
- The voter lists for polling stations contain the names and related information for only those people who are designated to vote at each polling station.

2. European Commission-UNDP-International IDEA Joint Training on Effective Electoral Assistance organised in 2009 and 2011 described voter registration as:

### Excerpt from the EC/UNDP/IDEA Joint Training on Effective Electoral Assistance’ Manual

Voter registration, arguably the most crucial and expensive component of an electoral process, is the activity directed at the identification of those citizens who are eligible to vote in a given election. It is generally aimed at the production of lists and of a register of voters based on the eligibility rules in force in a given country. If the registration system is flawed, an entire electoral process may be perceived as illegitimate. Voter registration can often be a highly contested activity and one of the major sources of complaints.

As one of the more costly, time-consuming and complex aspects of the electoral process, it often accounts for a considerable portion of the budget, staff time and resources of an EMB.

With the increasing use of information technology leading to an enormous expansion in cost in what was already an expensive exercise, requests for assistance from international partners such as UNDP and the EU for High technology voter registration solutions are increasing, which is not without controversy.

In basic terms, there are two methods for creating voting registers. Active registration requires citizens to express their intentions to participate in an election through a positive act of registration. Passive registration, on the other hand, occurs when voter lists are simply derived from the civil registry or another general database of citizens, which is kept by central or local administration services and where no active action is required from the voter. The former is found in many emerging and transitional democracies and especially in cases of countries emerging from armed conflicts where voter registration is kept as a separate activity and it is generally conducted by the election administration. The latter is diffused mainly in more established democracies.

More specifically, there are three options one could consider for the establishment of a voter register: a periodic register, a permanent register and a civil registry.

3. Definitions of a voter registry (or register), voters list (or roll) and voters lists (or rolls) and the process of the voter registration by NDI as follow:

Excerpt from “Building Confidence in the Voter Registration Process”, NDI Monitoring Guide	
<p>The terms “<b>voter registry</b>”, “<b>voters list</b>” and “<b>voters’ lists</b>”, while not synonymous, are closely related. However, the use of these terms often differs significantly for country to country, which often leads to confusion. The definitions offered below reflect the use of these terms by many international election experts.</p> <p>A <b>voter registry</b> contains much more than just the names of people eligible to vote. It usually has information such as: voters’ names, gender, birth certificates, addresses, assigned polling station and unique voter identification numbers.</p> <p>Some voter registries also include voters’ photographs and even their fingerprints. In addition, the voter registry may contain information about previously eligible persons who lost their eligibility, or changes in the names or addresses of people eligible to vote. A voter registry may also record activities associated with these events. For</p>	<p>Identification of Voters (Optional: Distribution of Voter ID Cards)</p> <p>□</p> <p>Data Entry of Information about Voters</p> <p>Production of Preliminary Voters List (PVL)</p>

<p>example, when a person registers to vote for the first time, a voter registry might contain information about where and when the person registered; who registered the person; when and who produced a voter ID card; and who distributed the voter ID card when and where to the registrant. A voter registry may even contain data on people who have not yet become eligible to vote.</p>	<input type="checkbox"/>
<p>A <b>voters list</b> is a snapshot of a voter registry at a particular moment in time. It contains the names, and often other information, such as addresses, date of birth, and gender of only those people in the voter registry who are known to be eligible to vote at that moment. Thus, it excludes the names of people in the voter registry who have ceased to be eligible or who are not yet eligible. Often during the registration process, there are preliminary, revised and final voters lists produced from the voter registry at different times. A <i>preliminary voters list</i> is typically produced relatively early in the voter registration process and is posted for scrutiny by the public, political parties and civic organisations. A <i>revised voters list</i> is at times created after a claims and objections period to verify that any additions, deletions or changes have been made by the election authorities. A <i>final voters list</i> is then produced for use on election day to determine who is permitted to vote. The voters list is typically divided by polling station into the corresponding number of voters' lists.</p>	<input type="checkbox"/> Verification of Preliminary Voters List  <input type="checkbox"/> Claims and Objections  <input type="checkbox"/> Data Entry of Additions, Deletions and Corrections  <input type="checkbox"/> Production of Revised Voters Lists  <input type="checkbox"/> Distribution of Voter ID Cards ( <i>Optional</i> ) Data Entry of Final Changes
<p>The <b>voters' lists</b> for polling stations contain the names and related information for only those people who are designated to vote at each polling station.</p>	<input type="checkbox"/>
<p>It is the voters list, and not the voter registry, that the public, political parties and civic organisations typically review. It is the preliminary voters list, usually divided into polling station voters' lists, which is posted for inspection. If a name of an eligible voter is missing on the preliminary voter list,</p>	<input type="checkbox"/> Production of Final Voters List (FVL)



that name, and related particulars, must be added to the voter registry. However, the person, as well as political parties and civic organisations, will only become aware of the addition when the revised or final voters list is produced.	<p>Distribution of Final Voters List to Polling Stations</p> <p>□</p> <p>Use of Final Voters Lists by Election Officials at Polling Station to determine Voter Eligibility</p>
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## Introduction of High Technology in the Electoral Cycle

4. Excerpted from a conference organised in 2006 by International IDEA, indicates these findings:

**Excerpt from “Effective Electoral Assistance: Moving from Event-based Support to Process Support”, Conference report and conclusions, International IDEA.**

### **Embracing Technology**

**The issues raised in connection with technology included the following:** A practical definition of technology for the electoral process is “capital equipment or systems of a type that is typically beyond the resources of a developing country, for which donor funding or support is therefore often provided”. If a post-election review led to early planning, governments and donors could avoid the last-minute rush to fund elections. The benefits of information technology (IT) are that it can process large volumes of data efficiently and save much effort. It can also be used to identify errors and anomalies (e.g., multiple registrations of voters). Technology can sometimes build credibility by improving the speed and efficiency of the polling process. How its application relates to the key EMB obligations – to respect the law, be non- partisan and neutral, be transparent, be accurate, and serve the voters – is less certain.

The risks in embracing technology include “overkill” – where the system may simply be unnecessary, or cheaper manual systems may work just as well. The system may be addressing the wrong problem. Technology is not just hardware and software: trained staff, effective procedures, technical support and ongoing maintenance are also crucial. The resources to sustain the system may not be available. There is a risk that system testing will be inadequate. Bad implementation can make everything go horribly wrong. Up-front system costs can be very substantial and a system may depreciate fast, becoming obsolete in only a few years.

Attention to technology may divert the EMB from more important things, and may overwhelm a donor or EMB budget. Costs associated with system defects, poor design or testing may leave donors captive to increasing costs to save what they have already invested in. There is a need to “skill up” staff to implement sustainable systems, and this may not be easy to meet given the short timetables involved. In addition, technology will

have an impact on voters – in terms of the perceived integrity of the electoral process – and possibly also on the community, for example, when centrally supplied voting machines replace locally constructed wooden ballot boxes.

The **recommendations** that derived from the discussion include the following:

**The best time to introduce technology** The best circumstances in which to embrace technology are not when donor budgets have to be spent shortly before an election, even though it is then tempting to throw money at technology. This is in fact the best way of maximizing risk, minimizing benefit and compromising sustainability. New systems are best introduced in the first half of an inter-election period, rather than the second half. Good decision-making requires a careful and critical analysis of underlying problems and objectives.

**The appropriate level of technology** Information technology was barely mentioned ten years ago but is now increasingly on the agenda. Many developing countries are introducing electronic voter registration and results-aggregation systems. IT applications should be introduced only when there is a certain degree of technological literacy in the country, meaning that IT is used as part of everyday life and is familiar to people on the ground, and hence introducing systems that match their current capacity. Often EMBs that see other countries using the new technology want to use it as well. Technical advisers should help EMBs identify the appropriate level of technology by looking at issues of feasibility – time, cost, computer literacy and infrastructure.

The controversial debate is whether to introduce technology that is above the current capacity of the country or whether the capacity can be increased to deal with it beyond the election. While debate continues over common areas of technology applications, such as voter registration, voting, the tabulation of votes and reporting the results, there are much less controversial areas, such as communications and logistics, voter and civic education, and even training, where technology can be introduced as a tool to improve effectiveness and product delivery.

**Confidence building** While many people believe that automation will fix problems; new technology can also make problems worse rather than help solve them. A high level of distrust lies at the core of this problem. Even if in theory IT can help remove difficulties, caution should always be used. It is essential to build confidence in parallel to introducing the system.

**Avoiding vendor-driven processes** Can donor and recipient interest be resisted? Vendors, who have an interest in making sales rather than in achieving optimal solutions, have often been lobbying even before electoral advisers arrive in the country, Effective Electoral Assistance saying that their solution is the best one. Electoral advisers can find themselves in a defensive position, as this is difficult to confront. Rather than confront vendors, perhaps stakeholders could involve them in a process where they will learn from electoral advisers how an election works and how technology can be effectively used to facilitate the election process. EMBs can cautiously engage vendors in the process to get the most appropriate products at the best price through transparent procurement procedures, resisting the hard sell and not being forced to resort to 'least worst options' due to lack of time. Technology can be introduced as long as this is an in-house, long term, incremental process, and not an external or vendor-driven process. When discussing whether or not to introduce technology and which type of technology should be introduced, it is important to look at the whole

electoral cycle and to think several elections into the future.

**Investment in training** Rather than investing in technology alone, investing in training is an essential complementary activity and a necessary component in increasing trust. Too much may be expected from technology – security, transparency and efficiency – and public expectations may be unrealistic: but a failure of the new technology may lead to a complete failure of trust and credibility.

5. Excerpted from the 2011 Workshop on Effective Electoral Assistance organised by EC-UNDP-IIDEA:

#### **Extract from EC-UNDP-IIDEA's Manual of the Workshop on Effective Electoral Assistance - 2011**

##### **IT infrastructure and the capacities of partner countries**

Effective technology upgrades cannot be introduced **without an honest evaluation of the degree of IT literacy and infrastructure that already exists in the partner country**. Long-debated issues like feasibility as well as long-term technical and financial sustainability can only be properly addressed through transparent and open tendering procedures (including pilot and validation tests) and through serious training and capacity-building measures to be required as part of the service.

**A fascinating debate persists as to whether it is appropriate to introduce a level of technology** that is aligned with the existing capacity of the partner country or whether such capacity should be increased for the purposes of introducing a technological upgrade that can serve the partner country beyond the immediate needs of the electoral event.

This debate is particularly heated over crucial aspects of the electoral process **such as voter registration**, voting, vote tabulation and results aggregation. Less controversial areas are communications and logistics, voter and civic education, and even training, where technology can be introduced more smoothly as a tool to improve effectiveness and product delivery without requiring legal changes.

6. Handbook on Procurement Aspects of Introducing ICT Solutions in Electoral Processes presents the impact on introducing new technologies as follows:

#### **Procurement Aspects in ICT Solutions in Electoral Processes: Case of Voter Registration, EC-UNDP-IDEA-ACE**

##### **Impact of Introducing New Technologies**

When a new system is being considered to replace another, an evaluation is needed to assess the impact of the change on all stakeholders. Once the system is adopted, the transition phase needs to be carefully managed to ensure that problems do not occur and that all functions can continue to be effectively carried out.

These are some strategies that can be used by electoral administrators to minimize the negative impact of

new systems, new technology and changes in electoral processes. The following are among those strategies:

- Allow plenty of time for implementation and avoid starting implementation too close to election day;
- Keep in mind that implementation of a new project often takes longer than expected;
- Plan for new systems to be finished well before the earliest possible election date and enforce cut-off dates after which no system changes are allowed;
- Have alternatives ready to be implemented in case the new system cannot be used for whatever reason;
- Manage information about the technology and changes so that stakeholders do not have unrealistic expectations and do not impose impossible deadlines;
- Avoid imposing a new, untried or unsuitable technology;
- Schedule enough time to thoroughly test new systems; and
- Provide training for staff and users as needed, aiming at building local capacity and sustainability

## Formulation of the Biometric Voter Registration System (BVR)

### 7. BVR Fact Sheet

#### **BVR Factsheet**

##### **1. Biometric Voter Registration System**

- The Biometric Voter Registration (BVR) System is a system to register the eligible population of a country by capturing in particular the photographs and the fingerprints of the individuals.
- The BVR System has been used over the past ten years across the globe, in particular in post-conflict contexts and/or emerging democracies with a large technical and financial support from the international community and recognised organisations with specialized electoral expertise.
- The system allows the Electoral Management Body with its designated partners to prepare a voter registry guaranteeing that the information on each voter is accurate and unique.
- Combined with the Automated Fingerprint Identification System (AFIS), the BVR System has the technical provision to identify duplicates in the voter registry due to errors or frauds, and to remove them.
- On Election Day, the electoral officers at the polling stations identify the voters based on the match between the information on the final voter registry (names, designated details according the laws and regulations, pictures) and the voters carrying their voter cards.
- The synergy between the Electoral Management Body and other stakeholders will facilitate the elaboration of an accurate and updated civil registry during the post-electoral phase.
- In the long term, the electronic-biometric voter registration system follows best practices in terms of cost-effectiveness and updated information, with implementation of proper mechanisms.

