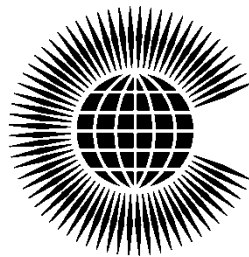


MALAWI PARLIAMENTARY AND PRESIDENTIAL ELECTIONS

19 May 2009

Report of the Commonwealth Observer Group



COMMONWEALTH SECRETARIAT

MALAWI PARLIAMENTARY AND PRESIDENTIAL ELECTIONS

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Chapter 1

Introduction

Invitation

At the invitation of the Chairperson of the Malawi Electoral Commission, Justice A Msosa, the Commonwealth Secretary-General, Mr Kamallesh Sharma, constituted an Observer Group for the Malawi Parliamentary and Presidential Elections scheduled for 19 May 2009. The Group was led by H.E. Mr John Kufuor, former President of Ghana, and comprised ten eminent persons in total. The Observer Group was supported by a five-member staff team from the Commonwealth Secretariat. A full list of members is at Annex 1.

Terms of Reference

"The Group is established by the Commonwealth Secretary-General at the request of the Chairman of the Malawi Electoral Commission. It is to observe relevant aspects of the organisation and conduct of the Parliamentary and Presidential Elections which are scheduled to take place on 19 May 2009, in accordance with the laws of Malawi.

The Group is to consider the various factors impinging on the credibility of the electoral process as a whole. It will determine in its own judgement whether the elections have been conducted according to the standards for democratic elections to which Malawi has committed itself, with reference to national election-related legislation and relevant regional, Commonwealth and other international commitments.

The Group is to act impartially and independently and shall conduct itself according to the standards expressed in the International Declaration of Principles to which the Commonwealth is a signatory. It has no executive role; its function is not to supervise but to observe the process as a whole and to form a judgment accordingly. In its Final Report, the Group is also free to propose to the authorities concerned recommendations for change on institutional, procedural and other matters as would assist the holding of future elections.

The Group is to submit its report to the Commonwealth Secretary-General, who will forward it to the Government of Malawi, the Chairman of the Malawi Electoral Commission, political and civil society organizations and thereafter to all Commonwealth Governments."

Activities

The Observer Group was present in Malawi from 12 May. During four days of briefings, the Group met with the Malawi Electoral Commission, political party representatives, civil society groups, media, Commonwealth High Commissioners, international organisations, and domestic and international observer missions.

The Observer Group was deployed on 17 May. Two-person teams travelled to each of the country's three regions, North, Central and South, and co-ordinated closely with other domestic, regional and international observers, building up a comprehensive picture of the conduct of the process.

During the deployment phase, Commonwealth Observers also met with District Commissioners, Returning Officers, security officials, regional representatives of political parties, candidates, media, polling agents, polling officers and voters.

On the basis of the Group's findings and observations, the Chairperson issued an Interim Statement on 21 May (Annex 2). The Group's Report was completed in Blantyre prior to departure and transmitted to the Commonwealth Secretary-General on 26 May 2009.

Chapter 2

Political Background

Transition to Multi-party Democracy

Malawi was governed under a one-party political system from Independence in 1964. Following growing domestic and international pressure, and after a referendum, Malawi adopted a multiparty political system in 1993. The 2009 elections were the fourth post-independence multi-party Presidential and Parliamentary elections; previous polls were held in 1994, 1999 and 2004.

2004 Elections

Dr Bingu wa Mutharika was handpicked as the United Democratic Front (UDF) presidential candidate for the 2004 elections by the then President, Dr Bakili Muluzi, who had been constitutionally barred from running for a third term. Dr Mutharika won the 2004 presidential poll, with 35.9% of the total votes cast. In the parliamentary election, the Malawi Congress Party (MCP) gained 56 seats, the UDF 49 seats, Independent candidates 39 seats, Republican Party (RP) 15 seats, and smaller parties, 25 seats, while 8 seats were left vacant.