## **2. How does it work?**

- Each eligible voter across a country will be invited to go to a registration centre near her/his residence to be registered.
- The registrants will meet electoral officials who will:
- Verify their eligibility based on the required identification documentation as stipulated in the Electoral Act and Regulations,
  - Complete a registration form;
  - Enter the details, capture their photographs and fingerprints into the database by using a laptop equipped with adequate software and devices,
  - Print and deliver a voter card with a unique reference number based on the constituency where the registrants are living.
- The registrants will leave the registration centres assured that their details are correct because these details will appear on the voter cards they will have received;
- During the inspection period as indicated in the Electoral Act and Regulations, registrants will be given the opportunity to make objections;
- The voters will use the locations where they will have registered for polling on Election Day.

## **8. Lessons Learnt from BVR Projects**

### **Selection of Lessons Learnt from BVR Projects**

#### **1. General**

- To organize the setup of the operations prior of the arrival of the equipment;
- To divide the country in operational areas in order: (i) to rationalize the resources (human resources and equipment/materials) and (ii) to use the experience of one operational area to benefit the next one;
- To think of combining the voter registration operations with a wider census of the adult population with a view to producing identity cards and passports;
- To plan a mock exercise in order: (i) to better understand the difficulties and adjust if necessary and possibly (ii) to use the mock exercises for voter education/awareness purposes;
- To plan to have a pool of trained reserve staff;
- To consider the specifics of the country in terms of geography, topology, cultural context, etc.

#### **2. In Terms of Operations**

- To ensure that qualified human resources (administrative and IT registration officers at the registration centre, maintenance officers, supervisors and technicians at the centralized data centre) are identified, selected, and trained in a timely manner;
- To ensure that logistical constraints such as transports, power supply, maintenance, repairs, consumables, etc. are properly integrated into the operation plan;
- To respect the traditions of the local population regarding capturing pictures, management of queues at registration centres through a targeted voter information programme;

- To ensure there are options to extend the registration period of specific operational areas due to weather conditions, natural disasters, or major technical problems;
- To set up a centralized data centre functioning before the beginning of the field operations;
- To plan for the best options to establish support to designated field offices in terms of facilitating the management/follow-up of incidents during the registration process.

### **3. In Terms of Technology**

- To endorse the functional and technical specifications of the registration kit;
- To endorse the registration's procedures through a targeted mock exercise before selection of the ICT Partner;
- To ensure that there is quality control and guarantee on the spare parts during the registration process;
- To train the national staff on the maintenance of the equipment;
- To follow up the activities of voter registration and direct technical assistance during the operations.
- To plan for voter information/awareness campaign and identify the parameters that will facilitate a high turnout and gender balance in the registration process across the country;
- To plan the transfer of knowledge/capacity building in the early stage of the project;
- To plan the use of the equipment for more than one electoral cycle:
  - Re-use and storage of a core equipment;
  - Hand over to other institutions of the surplus equipment;
- To ensure that the local staff is involved within the maintenance of the equipment.

9. Based on the introduction of the Automated Fingerprint Information System and the concept of the voter ID card, UNDP and ACE Project provide respectively background and best practice learnt on those features:

#### **Excerpt from the UNDP Electoral Assistance Implementation Guide**

AFIS refers to a computer system capable of establishing the identity of an individual through fingerprints by the use of biometrics. AFIS is being used with a certain consistency in many countries in voter registration process. In particular, it is increasingly popular in post-conflict countries and emerging democracies marked by a low level of ID card distribution.

#### **Advantages & Disadvantages of Voter Cards by ACE Project**

##### **Number of advantages:**

- It is a reliable form of identification;
- It serves as acknowledgement that the voter is duly registered;
- It may include several identifying features (e.g., photograph, signature, fingerprints) to provide greater assurance that the voter is who he or she claims to be;
- It may be marked when the voter has obtained a ballot, preventing multiple voting;
- It can be designed to be suitable for an electorate with a low literacy rate;
- It can be an effective form of identification where many voters have no fixed address;

- It facilitates voting in areas where a voter may not be known personally;
- It can be issued together with voter education material;
- In addition, there may be other, less tangible reasons for favouring voter identification cards. For example, according to a study of photo ID cards, the cards were said to convey to voters a feeling of pride in their right to participate in the electoral process.

#### **Number of disadvantages:**

- It may be very costly to produce and update. This is not always the case, but costs rise as security features are added and the card comes to be regarded as the primary piece of identification held by citizens.

The high costs must be borne by the government, the voter or both. If the cost is passed on to the voter, a lower proportion of eligible voters will obtain a card.

- It can be lost or stolen;
- A significant administrative structure must be in place to produce the cards;
- It must be produced with appropriate technology. If there is no electricity at the registration and card-issuing sites, cards may be sealed with a cold laminate or may be unsealed;
- Some voters will arrive at the polling station without their card. Procedures must be developed to deal with this situation;
- It must be updated periodically. Cards wear out over time and the pictures on them become dated. Hence the need for a system to replace cards regularly;
- The election authority must have a reliable system for delivering cards. Ideally the card should be produced when the voter registers, but this may not be practical or feasible.

#### **Options for security features:**

- A laminated covering to prevent anyone from changing information on the card;
- A fingerprint of the voter on the card as well as on the form used to produce the voters list;
- A photograph of the voter;
- The signature of the voter;
- A background printing in colours other than black to deter fraud through simple photocopying;
- A voter identification number corresponding to the number on the voter registration form, as a means of controlling the stock of forms and associated cards;
- The residential address of the voter;
- In certain countries where cards have a large number of security features, they have become the effective form of citizen identification.

#### 10. Formulation (simulation)

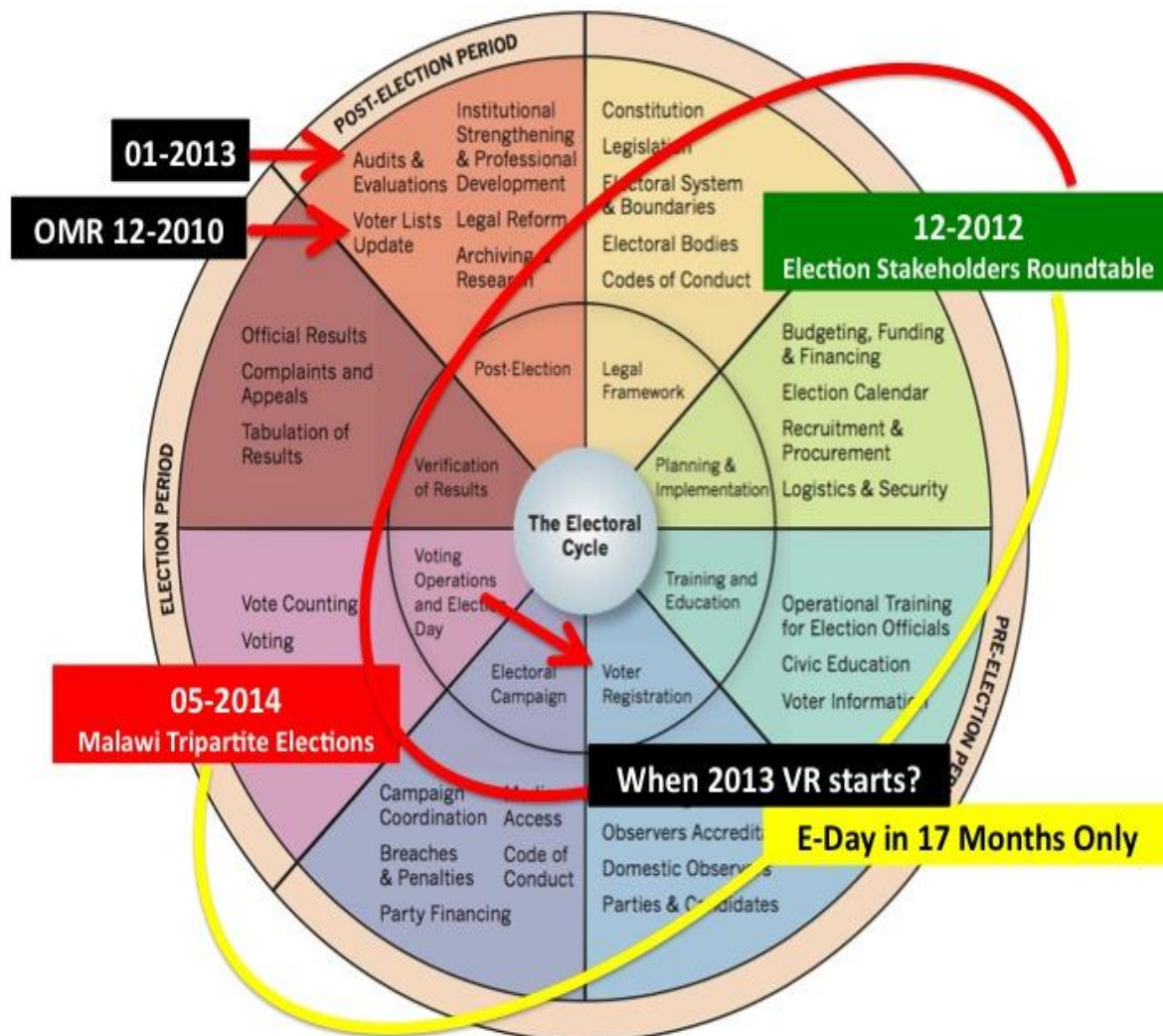
<b>Formulation of BVR System</b>	
<b>General Objectives</b>	<b>Scope of Work</b>
<ul style="list-style-type: none"> <li>▪ To set up BVR Working Group;</li> <li>▪ To collaborate with the</li> </ul>	<ul style="list-style-type: none"> <li>▪ To assign human resources (enhance MEC human resources, review the list participants in the BVR WG, involve additional ministries and/or state agencies when required);</li> </ul>

<p>stakeholders at the divisional level;</p> <ul style="list-style-type: none"> <li>▪ To enhance the human resources capacity within MEC and create a BVR “think tank” within the institution;</li> <li>▪ To conduct a comparative risk analysis for its implementation in Malawi;</li> <li>▪ To coordinate the progress on the BVR formulation with other stakeholders (political parties, media, CSOs/NGOs, donors, etc.)</li> <li>▪ To launch a tender process;</li> <li>▪ To organise a mock exercise.</li> </ul>	<ul style="list-style-type: none"> <li>▪ To determine conflicting cut-off ages for voter registration;</li> <li>▪ To review the eligibility criteria of the two elections (i.e., national and municipal) to facilitate the conduct of a unique voter registration process;</li> <li>▪ To identify the number of voter registration centres (VRCs) and their modalities of functioning (zones, opening days-hours, etc.);</li> <li>▪ To define the ICT solutions in terms of infrastructure (coordination with ITC Services), hardware, software (including AFIS);</li> <li>▪ To prepare a detailed budget in coordination with the Divisions;</li> <li>▪ To address the external voter registration, the special needs and special circumstances;</li> <li>▪ To address the sustainability of the concept (i.e., viable solution for the continuous voter registration process);</li> <li>▪ To prepare the tender process;</li> <li>▪ To design a mock exercise;</li> <li>▪ To solicit potential international technical assistance;</li> <li>▪ To schedule the implementation phases.</li> </ul>
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## Status of Malawi Electoral Cycle versus Zambia Case Study

### 11. Status of Malawi Electoral Cycle towards Voter Registration Process



**Past Events:**

2007: Malawi conducted novel OMR Voter Registration – 5.93 million registered voters

2009: General Elections

2010: Update of the Voter Registry during aborted 2010 Local Government Elections – 6.5 million registered voters

2012: By-elections in two constituencies

**Pending Events:**

Mid-Late 2013: Core Update/New Voter Registration

March 2014: Objection period

May 2014: Tripartite elections

**12. The cross-in institutional strategists process in Zambia, as presented in EC-UNDP-IDEA-ACE Handbook “Procurement Aspects of Introducing ICT Solutions in Electoral Process”.****Case study: The cross-in institutional strategy process in Zambia**

The recent example of Zambia illustrates a case of a cross-institutional joint strategizing process. This included an early analysis of technical specifications, market research, testing and validation of various kinds of biometric registration kits, and an analysis of associated risks to the process. All this took place even before the procurement-planning phase.

The process was facilitated by the EC-UNDP Joint Task Force, which undertook a number of missions to Zambia during 2008 and 2009. The missions, aimed at electoral assistance project formulation and identification covering the country's 2009-2012 electoral cycle, included the following activities:

- Immediate strategic and technical support to the Electoral Commission of Zambia (ECZ) and the Department of National Registration, Passports and Citizenship (DNRPC) of the Ministry of Home Affairs;
- Definition of an operational concept that took into consideration the phasing out of Polaroid systems used by both institutions;
- Introduction of digital registration kits to be used both by ECZ and DNRPC;
- Digitization of the existing civil register, which had previously been in paper form only;
- Establishing synergies with the existing OMR-based election information management systems used within ECZ;
- Development of technical specifications and planning for validation testing; and
- Establishment of a budgeting and procurement plan and “road map” that covered both goods and services.

The procurement process was conducted by UNDP PSO GPU, in support to the UNDP Zambia office. Specifications development and bidding period took place during the last quarter of 2009, with the final kits arriving in Lusaka in May 2010.

Zambia is one of the most promising case studies both in terms of the potential integration of the civil register and the voter register in a seamless manner, and also for the related programme/operational/procurement planning.

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# European Union Election Follow-Up Mission Malawi 2012



	EU EOM 2004 Recommendation	EU EOM 2009 Recommendation	EISA 2009 Recommendation	Commonwealth 2009 Recs	MESN 2012 Roundtable	Malawi's Int'l or Regional Obligations and Commitments	MEC Strategic Plan	MEC January 2012 Roundtable Recs	Roundtable Points of Consensus*
Legal Framework									
*when Roundtable Points of Consensus do not apply, written MEC commitment on EU EOM recommendation is provided in <i>italics</i> *									
1		Align electoral timeframes relating to the dissolution of parliament, nomination of candidates, campaign period and election day regarding incumbent members of parliament to guarantee legal certainty.			The period for nomination of parliamentary aspirants should be reduced	UN ICCPR Article 2(3)(a) to ensure that any person whose rights or freedoms are herein recognized as violated shall have an effective remedy, not withstanding that the violation has been committed by persons acting in an official capacity; (c) to ensure that the competent authorities shall enforce such remedies when granted.	<b>Specific objective 1: Gaps and inconsistencies in the electoral laws are addressed by the end of 2013</b>	Section 38(3) of the PPEA and s.30(3) of the LGEA should be amended to empower returning officers to declare defective nominations to be invalid, at the earliest opportunity, while allowing the prospective nominee in question a reasonable period of time in which to rectify the defects in the nomination before the expiry of the registration period. The provisions should be amended to require the EC to publish the notice of an order issued for the holding of an election in not only the Gazette, but also mass media outlets.	<b>Address ballot proofing/ nomination timeline</b> <b>Eliminate multiple candidacies between MP and Local Councillors</b>
2	1 Define the abuse of public resources and effective sanctions. Prohibit vote buying. Require declaration and use of private campaign funds. Hold MEC and other	<b>Clarify campaign regulations with parameters.</b> <b>Ensure legal compliance.</b> <b>Introduce independent regulatory oversight</b> <b>Separate use of state resources for public office and campaigning.</b>			Harmonize the entire electoral laws and this process should be facilitated by MEC in conjunction with MESN and there	UN ICCPR Article 2(3)(a) to ensure that any person whose rights or freedoms are herein recognized as violated shall have an effective remedy, not withstanding that the violation has been committed by persons acting in an official capacity; (c) to ensure that the competent	<b>Specific Objective No. 3: Capacity of MEC to enforce laws and regulations strengthened by 2013</b>		<b>Establish and define offence of unduly influencing voters</b> <i>*the Commission will support the review processes including the</i>

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	public officers accountable for legal breaches.				should be a study visit on such kind of processes. The local government act should be reversed to the original one. Section 65 should be implemented	authorities shall enforce such remedies when granted.			setting up of an independent regulating body
<b>Electoral System</b>									
3	3 Review constituency boundaries to reflect population sizes (even if this means cutting across Territorial Authority boundaries).	<b>Review constituency boundaries to reflect population density and weighting in parliamentary representation. Take into consideration the geography and demographics of Malawi as is currently the case.</b>		Delimitation of parliamentary constituencies needs to be done, and should be undertaken as part of MEC's next phase of activities. At present, there are imbalances in constituency size and equal suffrage is not provided for.		UN ICCPR, art. 25(b) "To vote and be elected at genuine periodic elections which shall be by universal and equal suffrage" IPU, Inter-Parliamentary Union Declaration on Criteria for Free and Fair Elections, art. 2(6) "Every voter is entitled to exercise his or her right equally with others and to have his or her vote accorded equivalent weight to that of others."	<b>Goal 3 MEC to demarcate constituencies and wards reflecting equal representation by December 2017</b>	MEC response on status of EU EOM recommendations: <i>You may, however, wish to appreciate that the Commission has just been appointed now (in May this year) and shall therefore in short term (before 2014 elections) only demarcate wards and centre placements where deemed necessary. After 2014 Elections, the Commission will then have a full constituency demarcation in readiness for 2019 Elections.</i>	<b>Revisit delimitation criteria for wards Proceed with 2010 Ward demarcation, while addressing Council member shortfalls on a case-by-case basis</b>
<b>Election Administration</b>									

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4		<b>The Electoral Commission should conduct an internal review of its procedures and structures in light of its limited capacity in organising these elections. The external expertise supplied by UNDP should also be assessed as part of this process.</b>	The mission recommends that the commission build on its achievements during the 19 May 2009 elections and uses an electoral cycle approach to election management in future which entails an ongoing programme for the professionalisation of the commission.	Undertake a comprehensive strategic and operational review of MEC, involving all stakeholders. Develop a Strategic Plan outlining MEC's full operational requirements – reflecting „lessons learned“ – based on the full electoral cycle. View future elections as a long-term electoral cycle, and not as a single event.	MEC should produce a calendar of events from now up to 2014 so that stakeholders should itemize what needs to be done	Good Commonwealth Electoral Practice, 1997, article 10: Although an electoral body should enjoy independence from direction or control, whether from the government or any other quarter, it is accountable to the electorate within the law, and should act accordingly.	<b>Specific objective 1: Skills development and placement of staff based on systematically identified skills gaps by end of 2013</b> <b>Specific activities:</b> <b>Conduct a skills audit in preparation for Tripartite Elections in order to address skills gaps if any.</b>	MEC response to EU EOM recommendation: <i>In view of having tripartite elections in 2014, the Commission has undertake to review all its procedures so that they are responsive to the general public and that the Commission is seen to be transparent. The Commission has also seen that it is only through full involvement and participation of stakeholders in the electoral process that transparency measures could be guaranteed.</i>	<b>MEC commits to sharing budget and electoral calendar at National Election Consultative Forum NECOF meeting in January 2013</b>
5	3 (iv) involve election stakeholders, including umbrella organisations for the handicapped and blind, prisoners etc., at an early stage in preparations to ensure improved accessibility; District Elections Supervisory Teams (DEST) should include representatives of civil	<b>Enhance MEC transparency to guarantee accountability throughout the election process.</b>			MEC should consult stakeholders when coming up with its strategic plan	AU African Charter on Democracy, Elections and Governance, art. 3(8) “State Parties shall implement this Charter in accordance with the following principles: 8) Transparency and fairness in the management of public affairs.”	<b>Goal 1: MEC to strive for an organisational culture that promotes excellence, transparency with clear policies, systems, and guidelines and that inspires internal and external confidence and trust</b> <b>Goal 2: MEC strives for a legal framework that will enable it to discharge its mandate to the satisfaction</b>	<i>As part of full stakeholder involvement, the Commission recently had By Elections in Mzimba where all stakeholders were constantly being consulted. And for the first time in the history of the Commission, we</i>	<b>Circulate draft operational plan with stakeholders signed into present roundtable on Monday, December 16</b>

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	society but not members of state security organizations.						of its stakeholders in the electoral processes in a transparent manner. <b>Goal 4: To create transparency and instil confidence in and ownership of the electoral cycle</b>	<i>allowed party representatives to accompany ballot papers from our Head office to centres where distribution was being done. Political parties applauded the Commission for this measure of transparency.</i>	
6	3 Address complaints as outlined in electoral legislation in a timely and professional manner.	<b>Establish a MEC legal department under the direction of the Commissioners to guarantee complaints are processed in a timely and consistent manner.</b>				UN Human Rights Committee, General Comment 9, art. 9. The right to an effective remedy need not be interpreted as always requiring a judicial remedy. Administrative remedies will, in many cases, be adequate and those living within the jurisdiction of a State party have a legitimate expectation, based on the principle of good faith, that all administrative authorities will take account of the requirements of the Covenant in their decision-making. Any such administrative remedies should be accessible, affordable, <i>timely</i> and effective.	<b>Specific objective 2: Capacity of MEC to deal with legal related matters including complaints handling is enhanced by end of 2013</b> <b>Specific activities:</b> - Establish a directorate of legal affairs - Propose an amendment of the legislation governing the complaints and appeals procedures to make it realistic - Organise training for Commissioners in conflict management - Organise regular training initiatives for MPLCs	<i>The Commission acknowledges this challenge that it has and also concurs with the recommendations put forward. Meanwhile the Commission intends to retain the legal counsel on returner basis but for the future, this has been incorporated into the Strategic Plan to set up a directorate of Legal Affairs by the end of 2013.</i>	<b>Establish Task Force to consolidate review process as soon as possible:</b> <b>MoLGRD; Malawi Police; MESN; MoJ; MHRC; Law Commission; Parliament; MEC; CMD; MoF; Political Parties; MISA Malawi; Media Council; MACRA; PAC</b>
7		<b>Independently assess financial needs of the Electoral Commission.</b> <b>Adequately fund MEC to ensure its independence and capacity.</b>				SADC Principles for Election Management, Monitoring, and Observation in the SADC Region PEMMO: Government must adequately fund the EMB in order for it to deliver a	<b>Goal 1:</b> <b>Specific objective 2: Public funding of MEC protected and predictable by the end of 2017</b>	<i>The Commission will ensure that public funding of MEC is protected and predictable by the end of 2017. To do this,</i>	<b>MEC should not be required to report to executive, but to Parliament</b>



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		Publish financial accounts annually.				credible and legitimate election. The EMB must promote financial sustainability and cost-effective management of elections. The size of the EMB should be manageable to ensure the efficient, effective, consensual and financially sustainable administration of elections.		the Commission will undertake the following specific activities: Engage Ministry of Finance in all stages of elections budget discussions. Increase dialogue and interface with Budget and Finance Committee of parliament well in advance of the formulation of the National Budget. Propose creation of committee of parliament to be responsible for elections. Propose passing of relevant legislation that provide for secured public funding for MEC. Meet Development partners and Government in the Pre and Post election period once every six months.	
8	3 Review composition of the MEC and structure of the election administration to ensure confidence among	<b>Review procedures for the selection of the Electoral Commission's Commissioners to increase transparency, by introducing an independent appointment panel.</b>	The provision on the appointment of members of the MEC should be reviewed to guarantee its	Ensure that the procedure for the nomination and appointment of the Electoral		SADC PEMMO: The composition of the EMB should be representative of the society, and the body should comprise at least 30% women. Consideration should be given	<b>Not directly addressed by Strategic Plan, but indirectly caught by commitment to pursue law reform according to internal and external</b>	Section 4(1) of the Electoral Commission Act should be amended to require the President to take full account of the	<b>MEC should not be required to report to executive, but to Parliament</b>

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	political contestants and efficient administration of elections.	<b>Set a two term limit.</b>	independence, transparency and professionalism. Regional trends and standards have been to appoint an independent electoral commission whose members are selected based on their expertise, integrity and political independence.	Commissioners results in public and political confidence in the national election management body. "Consultation" on the appointment of Commissioners is vague and does not guarantee an inclusive and transparent process. Involve parliament formally in the nomination of commissioners.		to appointing independent persons known within the society for their integrity. It is recommended that at least one of the commissioners should be a person who holds or has held high judicial office (a high court or supreme court judge). A percentage of EMB commissioners should be full-time members in order to ensure organisational and institutional continuity. Appointment and dismissal procedures should be clearly articulated and the process undertaken in a manner that is impartial, accountable and transparent.	<b>recommendations.</b>	views of political parties represented in the National Assembly in appointing members of the EC. Section 75(3)(a) of the Constitution should <b>not</b> be amended to alter the term of office of Electoral Commissioners.	
9	3 (iii) provide political party representatives, domestic observers and international observers with access to meetings at all levels of the election administration.	<b>Develop regular MEC-political party consultative meetings</b> <b>Introduce formal rules for meetings and published minutes.</b> <b>Appoint liaison officer for political parties and other stakeholders.</b> <b>Financial transparency measures should also be introduced for the organisation of these meetings.</b>		MEC needs to improve its communications and consultation procedures with all stakeholders, especially parties. Institutionalise Party Liaison Meetings, as they are important for transparency		SADC PEMMO: The EMB, political parties and civil society should facilitate the establishment of conflict prevention and management processes to deal with election-related disputes, including such strategies as stakeholder liaison committees. Independent, skilled and well-trained mediators and arbitrators should staff the conflict management panels established by the EMB.	<b>Goal 4: Specific objective 2: Interaction and communication with stakeholders improved throughout the electoral cycle by the end of 2016</b> <b>Specific activities:</b> <input type="checkbox"/> <b>Organise annual targeted meetings with each political party leadership represented in Parliament</b>	<i>The Commission agrees with the observation and recommendations made with regard to political party consultative meetings. In this regard, the Commission has provided for improved interactions and communication with stakeholders</i>	<b>MEC commits to sharing budget and electoral calendar at National Election Consultative Forum NECOF meeting in January 2013</b>