A Commonwealth Observer Group was present, and concluded that: "the voters were free to express their wishes on the day itself, but because of the problems with the register, the bias of the state media and the abuse of incumbency, the process prior to election day was unfair. Some of the requirements of the democratic process have been met, but others have not".

Governance Challenges

Strained relations soon developed between Dr Mutharika and his predecessor, and their respective supporters. Dr Mutharika left the UDF in February 2005, and founded an entirely new political party, the Democratic Progressive Party (DPP), after a struggle for influence with Dr Muluzi and his loyalists over several issues, including Dr Mutharika's high-profile anti-corruption campaign.

A sizeable number of sitting parliamentarians, including UDF, MCP and Independent members crossed the parliamentary floor and joined Dr Mutharika's new DPP party, despite Section 65 of the Constitution requiring the holding of by-elections in the event of crossing of the parliamentary floor. Dr Mutharika's minority government, through Court injunctions, steadfastly prevented the implementation of Section 65.

The power struggle between the now-ruling DPP and the opposition, particularly the UDF and MCP, manifested itself in several ways from 2005 to 2009. The UDF was unsuccessful in an attempt to have President Mutharika impeached and removed from office for allegedly violating the Constitution by using public funds to support the activities of his fledgling party. Parliamentary work was hampered by MCP and UDF through numerous efforts to hold up the passing of the budget and block Presidential appointments. Smooth functioning of Parliament was also hampered by the President withholding his assent for the Parliament to

convene. In this context, Malawi underwent four years of near parliamentary paralysis, with virtually no legislation passed.

Alleged Coup Plots

A senior UDF leader and two legislators were charged in 2004 with plotting to assassinate the President. The charges were later dropped. In 2005, two other UDF officials were arrested for allegedly publicly calling for the removal of the President from power. Their treason charges eventually collapsed. Vice-President Cassim Chilumpha was arrested in 2006, allegedly for hiring an assassin to kill the President. This case remains unresolved, and Mr Chilumpha has largely remained under house arrest. In May 2008, President Mutharika publicly accused his predecessor, Dr Muluzi, a retired army General, three serving army officers, and four UDF officials of a coup plot, and all were detained (though later released on bail).

Tensions Ahead of 2009 Elections

There were clear signs of growing tensions in the run-up to the May 19 elections. The most contentious issue was whether Dr Muluzi would be permitted to contest the Presidential election. President Mutharika insisted that Dr Muluzi was ineligible to stand, based on Section 83 (1) and (3) of the Constitution which stipulates the tenure and limits the maximum number of terms a person may serve as President of the Republic of Malawi, while Dr Muluzi and his supporters believed otherwise.

It was in this context that the African Union (AU) sent former Presidents Joachim Chissano of Mozambique and John Kufuor of Ghana to Malawi in February 2009, to engage in Good Offices amid early signs of impending pre- and post-electoral conflict.

However, on 26 February 2009, just after the departure of the AU delegation, Dr Muluzi was arrested and appeared before the Anti-Corruption Bureau (ACB) and the Blantyre Magistrates Court, charged with 86 counts of fraud and corruption, later consolidated into seven counts, relating to the alleged theft of \$11 million of donor funds. Dr Muluzi denied the charges, and was released on bail. This case remains unresolved.

On 20 March 2009, Dr Muluzi's nomination papers for the Presidential election were rejected by the Malawi Electoral Commission (MEC), a decision subsequently upheld by the Constitutional Court on 16 May 2009, three days before the elections.

On 8 April 2009, it was announced that the MCP and the UDF had formed an alliance. The two parties signed what they called 'The 2009 Coalition for Change' Memorandum of Understanding, which spelled out how the MCP and UDF would share power after winning the elections. Dr Muluzi publicly endorsed the candidature of the MCP leader, Mr John Tembo, for the presidency. However, the MCP and UDF fielded separate parliamentary candidates.

Main Political Parties

The Constitution of Malawi guarantees the right of every person to form and participate in a political party. Political Parties in Malawi are required to register under the Political Parties (Registration and Regulations) Act of 1993.