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				and confidence-building as well as for conflict resolution.				<i>throughout the Electoral Cycle.</i>	
10		<b>Support returning officers by two deputies during elections. Strengthen the role and increase the resources available for district electoral clerks. Draw pool of temporary polling staff including presiding officers from a wider group of candidates. Advertise polling staff posts.</b>		District Commissioners are an anomaly in the election management structure, as they are public servants working for government, as opposed to independently appointed election officials.		SADC PEMMO: Polling station staff should be recruited in a non-partisan manner by the EMB and should receive training well in advance of election day. Selection criteria for the recruitment of polling staff and performance management processes should be institutionalised by the EMB.	<b>Specific objective 3: Highly competent and skilled personnel professionally recruited by the end of end 2017</b> <b>Specific activities:</b> - Develop and implement a recruitment policy - Develop clear guidelines on seconded staff/technical advisors to the Commission -Reduce percentage of seconded staff	The PPEA and LGEA should be amended to prevent DCs from playing any direct role in the administration and management of aspects of elections that require that there be no appearance of likelihood of bias.	<b>Circulate draft operational plan with stakeholders signed into present roundtable on Monday, December 16</b>
11	3 Better train election officials in counting and aggregation procedures. Provide clear, timely and comprehensive written instructions as well as clarification to regulations where necessary;	<b>Increase MEC training activities and design a permanent and rolling programme for polling officials to ensure all areas of the technical process are fully understood by officials, covering all election related processes ranging from voter registration and aggregation. Ensure MEC-field communication gives directions in a timely manner across the country.</b>				SADC PEMMO: Polling station staff should be recruited in a non-partisan manner by the EMB and should receive training well in advance of election day.	<b>Goal 1:</b> <b>Specific objective 3: Efficiency and cost-effectiveness is increased through appropriate IT-infrastructure and training by 2014</b>	<i>Some of the training programs we have so far conducted are:</i> -TOT for Conflict Management -Training on Building Resources In Democracy Governance and Elections (BRIDGE) Modules The commission is also rolling out a countrywide Geographical Positioning System (GPS) Project on all registration/polling centres with	

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								<i>assistance from EU.</i>	
12	3 (v) improve preparatory work, particularly to ensure careful checking of information on ballot papers, proper procurement arrangements and the efficient collection of sensitive materials after election day; (vi) develop polling station forms that are easy to use, for example with carbon copies and serial numbers.	<b>Design a secure results system to ensure the integrity and reliability in the collection, aggregation and publication of results.</b>				Good Commonwealth Electoral Practice, 1997: Appropriate steps should to be taken to ensure the security of the ballot papers, the ballot boxes, and all other polling equipment at all stages.	<b>Goal 4: Strategic Goal No. 5: Transmission and announcement of results, complaints handling Credibility of results' transmission and announcement enhanced by 2014</b>	<i>The Commission acknowledges this observation and its recommendation. In view of the complexity of Results Management in the Tripartite Elections, the 2012 - 2017 Strategic Plan under Strategic Pillar No 3 has a Strategic Goal No 5 which looks at establishing an adequate and reliable results system.</i>	<b>Allow parallel vote count</b>
13	(vii) introduce necessary reconciliation and ballot security procedures. These should include a requirement for voters to mark the voters' roll upon receipt of a ballot paper, the stamping and/or signing of ballots upon issue, and a comparison of the total number of people marked as having received a ballot paper against the number of ballot papers issued; (viii) swiftly publish results broken down by	<b>Review electoral services and information technology departments of the Electoral Commission in respect to the system employed for the collection of the final results. Adequate training for staff responsible in the field for aggregation of results should be provided and more resources available to enable them to carry out their work.</b>				SADC PEMMO: Government must adequately fund the EMB in order for it to deliver a credible and legitimate election. The EMB must promote financial sustainability and cost-effective management of elections. The size of the EMB should be manageable to ensure the efficient, effective, consensual and financially sustainable administration of elections.	<b>Strategic Goal 1: Specific objective 3: Specific Activities:</b> - <b>Provide computers, internal networking and internet connectivity to all MEC offices from Headquarters through to District offices</b> - <b>Organise systematic IT training for members of staff on use of modern information technology such as skype as a means of internal communication</b>	<i>The Commission is nonetheless reviewing its system to come up with means of electronic transfer of results. In this regard, the Commission welcomes any financial assistance from cooperating partners towards alleviating this problem.</i>	<b>Allow parallel vote count</b>

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	polling station as they are announced, including on the internet.								
<b>Voter Registration</b>									
14	2 Establish civil register. Regulate procedure of making changes to the voter. Facilitate address changes..	<b>Review voter register and registration procedures.</b> <b>Increase the display period of the register.</b> <b>Consider permanent registration.</b> <b>Provide political parties with copies of the register well in advance of elections, together with copies of all special voter lists at regional and national levels.</b> <b>Display special voter lists at polling stations.</b>	Rectification of irregularities identified in the voters' register and continuous updating of this register.	The voter register needs to be audited and cleaned, resulting in a further upgrading of the list. Whilst the 2009 voter register may be an improvement on the 2004 register, it clearly still contains errors.	Extensive review of the voters roll <input type="checkbox"/> National Identity system to be put in place	UN ICCPR: article 2(2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant. SADC PEMMO: Eligible voters should be provided with continuous and accessible voter registration.	<b>Goal 4:</b> <b>Specific objective: To have an accurate, current and relevant voters' register in place by 2014</b> <b>Specific activities:</b> - Engage an expert to comprehensively review the current voter registration system and the voters' roll by end 2012 - Organization of stakeholders' meeting to deliberate on the results of the review - Based on the recommendations from the review, adopt and introduce an appropriate cost effective registration system - Explore synergies with other institutions for improving the voter registration system (national registration bureau, LG Minister and traditional leaders, etc. ) <input type="checkbox"/> Encourage all eligible voters to exercise their rights through registration	<i>Once again the Commission acknowledges this observation and recommendation put forward to have an accurate register. Our Electoral Laws provide for five days of public exhibition of roll for inspection. However with the Tripartite Elections in 2014 a more reliable register is indeed required. In this regard the Commission resolved to discard the current registration system where data is collected manually from the field to a Biometric registration system in order to have credible Voters Roll to be in line with all other SADC EMBs all of whom are on Biometric Registration System. The Commission has</i>	<b>Evaluate OMR system and current voter list by expert consultant in December 2012, and invite DPs to second international expert to partake in evaluation</b> <b>Consultation with Ministry of Home Affairs on dual use of new system for the purpose of national ID</b> <b>Looking into leasing options</b>
15	2 Establish firm yet sufficient voter registration and verification timeframes..	<b>Regulate procedures for challenges and complaints regarding voter registration.</b> <b>Set deadlines.</b> <b>Designate authority to deal with these complaints.</b> <b>Establish a body such as a District Registration Review Committee to deal with complaints, whose decision can be appealed to Magistrate Courts.</b>		Review the procedures for registration, ensuring registration officials are properly trained, the technical procedures are suitable and the equipment is reliable.	<input type="checkbox"/> A competent body must be established at the district level to deal with complaints	UN Human Rights Committee, General Comment 9, art. 9. The right to an effective remedy need not be interpreted as always requiring a judicial remedy. Administrative remedies will, in many cases, be adequate and those living within the jurisdiction of a State party have a legitimate expectation, based on the principle of good faith, that all administrative authorities will			

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						take account of the requirements of the Covenant in their decision-making. Any such administrative remedies should be accessible, affordable, timely and effective.		<i>already floated an advert for an independent assessor to look at the existing register and advise us on how we proceed.</i>	
<b>Political Parties and Candidates</b>									
16	<p>7. Require Political parties to declare the use and source of funding.</p> <p>Introduce campaign fundraising and spending caps.</p> <p>Train political parties and candidates in (i) policy development, (ii) manifesto preparation, (iii) communication with voters, (iv) the role and rights of monitors (for example, on complaint mechanisms).</p>	<p><b>The national capacity of political parties needs to be strengthened. Consideration should be given to provisions on state funding not only for the sustainability of political parties but also for campaign funding that guarantees a more level playing field and a reduction of dependency on contributions. Clear and transparent rules for the distribution and accountability of such funding should be established.</b></p>	<p>Political parties in Malawi have demonstrated a lack of commitment to internal democracy within their organisations. This lack of intraparty democracy has been most visible in the choice of office bearers and the selection of party candidates. This has affected the institutionalisation of parties, leading to an unstable party system characterised by frequent fragmentation. The democratisation of political parties,</p>	<p>Undertake capacity building for media and parliamentary political parties to increase understanding of electoral processes and specifically the role of an independent media as a pillar of the democratic process.</p>	<p>Introduce ceilings for campaign Auditing of political parties Declaration of finances for political campaign Abuse of government resources during campaign period should be put to check and that political parties should be accountable for the funds they use during the campaign period</p>	<p>SADC PEMMO: The use of public assets and funds for party political purposes should be regulated in order to level the playing field for political competition.</p> <ul style="list-style-type: none"> <li>The use of public resources for political campaigns and political party activities should generally be avoided but, if permitted, access thereto must be equitable and be paid for, and conditions for such access and payment must be clearly provided for in the law. Political parties and candidates should account to the EMB for the use of such resources.</li> </ul>	<p><b>Goal 3:</b> <b>Specific Objective No. 3: Capacity of MEC to enforce laws and regulations strengthened by 2013</b> <b>Specific activities:</b></p> <ul style="list-style-type: none"> <li>- Develop regulations that augment the electoral law to enhance the level playing field</li> <li>- Compile a guide on what MEC can do to punish violation of electoral laws</li> <li>- Review and draw lessons from past elections with regard to leveling play field</li> <li>- Raise public awareness on code of conduct for electoral contestants</li> <li>- Engage with relevant authorities to ensure implementation of judgements passed in respect of violation of electoral laws and regulations</li> </ul>	<p><i>The Commission acknowledges this observation and its recommendation as it is MEC's responsibility to make sure the playing field is levelled for all contestants. However as MEC, there is no legal framework to reinforce this. In the Strategic Plan, the Commission has provided for proposal for the introduction of a campaign financing law and develops regulations that augment the electoral law to enhance the level playing field for political parties and candidates.</i></p>	

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			through the adoption of fair competitive primary election rules, will go a long way towards consolidating democratic development in the country.						
<b>Campaign Environment</b>									
17		<p>The system for campaign spending should be reviewed as it is inadequate. Consideration should be given to placing a ceiling on spending and introducing an appropriate and transparent system for public accountability in campaign spending.</p> <p>The political parties should submit accounts of their donations and spending on a regular basis to a relevant authority for the duration of the campaign period ensuring maximum transparency.</p>			<p>The role of the police during elections should be seriously looked into. The police should not be used by ruling parties to intimidate people</p>	<p>UN Human Rights Committee General Comment 25, art 19: Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind. Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented.</p>	<p><b>Goal 2</b>  <b>Specific objective 2: A fair campaign process conducted by May 2014</b>  <b>Specific activities:</b>  - Develop and disseminate guidelines for traditional leaders and Council's Chief Executives/ and DCs during campaigns  - Strengthen the capacity of MPLCs in conflict management  - MPLCs to publicize schedules of campaign meetings  -Develop registers for DCs to record notifications for campaign meetings  - Review, consult on and determine candidate nomination fees  - To propose the introduction of a campaign financing law</p>	<p><i>The Commission acknowledges this observation and its recommendation too. However, since there is no law to enable MEC enforce this, other authorities like CMD could be in a position to ably regulate this.</i></p>	<p>JANUARY ROUNDTABLE RECOMMENDATION 2</p> <p>Section 57 of the PPEA and section 41 of LGEA should be amended to state unambiguously that the two-month period of campaigning is designated as such only for the purposes of mandating the EC to regulate campaigning and does not campaigning before the commencement of the period illegal.</p>