Seven candidates, including one independent candidate, were successfully nominated for the presidential election. A total of 16 political parties nominated candidates for the parliamentary election, with a high number of independent candidates also contesting parliamentary seats. It was widely accepted, however, that the following three political parties enjoyed the most significant support:

Malawi Congress Party (MCP) – The MCP, originally known as the Nyasaland African Congress was founded in 1959 by Dr Hastings Kamuzu Banda, the first Prime Minister, and later President of Malawi. The MCP ruled from Independence in 1964 till 1994. Its Manifesto Theme was “Poverty reduction and national development”. The MCP claimed credit for championing Malawi’s independence, and laying the foundation, during its thirty-year rule, for Malawi’s social and political development. The MCP agriculture policy pledged to go further than the DPP’s and offer a universal fertiliser subsidy channelled through farmers’ clubs. The MCP advocated for local investment projects in key social sectors such as agriculture, education, entrepreneurship and health. The MCP pledged to reduce the size of Cabinet and consolidate the number government ministries and departments.

United Democratic Front (UDF) – The UDF was founded in 1993 by Dr Bakili Muluzi, who served as President from 1994 - 2004. Its Manifesto Theme was “Proud of our past, confident in our future: Prosperity with accountability”. It is a member of Liberal International. The UDF claimed credit for championing the re-introduction of multi-party democracy in Malawi. The UDF manifesto highlighted support to agriculture by abolishing the fertiliser coupon system and introducing a universal fertiliser subsidy programme. It also pledged to foster economic prosperity and growth through equitable distribution of incomes, wealth and resources. The UDF pledged to train more teachers and health workers and to improve their pay. The UDF emphasised inclusiveness and equity as a pre-condition of freedom and social justice. The UDF expressed the view that the current anti-graft effort was being used to persecute the DPP’s political opponents.

Democratic Progressive Party (DPP) – The DPP was founded in February 2005 by Dr Bingu wa Mutharika, following rifts within the then ruling UDF. Its manifesto theme was “A government we can trust”. The DPP pledged to continue infrastructure programmes and the empowerment of women; and to improve health, education, agriculture (promising to continue its popular programme of supplying subsidised fertiliser to poor farmers), the economy, and other activities that would attract foreign direct investment, donor confidence and aid. The DPP was founded on the pillars of prosperity, justice and security, and claimed particular credit for improved food security, macro-economic performance and management, which it believed would help raise the standards of living and welfare of all Malawians. The DPP also pledged to continue the fight against corruption.

Overall, the main issues elaborated by political parties during the campaign were food security and agriculture, the economy, poverty, education, health and employment.

Results

With over 90% of the votes counted the Malawi Electoral Commission (MEC) on 22 May 2009 declared President Bingu wa Mutharika of the DPP duly re-elected. At this time the Chair of the MEC announced that the 670,090 outstanding votes would not change the result. The results given at this time were:

Bingu – DPP	2,730,630 votes, (65.9% of total votes cast)
Chibambo Kamuzu Walter – PETRA	31,960

Gondwe Loveness Mrs – NARC	29,705
Masauli Stanly Edington – RP	31,303
Nyasulu Gowa Dindi – AFORD	19,024
Nyondo James Mbowe – Independent	25,171
Tembo John Zenus Ungapake – MCP	1,270,057

For the first time in Malawi's history, the country has a female Vice President, Mrs Joyce Banda (President Mutharika's running mate during the elections).

At the time of writing only partial official parliamentary results were available. These indicated the DPP winning 114 of the 193 seats; the MCP 17 seats; the UDF 14 seats; and the Malawi Forum for Unity and Development (MAFUNDE), Alliance for Democracy (AFORD) and Maravi Peoples Party each gaining 1 seat. Forty seats were won by women. Twenty-four seats went to independent candidates. Six political parties will be represented in Parliament.

Dr Muluzi, and presidential candidates James Nyondo, Stanley Masauli, Kamuzu Chibambo publicly accepted the outcome of the elections and congratulated President Mutharika on his re-election.

Chapter 3

The Electoral Framework and Election Administration

The Legal Framework

The Constitution of the Republic of Malawi provides for a legislative body, the National Assembly (Parliament), and an Executive, headed by the President as the Head of State and Government.

The Parliament consists of 193 members, directly elected from 193 single-member constituencies on a First-Past-the-Post (simple majority) basis.

The President is also directly elected on a First-Past-the-Post (simple majority) basis. For the purpose of the election of the President the country consists of a single national constituency.

The Constitution provides that the Parliament and President are elected for a term of five years. Section 67 of the Constitution provides that the Parliament stands dissolved on 20 March in the fifth year after its election and the polling day for the general elections “shall be the Tuesday in the third week of May that year”. For 2009, the election fell on Tuesday 19 May.

The key legal instruments for the conduct of the election are:

- Constitution (1994 as amended)
- Parliamentary and Presidential Elections Act (1993 as amended)
- Malawi Electoral Commission Act (1998)
- Communications Act (1998)
- Electoral Code of Conduct for Political Parties and Candidates (as prescribed under Section 61.2 of the Elections Act)

In addition, a Media Code of Conduct (2008) was developed by the Electoral Commission and agreed upon by media present in the country and witnessed by political parties.

The Constitution provides for basic freedoms relating to the election, including the right to vote, freedoms of association, expression, press, access to information, assembly and movement. It also provides for political rights, with an explicit right to form, join and campaign for a political party.

The Parliamentary and Presidential Election law provides the minimum conditions for genuine elections.

Malawi Electoral Commission (MEC)

Section 75 of the Constitution provides for the establishment of an Electoral Commission, to consist of a Chairperson who shall be a judge nominated by the Judicial Service Commission and not less than six other members.

Members of the Commission are appointed for a four-year term. They can be re-appointed for a further term. A member of the MEC may be removed from office by the President on the recommendation of the Public Appointments Committee on the grounds of incapacity or incompetence.

According to Section 4 of the Electoral Commission Act (1998), "The President shall, subject to the Constitution, and in consultation with the leaders of the political parties represented in the National Assembly, appoint suitably qualified persons to be members of the Commission"

Section 6 of the Act provides for the independence of the Commission: "Every individual member and employee of the Commission shall perform the functions and exercise the powers provided for in this Act independently of the direction or interference of any ... public office; organ of the government; political party; candidate; or any person or organisation whosoever".

Funding for MEC is through parliamentary appropriation. MEC can also receive grants, donations, and voluntary contributions, often from international donors.

The key functions and responsibilities of MEC are to provide general direction and supervision over the conduct of any election, including Parliamentary and Presidential Elections, By-elections, Local Government Elections and Referenda.

In addition, the MEC is to:

- Determine the number of constituencies;
- Supervise the demarcation of constituencies;
- Organize and direct the registration of voters;
- Devise and establish ballot papers and voter registers;
- Establish and operate polling stations;
- Establish the necessary security conditions for the conduct of an election;
- Promote public awareness of electoral matters and conduct civic and voter education.

The Commission is assisted in carrying out day-to-day activities by a Secretariat that is headed by a Chief Elections Officer. The Chief Elections Officer works under the direction and supervision of the Commission.

The MEC Secretariat is divided into two sections: Elections Management (which deals with the core functions of conducting elections) and Support (which assists the MEC to carry out its core functions). The two sections report to the Commission through the Chief Elections Officer.

Elections Management comprises:

- The Electoral Services Department: This provides support to the regional offices and through them to the district offices, and coordinates their activities.
- Civic and Voter Education: Responsible for the production and distribution of civic and voter education messages and programmes
- Media and Public Relations: The Head of which acts as the Spokesperson and which also deals with the media on all issues relating to the electoral process.
- Training: Responsible for developing and organising a capacity building program and prepares and produces operational training materials, and organises the cascade training from the MEC Headquarters through the regional and district election offices to the polling stations.