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<b>Voter Education</b>									
18	4. Civic and voter education should be conducted by state bodies (such as education and public information services) and civil society organisations. The police and National Intelligence Bureau (NIB) should not be involved in such work. Increase efforts to target women, young people, the illiterate and other vulnerable groups, particularly in remote areas. Increase public awareness of political accountability.	<b>More extensive and permanent voter and civic education should be introduced throughout the year to inform and educate voters of both their rights as voters as well as registration and voting procedures. The responsible institutions should also ensure this reaches grass roots level and the authorities provide an adequate budget for these activities to be undertaken.</b>		There needs to be increased civic education and a raising of voter awareness of the electoral process. There were some civic and voter education programmes for this election, but they seemed to be too little too late, with polling station officials having to carefully explain the process to many voters.	Voter education should be continuous  True reflection of election results and this has to be done by domestic election observers	UN Human Rights Committee General Comment 25, article 11: Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.	<b>Specific objective 1: Quality and delivery of civic and voter education improved by end of 2013</b> <b>Specific activities:</b> - Based on existing baseline surveys, identify and assess the existing civic and voter education providers with respect to their capacity and quality (KAB/KAP-assessment, knowledge, attitude, behaviour / perception) etc. see Strategic Plan	<i>The Commission acknowledges the observation of having extensive and permanent Voter and Civic Education throughout the year. In the Strategic Plan, the Strategic Goal is "to maintain a high level of public participation in the electoral processes through empowerment, awareness, knowledge and skills."</i>	<b>Consult civil society in Law Review process</b>
<b>The Media Sector</b>									
19	5. Action against the media should only be taken by the licensing authority and MACRA, and not by the police. Composition of management boards of MBC and TVM should ensure the confidence of election stakeholders.	<b>The provisions of the Communications Act should be clarified to ensure a satisfactory regulatory environment for the broadcast media, whilst respecting the principle of freedom of speech. It should set out programme standards and broadcaster obligations as well as provisions relating to media coverage of elections.</b>				ACP-EU Joint Parliamentary Assembly Resolution on Challenges for the Future of Democracy and Respecting Constitutional order in ACP and EU Countries: article 7. Stresses that a society cannot be truly democratic without independent, free and plural media;	<b>Goal 2 (Legal Framework)</b> <b>Strategic Goal No. 3: Level Playing Field:</b> <b>Create a conducive environment in which all stakeholders are treated equally and have an unhindered access in the electoral processes.</b> <b>Specific objective 1: A platform for electoral contestants to market their agendas created by the end</b>	<i>The Commission acknowledged this observation and its recommendation. This problem is a deep rooted one in the media industry. In the Strategic Plan, the Commission has included this in Strategic Pillar No 1 under Strategic Goal 3 which is 'to create</i>	Task Force to liaise with MACRA to ensure that review of the Communications Act keeps up with Electoral Law Reform for 2014, and to vest MACRA with commensurate power of sanction
20	5. Provide clear	<b>Legally clarify equal access to</b>	4.4 State media:	Media:	Permanent	African Union Charter on			



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instructions for the allocation of equitable free airtime on public media for political contestants during the campaign period. Coverage of the president by public electronic media should be regulated during the campaign period. Political debate and discussion programmes should be increased, particularly during the campaign period.	<b>state-owned media for presidential candidates and political parties that takes into account the parliamentary representation and/or number of constituency seats political parties have candidates contesting.</b>	Successive incumbent governments have tended to monopolise the state owned media to their advantage. Malawian authorities need to align the country with the best regional electoral practices by allowing all the contesting parties and candidates to have equitable access to the tax payer funded media and to allow the electorate to make informed choices.	Strengthen legislative processes to ensure MBC and TVM abide by the existing laws and the code it has committed to. Malawi could consider several options to achieve this, including: a) a separate statutory body with the power to protect media from government interference and to bring errant media to account, such as exists in Ghana and South Africa; or b) strengthen MEC's media and compliance responsibilities so MEC can enforce existing laws and the code, including through court interdicts where	solution to the problem at MBC and other state media to protect managers at such institutions	Democracy, Elections and Governance: Art 17 (3) To this end, State Parties shall: Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections. SADC PEMMO: All contesting parties and candidates should have equal access to the public media. NATIONAL FRAMEWORK PPEA Section 63 (i) to "...monitor such news broadcasts and ensure equal news coverage of campaigning by all political parties". They are also responsible to MACRA, as all broadcasters, under the terms of their licences and the Communications Act Code of Conduct	<b>of 2013</b> <b>Specific activities:</b> - Engage MACRA to resuscitate the media monitoring - Publish MACRA reports on the media monitoring - Regularly engage with public media managers and MACRA in giving equal access to electoral processes - Collaborate with relevant stakeholders in organizing political debates for electoral contestants <b>Specific Objective No. 3: Capacity of MEC to enforce laws and regulations strengthened by 2013</b> <b>Specific activities:</b> - Develop regulations that augment the electoral law to enhance the level playing field - Compile a guide on what MEC can do to punish violation of electoral laws - Review and draw lessons from past elections with regard to leveling play field - Raise public awareness on code of conduct for electoral contestants - Engage with relevant authorities to ensure implementation of	<b>a conducive environment in which all stakeholders are treated equally and have an unhindered access in electoral processes.</b>  <i>The Commission acknowledges this observation and recommendation as well. However MEC strives to provide equal coverage for all contestants without looking at parliamentary representation. As such, MEC will endeavour to achieve fair coverage for all candidates through interaction with media houses and buying airtime for contesting candidates to access airwaves in the media. This is best done by what has been explained on 19. MEC augments this process of fair coverage by recruiting stringers (Election Reporters). In 2009,</i>	Maintain the concept of equitable treatment by private media  MEC to consider reinforcing its media code-of-conduct by promulgating it as regulation  Hold MEC workshops on code of conduct for media during elections with Task Force to shape content  Media Council and other stakeholders ensure media abide by code-of-conduct when covering elections  Enable MBC to recognize its role as a public broadcaster  Capacitate MBC with adequate budget and equipment to provide coverage

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21	5. The roles of MACRA and MEC in regulating the media during an election campaign should be clarified and clearly defined to remove the possibility of a power vacuum or clashes between the two. Issue full licence to TVM.	<b>An independent regulatory authority should be established for the audiovisual sector. This regulatory authority's functions and mandate should be clearly defined and it should have an adequately funded secretariat to undertake management responsibilities. It should also have statutory powers for it to adequately deal with complaints against programming and ensure editorial standards are maintained.</b>		necessary.	Permanent solution to the problem at MBC and other state media to protect managers at such institutions	UN Human Rights Committee, General Comment 9, art. 9. The right to an effective remedy need not be interpreted as always requiring a judicial remedy. Administrative remedies will, in many cases, be adequate and those living within the jurisdiction of a State party have a legitimate expectation, based on the principle of good faith, that all administrative authorities will take account of the requirements of the Covenant in their decision-making. Any such administrative remedies should be accessible, affordable, timely and effective.	<b>judgments passed in respect of violation of electoral laws and regulations</b>	<i>the Commission also used the Media Monitoring Unit (MMU) to monitor the fair coverage</i> <i>The Commission once again acknowledges this observation and recommendation. However, the Commission views this to be best done by MACRA. MEC will therefore need to engage MACRA to adhere to the laws that established it. MEC shall therefore network with MACRA in seeing the compliance of this. This will also be extended to internet facilities to ensure fair coverage.</i> <i>The Commission acknowledges this and has planned to work with these media houses to see to it that all mechanisms and code of conduct become regulations so that they are enforced.</i>	of the entire political spectrum MEC to organize debate for Presidential candidates MEC to purchase equal broadcast airtime for presidential candidates in 2014 at favourable rates in order to level the playing field MEC to work with MACRA under MoU to enhance enforcement of legal framework Task Force to ascertain that MoU clarifies obligation to monitor broadcast media during elections from MEC to MACRA Make MACRA directly accountable to Parliament Establish Task Force to consolidate review process as soon
22		<b>A regulatory structure should be established to ensure that the Malawi Broadcasting Corporation and Television Malawi fulfil their obligations as public service broadcasters. Mechanisms should be set up to ensure the independence and public accountability of state owned media and a clear monitoring mechanism introduced to guarantee impartiality and balance is maintained.</b>				African Union Charter on Democracy, Elections and Governance: Art 17 (3) To this end, State Parties shall: Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections. SADC PEMMO: All contesting parties and candidates should have equal access to the public media.			

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								As the situation is now, they get out scot-free as codes of conduct are not legally binding to discipline them when they are biased in their media coverage.	as possible: MLGRD; Malawi Police; MESN; MoJ; MHRC; Law Commission; Parliament; MEC; CMD; MoF; Political Parties; MISA Malawi; Media Council; MACRA; PAC
<b>Promote the Participation of Women and Minorities</b>									
23	1. Introduce gender quota. 9. Political parties should make serious efforts to (i) ensure that women are represented in senior positions, and (ii) select more women candidates in order to reach the SADC target of 30% female representation in parliament. MEC should take steps to increase the representation of women in all levels of the election administration.	<b>A stronger position for women and minorities in parliament, governance and political parties should be encouraged through affirmative action within the political parties themselves. Initiatives to encourage the representation of women in public and political life should also be considered and the Electoral Commission also introduce a pro-active gender policy to ensure women take up key positions.</b>			The 50/50 campaign should proceed with no interventions from government and that the quota system on women representation in parliament should be implemented	AU Protocol on the Rights of Women in Africa: 1. States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that: a) women participate without any discrimination in all elections; b) women are represented equally at all levels with men in all electoral processes. SADC PEMMO: Composition of the EMB should be representative of the society, and the body should comprise at least 30% women.	<b>Pillar 4:</b> <b>Specific objective 1: Gender in all policies, processes and activities is mainstreamed.</b> <b>Specific activities:</b> <b>- Undertake a gender audit of all electoral laws, policies, guidelines and procedures to ensure that they engendered -Develop a gender policy for MEC - Organize gender awareness training for all members of staff -Appoint a gender focal person</b>	<i>The Commission acknowledges this observation and its recommendations. As a matter of fact, MEC operates on an equal gender policy especially in key positions. This is to ensure that as many women as possible take up these key positions. You may wish to know that the Commission has also taken the initiative to include gender issues in its 2012-2017 Strategic Plan.</i>	
<b>Civil Society and Domestic Observation</b>									
24	6. National Elections Consultative Forum	<b>The active position of civil society in Malawi should</b>			Specific activities to	AU African Charter on Democracy, Elections and	<b>Specific objective: Election observation / monitoring</b>	Section 101 of the PPEA should be	<b>Provide the right to national</b>

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<p>(NECOF) meetings should be held on a regular basis during the pre-election period and recommendations emerging from the meetings properly implemented.</p> <p>Multi-Party Liaison Committee meetings should be held more regularly in the lead up to elections, and should include the participation of independent candidates.</p> <p>8. Train and support civil society to strengthen capacity to conduct civic and voter education and election observation, including parallel vote tabulation.</p> <p>Sufficient resources should be provided to enable civil society to conduct civic and voter education and election observation.</p>	<p><b>continue to be supported in respect to their election related work. Civil society organisations should continue to work together in observing elections to ensure coordination between organisations. The Electoral Commission should also actively engage with these groups to ensure their maximum potential is realised.</b></p>			<p>advocate for implementation of laws in parliament</p> <p>Actions should be backed by law to prevent prolonged debates on election issues</p> <p>Action plan produced as we come up with our resolutions and we should know who is responsible for what in our actions</p>	<p>Governance: Article 22 State Parties shall create a conducive environment for independent and impartial national monitoring or observation mechanisms.</p>	<p><b>systematically and comprehensively conducted by end of 2014</b></p> <p><b>Specific activities:</b></p> <ul style="list-style-type: none"> <li>- Consult, develop, publish and circulate guidelines and code of conduct for domestic and international observers and domestic monitors</li> <li>- Review accreditation mechanisms for election observers (domestic &amp; international)</li> <li>- Provide information seminars and induction for observer groups - Prepare briefing kits for election observers / monitors - Engage election observer groups at an early stage for even deployment</li> <li>- Publicize online reports of domestic and international observers</li> <li>- Organise a post-election stakeholder workshop to assess the extent to which the electoral process complied with international best practice</li> <li>- Provide information seminars for political party agents (ToT)</li> <li>- Establish a desk office responsible for election observers (temporary)</li> </ul>	<p>amended to include local observers and section 103 should be amended to stipulate that observation of parliamentary and presidential elections begins at the start of registration process.</p>	<p><b>election observation in PPEA in harmonisation with LGEA</b></p>

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							<ul style="list-style-type: none"> <li>- Review accreditation fees for international observers, and adhere to international best-practise</li> <li>- Review and consult on accreditation of media to monitor election process</li> </ul>		
<b>Complaints and Appeals</b>									
25		<p><b>The timeframe to file a petition to the High Court challenging the results of elections should be realistic and effective. The Parliamentary and Presidential Elections Act of 1993 should be amended to include a timeframe of between 21 or 30 days after the announcement of results for petitions to be submitted. Furthermore, deadlines for conclusions to election petitions should be implemented providing an effective and timely remedy to petitioners.</b></p>	<p>In addition to the MPLCs, the MEC is advised to introduce community-based conflict management mechanisms at national, regional and local levels that will address not only problems relating to parties and candidates but also those affecting the electorate as a whole, throughout the electoral process.</p>			<p>UN Human Rights Committee, General Comment 9, art. 9. The right to an effective remedy need not be interpreted as always requiring a judicial remedy. Administrative remedies will, in many cases, be adequate and those living within the jurisdiction of a State party have a legitimate expectation, based on the principle of good faith, that all administrative authorities will take account of the requirements of the Covenant in their decision-making. Any such administrative remedies should be accessible, affordable, timely and effective.</p>	<p><b>Goal 5: Propose an amendment of the legislation governing the complaints and appeals procedures to make it realistic (adequate time for proper verification of complaints to allow for analysis of complaints before announcement of official election results), see also Pillar 1, Strategic Goal No. 2, Legal Framework</b></p>	<p>The PPEA must be amended to introduce a provision that stipulates that the successful candidate in a presidential election must be sworn in only after the expiry of a specified number of days after the announcement of the results of the election. The number of days must be adequate for the EC to address any irregularities and complaints</p>	<p>January 2012 roundtable Section100 should be amended to restrict access to the High Court by petitioners only in the case of appeals against decisions of the EC and to require all complaints to be handled in the first instance by the EC. Further participants recommended that consideration be given to establishing an Electoral Court with exclusive jurisdiction over election-related cases and the promulgation of regulations regulating the submission and</p>

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									EC's handling of election complaints.
<b>Polling, Counting and Publication of the Results</b>									
26		There should be an increase in the number of polling stations in higher population density areas. A maximum ceiling of 600 voters should be placed on the number of voters registered at an individual polling station to ensure regular voting patterns and less crowding.		When dividing Polling Station Streams into alphabetical divisions, it is important to take account of the number of voters in each stream, to provide for a more balanced distribution of voters wherever possible.	The decision to reduce wards was done without consultation and the Malawi Electoral Commission should revisit this decision	SADC PEMMO: To ensure easier access, minimise waiting time and enhance efficiency there should be as many polling stations as population density and settlement patterns demand.		<i>The Commission looks at this observation and its recommendations as very valid especially in view of having Tripartite Elections in 2014. The current threshold for a polling stream is 1200 but we are looking at possibilities of reducing this number. This will of course have a bearing on the budget as it will provide for more streams and consequently more resources required both material, financial and staff. The Electoral Law Review consultation that was conducted also highlighted this and it is the hope of the Commission that necessary amendments will be made to accommodate this.</i>	
27	10.	More training conducted well		Conduct „real-	The role of the	SADC PEMMO Polling station	<b>Goal 2:</b>	<i>The Commission has</i>	

	EU EOM 2004 Recommendation	EU EOM 2009 Recommendation	EISA 2009 Recommendation	Commonwealth 2009 Recs	MESN 2012 Roundtable	Malawi's Int'l or Regional Obligations and Commitments	MEC Strategic Plan	MEC January 2012 Roundtable Recs	Roundtable Points of Consensus*
	Police should be properly trained on the role they should play on election day, specifically that they should not perform the tasks of polling.	<b>in advance of election day should be planned by the Electoral Commission. A permanent register of polling officials should be maintained with regular training sessions conducted throughout the country. This training should include polling officials, party agents, observers and security forces. It should also clearly outline the roles and responsibilities of the different stakeholders in respect to the election process.</b>		time" training on the tabulation and transmission of results. MEC requires adequate resources for its task. This is particularly pertinent with regard to transportation and communication facilities.	police during elections should be seriously looked into. The police should not be used by ruling parties to intimidate people	staff should be recruited in a non-partisan manner by the EMB and should receive training well in advance of election day. Selection criteria for the recruitment of polling staff and performance management processes should be institutionalised by the EMB.	<b>Specific objective 1: Security policy for the electoral process provided by July 2013</b> <b>Specific activities:</b> <b>- Review security policy for the electoral process together with security forces and set parameters for new policy</b> <b>-Conduct refresher trainings for police at registration and polling stations</b>	<i>taken note of this observation and recommendation. Currently when conducting our trainings, polling officials, party agents and security officers are trained together with our staff. The Commission looks at this as an area where if adequate funds are available, the Commission would utilize the funds to enhance those trainings. At the moment when we train party agents, expenses are met by their parties hence we experience low patronage from parties. The Commission has a permanent data for its entire staff from registration to polling. This started after the 2009 Elections.</i>	
28	3 Polling stations should close at 16:00 rather than 18:00 to ensure that counting can be undertaken in daylight.	<b>Consideration should be given to adjusting the closing time of polling stations to ensure that counting can be conducted in a suitable environment with adequate lighting and visibility.</b>				SADC PEMMO: If the voting station is to function effectively as a counting station it must have adequate lighting, communication systems and security.		Section 80 of the PPEA and section 64 of the LGEA should be amended to stipulate that voting will close at 4pm,	<b>Consider revising polling hours</b>

	EU EOM 2004 Recommendation	EU EOM 2009 Recommendation	EISA 2009 Recommendation	Commonwealth 2009 Recs	MESN 2012 Roundtable	Malawi's Int'l or Regional Obligations and Commitments	MEC Strategic Plan	MEC January 2012 Roundtable Recs	Roundtable Points of Consensus*
		This is particularly the case for polling stations that are situated outside in the open air.						provided that the period may be extended if by 4pm there are voters who are waiting in line to vote.	
29		The layout of polling stations should be redesigned to reduce confusion and crowding. A design based on ease of access, voter flows and security as well as transparency should be envisaged to ensure improvements in access and understanding of polling station layouts.		Improve signage and control of voter flow in polling stations, by use of coloured tape or rope as a guide for voters to indicate the flow of the voting process in the polling station and improved signs for identifying types of ballot box.		SADC PEMMO: Polling stations should be situated in venues that are accessible to all voters, especially the elderly and the people with disabilities. (...) Polling stations should be public places, such as schools, tents, mobile vehicles that are neutral.		<i>The Commission has taken note of the observation and recommendation. We have a layout flow provided for in our polling manuals. However, the Commission will review the layout to adequately accommodate ease of access, voter flows and security as well as transparency.</i>	
30		Increased visibility material should be made available for identifying polling officials, party agents and observers at polling stations. Furthermore, polling stations that are located in the open air should receive some form of temporary cover in case of rainfall.				UN Human Rights Committee General Comment 25: art 11 Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods,		Section 70 of the PPEA and section 54 of the LGEA should be amended to provide room for EC to provide items that are not included in the current lists but which may be required for the efficient conduct of polling and counting of votes.	



	EU EOM 2004 Recommendation	EU EOM 2009 Recommendation	EISA 2009 Recommendation	Commonwealth 2009 Recs	MESN 2012 Roundtable	Malawi's Int'l or Regional Obligations and Commitments	MEC Strategic Plan	MEC January 2012 Roundtable Recs	Roundtable Points of Consensus*
						such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice.			
31		<b>Safeguard the accuracy of the aggregation process. Forms for closing and tallying should be simplified and polling staff should receive advanced training in handling the forms, handover of documents and data entry and these should be simplified as they are overly complex in design. The systems used should be thoroughly tested before any further elections and staff receive training in how to handle the equipment.</b>		Review the transportation of results from polling station to the RO; the tabulation of results at the RO; the transmission of results from District to MEC; and the inputting of results at the national level.	MEC should simplify forms for transmission of election results	UN, Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections, para. 112: Counting should be open to official observation by concerned parties. All issued, unissued and damaged ballot papers must be systematically accounted for. The processes for counting votes, verification, reporting of results and retention of official materials must be secure and fair. Re-count procedures should be available in case of questionable results.	<b>Goal 5: Specific objective: Results' transmission and announcement processes are improved and well known to all stakeholders by March 2014</b> <b>Specific activities:</b> <b>-Develop regulations for results transmission from polling stations to MEC headquarters and make them available</b> <b>- Conduct pilots for the IT results transmission, and improve on the current results transmission system</b> <b>- Communicate clearly on procedures of announcement of results</b>	Section 90 of the PPEA and section 74 of the LGEA should be amended to require that the collection of the unused ballot papers if done under conditions of absolute security against loss, tampering or interference.	

## EU EFM Tool to Enhance MEC Task Force Amendment Drafting Workflow

Law Commission Review 2007	MEC Review	Principles for Election Management and Monitoring in the SADC Region s3.3:	Constitution	Electoral Commission Act 1998	2009 International Observer Recommendations	Point of Consensus to yield to Proposed Amendment Text
<p>The composition should not be a representation of political parties but non partisan persons;</p> <p>The nomination procedure must be done by an independent selection panel comprising of a Judge, Law Commissioner, Civil Society representative, Chairperson of Human Rights Commission and representative of the University of Malawi.</p> <p>_____</p> <p>The EC must be answerable to Parliament not to the President</p> <p>Section 6 of the EC Act to be <b>amended</b>.</p>	<p>Section 4(1) of the Electoral Commission Act should be amended to require the President to take full account of the views of political parties represented in the National Assembly in appointing members of the EC.</p> <p>Section 75(3)(a) of the Constitution should not be amended to alter the term of office of Electoral Commissioners.</p> <p>_____</p> <p>The Constitution should be amended to add a provision under Chapter VII which expressly extends all powers of the EC to cover local government elections and to relocate sections 147 and 148 to that Chapter.</p>	<p>It is recommended that at least one of the commissioners should be a person who holds or has held high judicial office (a high court or supreme court judge). A percentage of EMB commissioners should be full-time members in order to ensure organisational and institutional continuity.</p> <p>_____</p> <p>The <b>EMB should be accountable to the National Assembly/Parliament</b> through, for example, the Public Accounts Committee rather than a ministry, and should be required to report to the national legislature annually on its activities.</p>	<p>75 (1)</p> <p>There shall be an Electoral Commission which shall consist of a Chairman who shall be a Judge nominated in that behalf by the Judicial Service Commission and such other members, not being less than six, as may be appointed in accordance with an Act of Parliament.</p> <p>(4) The Electoral Commission shall exercise its powers, functions and duties under this section independent of any direction or interference by other authority or any person.</p>	<p>4.</p> <p>The President shall, subject to the <u>Constitution</u> and in <u>consultation</u> with the leaders of the political parties represented in the National Assembly, appoint suitably qualified persons to be members of the Commission on such terms and conditions as the Public Appointments Committee of Parliament shall determine.</p> <p>6.</p> <p>Provided that for the purpose only of accountability the Commission shall be answerable, and <b>report directly to the President</b> on the overall fulfilment of the functions and powers of the Commission.</p> <p>22.</p> <p>The Minister may, on the recommendation of the Commission, make regulations for the better carrying out of this Act.</p> <p><b>Which minister?</b></p> <p><b>Can MEC as an independent body not promulgate regulations without consent by the executive?*</b></p>	<p><b>2009 EU EOM Recommendation 8</b></p> <p>Review procedures for the selection of the Electoral Commission's Commissioners to increase transparency, by introducing an independent appointment panel.</p> <p>Set a two term limit.</p> <p><b>2009 EISA Recommendation</b></p> <p>The provision on the appointment of members of the MEC should be reviewed to guarantee its independence, transparency and professionalism.</p> <p>Regional trends and standards have been to appoint an independent electoral commission whose members are selected based on their expertise, integrity and political independence.</p> <p><b>2009 Commonwealth Recommendation:</b></p> <p>Ensure that the procedure for the nomination and appointment of the Electoral Commissioners results in public and political confidence in the national election management body.</p> <p>"Consultation" on the appointment of Commissioners is vague and does not guarantee an inclusive and transparent process. Involve parliament formally in the nomination of commissioners.</p>	<p><b>MEC should not be required to report to executive, but to Parliament</b></p> <p><b>Revisit delimitation criteria for wards (requires repeal of Electoral Commission Amendment Act 2010)</b></p>

\*The questions in yellow are the annotation by the mission and their aim was to inspire the discussion of the Task Force.