The Support Section comprises the following departments:

- Procurement: Dealing with all procurement items for the MEC;
- Finance: Dealing with the disbursement of all MEC funds;
- Administration and Human Resources: Responsible for all administrative matters for the MEC, including transport, vehicles and secretarial work;
- ICT: To ensure that all ICT related equipment is in good working condition. It provides advice to MEC on all ICT issues to ensure timely and appropriate solutions for electoral processes, undertakes ICT activities in such areas as voter registration, tallying and consolidation of election results, and production of the final results, and maintains all the MEC databases, including the voters register.

For the purpose of administering the process there is a five-tiered election management structure.

1. Malawi Electoral Commission, which is based in Blantyre and comprises a Chair and Election Commissioners and which has a Chief Election Officer, who oversees the executive functions described above. MEC is further supported by a technical assistance programme, provided through UNDP.
2. Regional Election Office in each of the three regions of the country (North, Central and South). The Regional Offices provide the operational link between the national MEC office and the Districts.
3. A District Election Co-ordinator (DEC) in each of the 28 Districts. The District Commissioner is designated as the DEC. A District Elections Clerk and District team works under the DEC. They have a key role in the operations for distribution of materials, as well as the tabulation of the results.
4. A Constituency Returning Officer (RO) is appointed for each of the 193 constituencies, often drawn from higher level education officials and is based at the District level.
5. A Presiding Officer is appointed to administer the process in each of the 3,897 Polling Stations, often drawn from the education sector, mainly primary school staff. The Presiding Officer oversees the conduct in each polling station, with Assistant Presiding Officers as required. A series of staff are also appointed, including clerks for checking the identity of voters, inking and issuing ballot papers. In addition, Security Officers are also appointed for each polling station, drawn from police and/or defence forces. Ushers are also appointed to direct voters to their correct alphabetical Streams and to control the flow of voters at a Polling Station.

The Commission, its Secretariat and the Regional Offices are permanent staff. Constituency Returning Officers and Polling Station Staff are employed on a temporary basis. DEC's are District Commissioners, who are permanent public officials.

Voter Registration and Voter Eligibility

The voter register was heavily criticised during the 2004 elections and the MEC, which is legally mandated to maintain and compile the voter register, decided to conduct a brand new national voter registration. This commenced in 2008, with the establishment of some 3,950 registration centres.

The aim was to compile a national computerised register of voters as a permanent voter register. All registered persons were provided with a voter registration certificate containing a photo ID, which they required for voting on the day of the election. The process of registration experienced a series of problems and these are described later in the chapter.

According to Section 77 of the Constitution, an eligible voter must be:

- A citizen of Malawi (or ordinarily resident in the Republic for seven years);
- At least 18 years of age
- Ordinarily resident in that constituency or was born there or is employed or carries on business there
- Not mentally incompetent or under sentence of death

If qualified for more than one constituency, a voter can only register in one.

The total number of persons registered for the 2009 election was approximately 5.8 million. Interlocutors gave a rough regional breakdown as: South 2.6m; Central 2.4m; North 800,000.

Candidate Eligibility and Nomination

Candidates for both the parliamentary and presidential elections can be a representative of a political party or an Independent. For the Parliamentary election Article 51 of the Constitution defines the eligibility criteria, whereby a person must be:

- A citizen of Malawi
- At least 21 years of age
- Able to speak and read English
- Not (in last 7 years) convicted of a crime of dishonesty or moral turpitude
- Not the holder of a public office
- Not serving in the Defence or Police Forces

For the 19 May elections, there were 1,184 candidates contesting the parliamentary elections across the 193 constituencies, representing a total of 16 political parties. Of these, over 400 were independents (many due to a person being excluded during a party's primary elections). Of the 1,184 candidates, 232 (19.6%) were women, which is an increase from 2004, when it was 12.2%.

For the election of the President, there were seven candidates. According to Section 80.6 of the Constitution, to be eligible a candidate must be:

- A citizen of Malawi
- At least 35 years of age
- Not of unsound mind, bankrupt, convicted of a crime in last 7 years involving dishonesty or moral turpitude, owe allegiance to a foreign country
- Not the holder of a public office or serving in Police or defence forces

According to Section 83.3 of the Constitution a president may only "serve ... a maximum of two consecutive terms". As interpreted by the Courts in the case of Dr Muluzi, this precludes a President from serving more than two terms.