January 2012 MEC Law Review	November 2012 LAC Review or Int'l or Regional Obligation	Constitution or International Commitment	Applicable PPEA Provision	Applicable LGEA Provision	Points of Consensus to yield to Proposed Amendment Text
Section 6 of the LGEA and section 15 of the PPEA should be amended to unequivocally restrict eligibility to be registered as a voter to citizens and residents who have resided in Malawi for at least seven years in line with section 77(2) of the Constitution.	The Committee therefore recommends that section 6 of LGEA and section 15 of the PPEA should be amended to unequivocally restrict eligibility to be registered as a voter to <u>citizens and residents who have resided in Malawi for at least seven years</u> in line with section 77(2) of the Constitution.	77. (2) a person shall be qualified to be registered as a voter in a constituency if, and shall not be so qualified unless, at the date of the application for registration that person – (a) is a citizen of Malawi or, if not a citizen, has been ordinarily resident in the Republic for seven years;	15. Every citizen of Malawi residing in Malawi (...) shall be eligible to register as a voter in an election.	6. Any person residing in Malawi (...) shall be eligible to register as a voter in an election.	<b>Harmonise PPEA and LGEA with Constitution on seven-year resident eligibility</b>
Section 77(2)(b) of the Constitution should be amended to extend eligibility to every person aged at least 18 years on the date of polling in the election for which registration is applied.	The Committee felt that the two positions should be harmonized. The ideal scenario would of course be to amend the section 77(2)(b) and provide for date of voting (polling day) as the time when a person would qualify as a voter when that person turns eighteen.	77. (2) b has attained the age of eighteen years;	15. and who, on or before the polling day, shall have attained the age of eighteen years shall be eligible to register as a voter in an election.	6. and who, on or before the polling day, shall have attained the age of eighteen years shall be eligible to register as a voter in an election.	<b>Establish eligibility by age of 18 at or before polling day</b>
77(2)(c) the Constitution should be amended by replacing “was born” with “originates from”.		77 (2) c is ordinarily resident in that constituency or was born there or is employed or carries on a business there.	19. (16 of 1994) A person shall be registered as a voter in the area where he ordinarily resides or was born or is employed or carries on business.	10. A person shall be registered as a voter in the area where he ordinarily resides or was born or is employed or carries on business.	
	ICCPR art 14(1) All persons shall be equal before the courts and tribunals. In the determination (...) <u>of his rights and obligations in a suit at law</u> , everyone	40(3) Save as otherwise provided in this Constitution, every person shall have the right to vote 76. 3. Any person who has petitioned or	28. (4) The Commission shall <u>endeavour</u> to determine every complaint or <u>appeal</u> relating to registration of voters <u>before the polling day</u> and to remedy any confirmed irregularity. <u>Before closing of the voters list? Shall</u>	19. (4) The Commission shall <u>endeavour</u> to determine every complaint or <u>appeal</u> relating to registration of voters <u>before the polling day</u> and to remedy and confirmed irregularity.	

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	shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.	complained to the Electoral Commission shall have a right to appeal to the High Court against determinations made under subsections (2) (c) and (2) (d).	Endeavour or Shall?		
Section 73 of the PPEA and section 57 of the LGEA should be amended to provide for the making of regulations under the PPEA and LGEA respectively to provide for the specific manner in which the rights may be exercised and the remedies available to representatives of political parties and candidates whose rights are violated or threatened.		3. Any person who has petitioned or complained to the Electoral Commission shall have a right to appeal to the High Court against determinations made under subsections (2) (c) and (2) (d).	31. A voters register shall be open to inspection, for purposes of verifying the entries therein, by voters, representatives of political parties and international observers, and for this purpose the Commission shall make copies of voters registers and post them for inspection at appropriate public places made known to the public. How many days before eday? And for what period of time?	22. A voters register shall be open to inspection, for purposes of verifying the entries therein, by voters, representatives of political parties and observers, and for this purpose the Commission shall make copies of voters registers and post them for inspection at <u>appropriate</u> public places <u>made known</u> to the public. <u>How many days before eday? And for what period of time?</u>	
	To avoid any further conflicts between the LGEA and the Constitution, the Committee recommends that section 23 of the LGEA should be amended to provide for 5 years as tenure of office for councillors. The provision should read as follows: 23 (1) An election shall be held every five	147. "(5) Local government elections shall take place concurrently with general elections for members of the National Assembly as prescribed under section 67(1), and local government authorities shall stand dissolved on the 20 <sup>th</sup> day of March in the fifth year after their election.	32.(10 of 1998)(1) A general election shall be at such times as are required by the Constitution.	23. (1) An election shall be held every three years.	

January 2012 MEC Law Review	November 2012 LAC Review or Int'l or Regional Obligation	Constitution or International Commitment	Applicable PPEA Provision	Applicable LGEA Provision	Points of Consensus to yield to Proposed Amendment Text
	years				
The provisions should be amended to require the EC to publish the notice of an order issued for the holding of an election in not only the Gazette, but also mass media outlets.	ICCPR art 14(1) All persons shall be equal before the courts and tribunals. In the determination (...) <u>of his rights and obligations in a suit at law</u> , everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.	76. 3. Any person who has petitioned or complained to the Electoral Commission shall have a right to appeal to the High Court against determinations made under subsections (2) (c) and (2) (d).	36. (1) Whenever a general election or a by-election is to be held, the Commission shall issue an order, notice of which shall be published in the Gazette- (b) appointing the place, date and time for the receipt by the returning officer of the nominations of candidates, in respect of each such constituency; (2) The date appointed under subsection (1) (b) shall be not less than fourteen days after the publication of the order. (3) The period appointed under subsection (1) (c) during which a poll shall be taken shall commence <u>not less than fourteen days</u> after the nomination of candidates.	28. (1) Whenever an election or a by-election is to be held, the Commission shall issue an order, notice of which shall be published in the Gazette— (b) appointing the place, date and time for the receipt by the returning officer of the nominations of candidates, in respect of each such ward; (2) The date appointed under subsection (1) (b) shall be not less than fourteen days after the publication of the order. (3) The period appointed under subsection (1) (c) during which a poll shall be taken shall commence <u>not less than fourteen days</u> after the nomination of candidates.	
		40 (3) Save as otherwise provided in this Constitution, every person shall have the right to vote, to do so in secret and to stand for election for public office <u>(not offices)</u> . 51. (1) Notwithstanding subsection (1), no person shall be qualified to be nominated or elected as a member of Parliament who (e) holds, or acts, in any	37. (6) No candidate may be nominated for election in more than one constituency or, in the case of a by-election, while he is a member of the National Assembly.	29. (6) No candidate may be nominated for election in more than one ward or, in the case of a by-election, while he is a councillor.	<b>Eliminate multiple candidacies between MP and Local Councillors</b>

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		public office or appointment (...)			
			38. (c) evidence that he is registered as a voter <u>in any constituency</u> .	30. (c) evidence that he is registered as a voter. <b>Could include future overseas voters</b>	
		76. 3. Any person who has petitioned or complained to the Electoral Commission shall have a right to appeal to the High Court against determinations made under subsections (2) (c) and (2) (d).	(2) The returning officer shall, <u>if the candidate or his election representative so requests</u> , examine the nomination paper and supporting documents of the candidate before they are tendered and advise the candidate or his election representative whether in his <u>opinion</u> they are in order. <b>Returning officer has discretion to advise candidates or not.</b>	(2) The returning officer shall, <u>if the candidate or his election representative so requests</u> , examine the nomination paper and supporting documents of the candidate before they are tendered and advise the candidate or his election representative whether in his <u>opinion</u> they are in order. <b>Returning officer has discretion to advise candidates or not.</b>	
			39. (e) that the evidence delivered to the returning officer under section 37 (3) is <b>(PHRASE INCOMPLETE)</b>	31. (e) that the evidence delivered to the returning officer under section 29 (3) is insufficient.	
Section 38(3) of the PPEA and s.30(3) of the LGEA should be amended to empower returning officers to declare defective nominations to be invalid, at the earliest opportunity, while allowing the prospective nominee in question a reasonable period of time in which to rectify the defects in the nomination before the expiry of the registration period.	EU EOM 2009 Recommendation 1 Align electoral timeframes relating to the dissolution of parliament, nomination of candidates, campaign period and election day regarding incumbent members of parliament to guarantee legal certainty.	<b>UN ICCPR Article 2(3)(a)</b> ensure that any person whose rights or freedoms are herein recognized as violated shall have an <b>effective remedy</b> , not withstanding that the violation has been committed by persons acting in an official capacity; (c) to ensure that the competent authorities shall enforce such remedies when granted.	40. the returning officer shall <u>forthwith</u> notify such candidate or his election representative giving the reasons for such opinion, and, if so requested by the candidate or his election representative, the returning officer shall draw up and sign a statement of the facts and his opinion based thereon and transmit it, together with the nomination paper and any certificate or affidavit which has been lodged with such nomination paper, to the Registrar of the High Court for hearing and decision by the High Court <u>at the earliest opportunity</u> ;	32. the returning officer shall <u>forthwith</u> notify such candidate or his election representative giving the reasons for such opinion, and, if so requested by the candidate or his election representative, the returning officer shall draw up and sign a statement of the facts and his opinion based thereon and transmit it, together with the nomination paper and any certificate or affidavit which has been lodged with such nomination papers, to the Registrar of the High Court for hearing and decision by the High Court at the <u>earliest opportunity</u> ;	<b>Address ballot proofing/nomination timeline</b>

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Section 45(1) of the PPEA and s.37(1) of the LGEA should be amended to require that the EC consult stakeholders on the appropriate amount of the deposit payable, to require that the EC announce the amount of deposit required at such a time as to provide candidates with sufficient time to raise the required necessary funds and to provide that in both local government and general elections deposits should only be refunded to those who win at least 5% of the valid votes in the election in which they contest.			45. (1) At the same time as the nomination paper for a candidate is lodged, there shall be deposited with the returning officer by or on behalf of the person nominated, such sum as may be fixed by the Commission. <b>When?</b>	37. (1) At the same time as the nomination paper for a candidate is lodged, there shall be deposited with the returning officer by or on behalf of the person nominated, such sum as <b>may</b> be fixed by the Commission. <b>When?</b>	
			45. (2) If a poll takes place for the constituency concerned, the sum deposited under subsection (1) shall be refundable to the payee, whether the candidate in respect of whom the sum was deposited is or is not elected in the poll, unless the number of valid votes cast for an unsuccessful candidate is <b><u>less than five per cent of the total valid votes</u></b> cast in the constituency in which case such sum shall be paid into the Consolidated Fund. <b>Deadline for refund?</b>	37 (2) If a poll takes place for the ward concerned, the sum deposited under subsection (1) shall, in the case of a candidate <b><u>who has lost</u></b> , be forfeited. <b>Deadline for refund?</b>	
Section 46(1) of the PPEA and section 38(1) of the LGEA should be amended to permit the EC not to delete names of candidates from ballot papers if they withdraw after the printing of ballot papers and shortly before polling day.			PPEA <b><u>46. and 52</u></b> (1) Subject to this section, a duly nominated candidate for elections for a constituency may withdraw his nomination <b><u>at any time</u></b> before the polling day. <b>Before ballot proofing?</b>	38. (1) Subject to this section, a duly nominated candidate for election for a ward may withdraw his nomination at any time before the polling day. <b>Before ballot proofing?</b>	<b>Address ballot proofing/nomination timeline</b>
Section 73 of the PPEA and section 57 of the LGEA should be amended to provide for the making of regulations	<b>UN ICCPR Article 2(3)(a)</b> ensure that any person whose rights or freedoms are herein recognized as violated shall have an	76. 3. Any person who has petitioned or complained to the Electoral Commission shall have	51. <b><u>As soon as practicable</u></b> after the sitting of the Commission to receive nominations of candidates for election to office of President under this Part,	35. (1) When two or more persons have been duly nominated as candidates for election in any ward, the returning officer in such ward shall, as soon as practicable after	