To be nominated for the parliamentary elections, an aspirant candidate must be supported by at least 10 voters from that Constituency. They also have to pay a deposit of K100,000 (£400).

For the Presidential election, an aspirant candidate's nomination must be supported by at least ten registered voters from each district. A deposit of K500,000 (£2,000) is payable.

For both parliamentary and presidential elections a deposit is refundable if a candidate secures at least 5% of the vote.

Complaints and Appeals

MEC has authority to deal with complaints relating to its management and decision-making procedures, such as voter registration, candidate nomination and limited, non-violent campaign violations. Decisions of MEC can be appealed in the High Court (Malawi has three High Courts, one for each region of the country).

Election offences, considered criminal acts, and electoral petitions challenging results are under the jurisdiction of the courts. Candidates have a 48-hour period in which to contest the final election results.

In order to provide for timely responses to election complaints, the Chief Justice issued a Practice Direction (No.2) in February 2009, which created a timeframe for the completion of election-related cases. This provides, for example, for a period of 24 days between the time an application is made and the time a High Court should rule. A roster of judges was created to hear such cases.

The following cases highlight the types of complaints received and handled by MEC during the course of these elections:

- Three aspirant candidates who had their nominations rejected by MEC appealed against the decision:
 - Dr Muluzi (UDF) was rejected by MEC on the basis that Section 83(3) provides that a President may only serve a maximum of two consecutive terms. Dr. Muluzi appealed this decision to the High Court, which upheld MEC's decision. He later appealed the decision to the Constitutional Court, which further upheld the decision.
 - The nomination of Jeremiah Chihana was rejected by MEC on the basis that he had committed an offence which made him ineligible. This was appealed to the High Court, which ruled in his favour. The Supreme Court had not scheduled a hearing for MEC's appeal, and he therefore appeared on the ballot.
 - Tionge Maywa's nomination as a presidential candidate was rejected by MEC due to non-payment of the deposit. The aspirant appealed against the decision but a hearing was postponed as he was seeking legal aid. The hearing was not held before the election and he did not appear on the ballot.
- Complaints relating to missing names in the voter register.
- A small number of complaints relating to defacement of campaign materials

With regard to complaints submitted to courts for criminal offences, the following types of complaints were identified:

- A small number of cases reported to police of illegal possession or attempting to sell voter registration certificates.
- One case reported to police for attempting to disrupt a rally.
- MEC referred hundreds of cases of double registration to the police.

There were also informal complaints raised by parties to MEC. These were often discussed and dealt with during Party Liaison meetings.

Overall, the complaints process is clear for voters and candidates to pursue a complaint, with a right of appeal against any decision of MEC and through a normal court appeal process thereafter.

Key Issues

Voter Registration

The 2008 decision to undertake a brand new voter registration was due to the problems faced with the register during the 2004 polls. The new MEC stated that it tried out the old register during 5 by-elections and it had proven unreliable.

The original plan was for a 9-month registration exercise, but a mix of factors, including the delay in the formation of MEC (discussed below), delays in providing the budget and delays in the procurement process, led to a compressed timeframe. Between August 2008 and January 2009, MEC claimed to have registered some 5.9 m out of an estimated 6.2m persons, based on figures from the 2008 census.

The MEC established some 3,897 registration centres across the country. Registration teams had to capture a voter's details, as well as take their photo for the ID card, complete a form for later scanning into a computer and also issue the Voter Certificate (ID), which also included a colour photograph. Malawi does not have a national ID card system, so in addition to an interest in registering to vote, the prospect of securing a photo ID card proved attractive to Malawians.

For the registration process, officials had to complete three sections:

- Part A – A counterfoil/application form signed by a voter, including a photo.
- Part B – A coding form (OMR) for scanning into a computer, including a thumb print.
- Part C – Details and photo for voter certificate, which was laminated and handed to a voter.