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under the PPEA and LGEA respectively to provide for the specific manner in which the rights may be exercised and the remedies available to representatives of political parties and candidates whose rights are violated or threatened.	<b>effective remedy</b> , not withstanding that the violation has been committed by persons acting in an official capacity; (c) to ensure that the competent authorities shall enforce such remedies when granted.	a right to appeal to the High Court against determinations made under subsections (2) (c) and (2) (d).	the Commission shall cause to be published in the Gazette and on the radio and in a newspaper in general circulation in Malawi the names of all candidates who have been validly nominated for election to the office of President in alphabetical order of surnames. <b>How many days before eday?</b>	the close of the period for nomination, declare and give notice that a poll is to be taken <b>How and by what deadline before eday?</b>	
			PPEA: <b>43. and 55.</b> such notice shall state— (a) the names of the candidates in alphabetical order of surnames; <b>What about the order of candidates on the ballot?</b>	LGEA section 35. (a) the names of the candidates in alphabetical order of surnames; <b>What about the order of candidates on the ballot?</b>	
Section 63 of PPEA should be amended to include television news as a media through which all candidates may have the substance of their campaign propaganda reported. Additionally, both section 63 of PPEA and section 47 of the LGEA should be amended either to vest in the EC editorial control over election broadcasts on MBC during the official campaign period or to prohibit MBC from covering or broadcasting any campaign news, advertisements or			63. (a) the content of the news shall be <b>professionally determined</b> by the <b>Malawi Broadcasting Corporation</b> ; <b>Equally apportioned? What about airtime given to the incumbent in exercise of his/her function during the campaign period?</b>	47. (a) the content of the news shall be <b>professionally determined</b> by the <b>television station and</b> the Malawi Broadcasting Corporation; <b>Equally apportioned? What about airtime given to the incumbent in exercise of his/her function?</b>	<b>MEC to hire stringers as in 2009 and in the Mzimba by-elections for 2014 to ensure coverage of candidates who would otherwise not have been covered</b> <b>MEC to organize debate for Presidential candidates</b>
		EU EOM 2009 Recommendation 17: The system for campaign spending should be reviewed as it is inadequate. Consideration should be given to placing a ceiling on spending and introducing an appropriate and transparent system for	66. Every political party may, for the purpose of financing its campaign, appeal for and receive voluntary contributions from any individual or any non-governmental organization or other private organization in or outside Malawi. <b>Spending cap? Transparency?</b>	50. Every candidate may, for the purpose of financing his campaign, appeal for and receive voluntary contributions from any individual or any non-governmental organization or other private organization in or outside Malawi. <b>Spending cap? Transparency?</b>	<b>MEC to purchase equal broadcast airtime for presidential candidates in 2014 at favourable rates in order to level the playing field</b>



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materials if such coverage or broadcasting is not expressly requested by the Commission.		public accountability in campaign spending. The political parties should submit accounts of their donations and spending on a regular basis to a relevant authority for the duration of the campaign period ensuring maximum transparency.			
			67. 10 of 1998(4) The Commission shall, before the polling day, publish in the Gazette and in more than one issue of a newspaper in general circulation in Malawi and by radio announcements and by any other appropriate means the names of all places throughout Malawi at which polling stations have been established. <b>By what deadline? Malawi Police needs 90 days.</b>	51. (3) The Commission shall, before the polling day, publish in the Gazette and in more than one issue of a newspaper in general circulation in Malawi and by radio announcements and by any other appropriate means the names of all places throughout Malawi at which polling stations have been established. <b>By what deadline? Malawi Police needs 90 days.</b>	
	The Malawi Electoral Commission confirmed the need to harmonize the two pieces of legislation on this point, and hence the Committee's recommendation for such a change.	76. 3. Any person who has petitioned or complained to the Electoral Commission shall have a right to appeal to the High Court against determinations made under subsections (2) (c) and (2) (d).	75. Provided that the registration officer or other authorized officer may at his <b>sole discretion</b> refuse to grant the request. <b>Objective criteria? Voter already inked?</b>	LGEA omits this limb.	
			<b>Not mentioned in PPEA. Is this residual to multiple ballot paper design?</b>	54. (g) a special container to be positioned in the polling booth into which a voter shall deposit the ballot paper; <b>Superfluous: see (c) ballot boxes</b>	

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Section 80 of the PPEA and section 64 of the LGEA should be amended to stipulate that voting will close at 4pm, provided that the period may be extended if by 4pm there are voters who are waiting in line to vote.			80. On the polling day voting shall begin at 6 o'clock in the morning and close at 6 o'clock in the evening, <b>Leave hours to MEC's regulatory discretion? Set legal deadline by which MEC must announce polling hours?</b>	64. On the polling day voting shall begin at 6 o'clock in the morning and close at 6 o'clock in the evening, <b>Leave hours to MEC's regulatory discretion? Set legal deadline by which MEC must announce polling hours?</b>	<b>Consider revising polling hours</b>
	The Committee therefore recommends that these two pieces of legislation should be revised to ensure that the inking process will be done properly.		86. 10 of 1998(4) After a voter has cast his vote in accordance with subsection (3) with respect to the election of a member of Parliament, he shall immediately be led to the next desk of polling station officers who, on verifying that the voter has had his right index finger dipped in indelible ink, <b><u>shall dip the voter's left index finger in indelible ink</u></b> and hand to him a ballot paper for candidates for election to the office of President for use by the voter in accordance with subsection	70. (a) mark his voters registration certificate and record his name and registration number and hand back the certificate to him; <b>No longer possible, laminated</b> (b) dip the right index finger of the voter in the indelible ink <b>Reconsider tripartite inking procedures</b>	
			89. (1) In addition to representatives of political parties, any voter present at a polling station may raise doubts and present in writing complaints <b>Ideally only verso of the results sheet</b> <b>Until when can complaints be lodged with MEC? Until respective announcement of results at polling station and district level?</b>	73. (1) In addition to representatives of candidates any voter present at a polling station may raise doubts and present in writing complaints <b>Ideally only verso of the results sheet</b> <b>Until when can complaints be lodged with MEC? Until respective announcement of results at polling station and district level?</b>	
The PPEA and LGEA should be amended to prevent DCs from playing any direct role in the administration and			94. The presiding officer of a polling station shall, with all dispatch, deliver to the office of the District Commissioner <b>By what deadline?</b>	78. The presiding officer of a polling station shall, with all dispatch, deliver to the office of the District Commissioner <b>By what deadline?</b>	

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management of aspects of elections that require that there be no appearance of likelihood of bias.					
			95. 10 of 1998(4) The returning officer or an officer of the Commission duly authorized in that behalf shall publicly announce the result of the election in each constituency and in the entire district in accordance with the record prepared under subsection (1) <b>By what deadline?</b>	79. (4) The District Commissioner or an officer of the Commission duly authorized in that behalf shall publicly announce the result of the election in each ward and in the entire area of the council in accordance with the record prepared under subsection (1);	
			95. 10 of 1998(5) The returning officer or a duly authorized officer of the Commission shall, with all dispatch, deliver to the Chief Elections Officer <b>By when?</b>	79. (5) The District Commissioner or a duly authorized officer of the Commission shall, with all dispatch, deliver to the Chief Elections Officer <b>By what deadline?</b>	
			99. The Commission shall publish in the Gazette and by radio broadcast and in at least one issue of a newspaper in general circulation in Malawi the national result of an election within eight days from the last polling day and not later than forty-eight hours from the conclusion of the determination thereof and shall, in such publication, specify— (d) the total number of valid votes cast for each classification of votes as specified in section 91. <b>Disaggregated by polling station</b>	83. The Commission shall publish in the Gazette and by radio broadcast and in at least one issue of a newspaper in general circulation in Malawi the national result of an election within eight days from the last polling day and not later than forty-eight hours from the conclusion of the determination thereof and shall, in such publication, specify— (d) the total number of valid votes cast for each classification of votes as specified in section <b>Disaggregated by polling station</b>	
Section 101 of the PPEA should be amended to include local observers and section 103 should	The Committee therefore recommends that section 106 should be amended in order for the PPEA to		101. For the purposes of this Act, international observation means the verification of the various stages of the	84. For the purposes of this Act, observation means the verification of the various stages of the election by international	<b>Provide the right to national election observation in PPEA in harmonisation with LGEA</b>

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be amended to stipulate that observation of parliamentary and presidential elections begins at the start of registration process.	recognize local observers as well.		election by international organizations, non-governmental organizations, foreign governments and foreign personalities duly recognized for the purpose in accordance with this Part.	organizations, international and <b>local</b> non-governmental organizations, foreign governments and foreign and local personalities duly recognized for the purpose in accordance with this Part.	
	That being the case, the Committee noted that since the elections will be done concurrently, it may not be easy for the local observers to observe the local government election without <b>"illegally"</b> observing the parliamentary and presidential elections. The Committee therefore recommends that section 106 should be amended in order for the PPEA to recognize local observers as well.		107. Recognition of <b>international</b> observers on arrival in Malawi shall be granted by the Commission which, for that purpose, shall—(a) establish adequate administrative procedures for the proper and timely recognition of the observers; (b) devise an identity card for each category of international observers and issue to every recognized observer the card corresponding to his category. (c) devise a common and easily identifiable badge for all international observers and issue the badge to every recognized international observer. <b>By what deadlines? Right to appeal against rejection?</b>	90. Recognition of observers on arrival in Malawi shall be granted by the Commission which, for that purpose, shall— (a) establish adequate administrative procedures for the proper and timely recognition of the observers; (b) devise an identity card for each category of observers and issue to every recognized observer the card corresponding to his category; (c) devise a common and easily identifiable badge for all observers and issue the badge to every recognized observer. <b>By what deadlines? Right to appeal against rejection?</b>	
The PPEA must be amended to introduce a provision that stipulates that the successful candidate in a presidential election must be sworn in only after the expiry of a specified number of days after the announcement of the results of the election. The number of days must be adequate for the EC to address any irregularities		76. 3. Any person who has petitioned or complained to the Electoral Commission shall have a right to appeal to the High Court against determinations made under subsections (2) (c) and (2) (d).	100. 16 of 1994(1) A complaint alleging an undue return or an undue election of a person as a member of the National Assembly or to the office of President by reason of irregularity or any other cause whatsoever shall be presented by way of petition directly to the High Court <b><u>within forty-eight hours, including Saturday, Sunday and a public holiday</u></b> , of the declaration of the result of the election. <b>48 hours slightly too short, especially if they fall over weekend. No deadline for</b>	97. (1) An appeal shall lie to the High Court against a decision of the Commission confirming or rejecting the existence of an irregularity and such appeal shall be made by way of a petition, supported by affidavits of evidence, which shall clearly specify the declaration the High Court is being requested to make by order. <b>No deadline for filing with High Court. No deadline for High Court to notify interested parties. No deadline for interested parties to respond. And no deadline for High Court to rule on appeals.</b>	

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and complaints.			High Court to notify interested parties. No deadline for interested parties to respond. And no deadline for High Court to rule on appeals.		
Section 100 should be amended to restrict access to the High Court by petitioners only in the case of appeals against decisions of the EC and to require all complaints to be handled in the first instance by the EC. Further participants recommended that consideration be given to establishing an Electoral Court with exclusive jurisdiction over election-related cases and the promulgation of regulations regulating the submission and EC's handling of election complaints.		Law Commission recommended in 2007: The Judiciary should establish a specialized division for electoral disputes, to avoid delays.	100. (5) A declaration by the High Court under subsection (3) (b) shall not invalidate anything done by the President before that declaration. The current framework does not preclude swearing in of candidates prior to expiration of the High Court Appeals period	No equivalent provision for MPs or Local Councillors. The current framework does not preclude swearing in of MPs or Local Councillors prior to expiration of the High Court Appeals period	
	In light of the above inconsistencies the Committee therefore recommends that a thorough cleaning process be made to ensure that the two pieces of legislation are aligned to each other. The two should speak one language to avoid creating practical problems in terms of		24. 10 of 1998 (3) A person to whom a voter's registration certificate has been issued shall be personally responsible at all times for its safekeeping and shall not place or cause it to be placed in the custody of any other person or allow any other person to use it to vote in an election. (4) No person shall receive, keep or use, in relation to an election, a voter's registration certificate that has not been	Omitted	Establish and define offence of unduly influencing voters

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	implementation.		issued to him in accordance with this section. (5) Any person who contravenes subsection (3) or (4), or who aids, abets or counsels, or conspires with, any person to contravene subsection (3) or (4), shall be guilty of an offence and shall be liable to a fine of K50,000 and to imprisonment for seven years.		
Section 56(2) of the PPEA should be amended to state that political party and independent candidates have a right to campaign in public places and a responsibility to inform the DC and the police who shall be permitted to prohibit such campaign only if such prohibition is consistent with the Constitution.	In light of the above inconsistencies the Committee therefore recommends that a thorough cleaning process be made to ensure that the two pieces of legislation are aligned to each other. The two should speak one language to avoid creating practical problems in terms of implementation.		115. A person who (b) in relation to campaigning for elections— (i) holds a public meeting contrary to section 56 (2); Commits an offence.	Not an offence under LGEA.	
Section 57 of the PPEA and section 41 of LGEA should be amended to state unambiguously that the two-month period of campaigning is designated as such only for the purposes of mandating the EC to regulate campaigning and does not campaigning before the commencement of the period illegal.			115. (b) 10 of 1998(iii) campaigns or causes another person to campaign within forty-eight hours before opening of the poll on the first polling day contrary to section 57;	Not an offence under LGEA	
			115 (b) (vii) contravenes sections 61 (1)	Not an offence under LGEA	
			118. (1) A person guilty of an offence under this Act for which no other penalty has been specified shall be liable to a fine of <b>K5,000</b> and to imprisonment for <b>two years</b> .	101.(1) A person guilty of an offence under this Act for which no other penalty has been specified shall be liable to a fine of <b>K50,000</b> and to imprisonment for <b>five years</b> .	