During the registration process, it is reported that registration clerks had difficulties using the equipment and technology (indicating a lack of adequate training and preparation, or the selection of an inappropriate system) and some equipment, such as the cameras, proved unreliable. It was also reported that in some instances registration officers completed Part A and Part C, but left Part B until later, resulting, in some instances, in discrepancies in the recorded details.

Between 30 March and 3 April 2009, a public verification exercise was conducted. This was initially extended to 10 April due to the low rate of public interest in checking the register. However, the verification period was further extended due to the large number of anomalies found once the register was properly checked. The types of problems identified included:

- Double entries (c. 60,000).
- Mistakes in names and photos.
- Inverted names.
- Coding errors (eg., mis-allocation or no allocation of voter to registration centre).
- Missing names (often due to unreadable forms).

Originally it was estimated that the 'error' rate in the register was approximately 24% (1,416,000). In response, MEC undertook a major effort to try to improve the quality of the register. They employed 500 clerks for a verification process, checking names held in a 'holding area' in the database due to identified errors as well as checking the Part A's against the printed certified register, which was based on the Part B's. The assumption was that Part A should be correct as it was the handwritten 'source', including the details as given to registration officers by the voters. Given the scale of the undertaking and the time it was taking to work through the identified problems, MEC later increased the number of clerks to 900.

However, during this exercise, it emerged that many Part A forms were missing, due to the forms not being returned from the field or being held by MEC but not in an identifiable location. MEC urged officials across the country to return all related forms and they also identified some in Blantyre. Further verification, cleaning and the re-call for registration books from the field led to a decrease in the estimated error rate to 18% (c. 1 million). MEC also experienced problems incorporating information on voter transfers, which could be applied for by the voter up to one week before the election. Cleaning and checking continued up to the point where MEC had to start printing the register, in order for it to be completed in time for national distribution. At the time of printing of the register, the COG was informed that the error rate was approximately 14%.

Given MEC's expectation that there would still be an error rate in the certified register and their reluctance to have any person disenfranchised due to a technical error, they developed a series of back-up measures to help address the problem. Firstly, they produced a 'Numeric Register' to be provided to each polling station. This listed voters registered at the centre by Voter Certificate number, so in the event that a name could not be found on the certified list, then they could be checked against the numeric list. While under the circumstances this was a reasonable and pragmatic measure, it should be pointed out that the law does stipulate that in order to vote a person is supposed to be on the certified voter register.

In addition, MEC issued an instruction that persons not appearing on either register, but whose voter certificate was within the numbered range of certificates for that polling station, should be allowed to vote. Thus, while the remaining problems with the voter register were not fixed, a mechanism to ensure people were not disenfranchised due to administrative error was put in place.

However the late production of the final register and the numerous problems associated with its production meant a lessening of public confidence in MEC's capacity. Some political parties also claimed that MEC was not always forthcoming with information and updates on the status of the register. As a consequence of the delays, a public verification of the final list was not possible in time before the election and the parties, despite promises, were not given a CD copy of the register in time to print it and distribute it. This undermined an important transparency and confidence-building measure.

Appointment of MEC

The Constitution provides for an Electoral Commission to oversee the organisation and conduct of the electoral process. According to Section 4 of the Electoral Commission Act, "The President shall, subject to the Constitution and in consultation with the leaders of the political parties represented in the National Assembly, appoint suitably qualified persons to be members of the Commission ..."

However, the appointment of the MEC became a contentious issue. Opposition parties claim the President did not properly consult. For past elections it seems that parties were actively involved in discussing candidates, even proposing names themselves. However, in this instance the President apparently sent a letter to opposition parties informing them of his selection and inviting comment. It seems parties did not comment, claiming this was not appropriate consultation. This led to a court case challenging the appointment of MEC. The case was eventually dropped, but it meant that MEC could only start working properly in January 2008 and, in the early part of its tenure, it lacked an approved budget for its operations. These delays in MEC's operational readiness meant it lost valuable time right at the outset of the process, which had serious consequences for its work programme up to and including election day.

Capacity and Management of the Electoral Commission

Despite the nature of its appointment MEC, is generally viewed by stakeholders as independent, and it eventually ran a credible electoral process on the day of the election.

However, the tight deadlines and a lack of capacity at the operational level, coupled with some management mistakes, created challenges for MEC in the lead-up to the day of the election. Key examples include:

- MEC conducted nominations for the elections from 2-6 February 2009, and promised to announce the results of nomination on 13 February. However, the law states that candidates cannot hold public office, and in the Malawi context this is understood – and past practice has been consistent – to include Members of Parliament. It is claimed that MEC was advised of this. MEC announced it would delay the announcement of the results of nomination until after the dissolution of parliament on 20 March. Such a clear procedural error did not reflect well on the body.
- MEC significantly increased the deposit for parliamentary and presidential candidates without consultation with political parties, causing consternation among parties not only at the significant increase in cost, but also at the unilateral manner of its introduction. The rates were increased from K5,000 to K100,000 (a x20 increase) for parliamentary candidates and from K20,000 to K500,000 (a x25 increase) for presidential candidates.
- MEC held consultation meetings with political parties. In the early stages, these meetings were, according to MEC, quite fractious. As a consequence, the meetings were initially few and far between, and only quite late in the process did they become more regular. Such a lack of openness increased mistrust by the parties.
- The voter registration process has been explained above. Suffice to reiterate that the serious problems and shortcomings during the process affected MEC's credibility. This

was exacerbated by, according to opposition parties, MEC's failure to fully disclose the extent of the problems it was facing even in consultation meetings with parties.

- MEC faced a number of accusations regarding its procurement procedures and its financial accountability. Unfortunately a number of junior MEC finance officials were arrested and accused of embezzling millions of Kwacha. Most were later released, but two were charged.
- MEC faced some serious resource shortages, and this was evident in its reliance on inadequate levels of transportation being allocated by government departments for the collection of results, which seriously impacted on the timeliness of the results process (discussed further in Chapter 5).
- MEC's decision to allow the incumbent President to be the first name on the ballot, on the basis of his being known by his 'nickname' Bingu. Being listed as Bingu meant he was alphabetically first in order. If he was listed as Mutharika then he would have been in the middle of the ballot. All other candidates were listed in order of their surnames as given at nomination. This raised some procedural questions. It is not clear on what basis this decision was taken or exactly at what stage the application was made.

The time constraints faced by MEC and the enormous effort required for the voter registration process, and the later auditing and verifying of the register, meant that other key aspects of the work were adversely affected. It is clear from the conduct of the counting and tabulation process at the regional level, for example, that further training was required to ensure all concerned were aware of the procedures and of their responsibilities. However, it was also the case that the procedures were only agreed to and published quite late, precluding early training.

Having raised these points, it should also be stressed that, despite these challenges MEC, did ultimately manage to organise a good process on the day of the election at the polling station level.

There were concerns raised to the Observer Group regarding the effectiveness of the programme of technical assistance offered to MEC by the United Nations Development Programme (UNDP). This was a large-scale assistance programme in terms of international personnel working within MEC and the concerns raised particularly mentioned the lack of capacity-building for national staff. However, ultimately MEC was responsible for managing all staff – national and international – under its authority.

Constituency Delimitation

The existing parliamentary constituencies were established in 1994 and today contain widely varying population sizes. It is part of MEC's mandate to undertake a review, but the Chair of MEC reasonably claimed that there had not been sufficient time for this. Apparently MEC had started working on this in 2008 but was stopped by parliament due to the lack of time available.

It is not desirable for a revision to be undertaken close to an election as it increases sensitivities. The revision is overdue and needs to be undertaken well in advance of the next parliamentary elections in order to ensure that equal suffrage is provided for.

Women's Participation

There was a total of 232 women candidates standing for the parliamentary elections out of a total of 1,184 candidates (19.6 %). This compares favourably to the 2004 figure, which was 154 out of a total of 1,258 (12.2%) – an increase of just over 50% for the 2009 election.

In addition, for these elections, there was one female Presidential candidate and two vice-presidential candidates.

In both 2004 and 2009, many of the women candidates were independents, indicating a lack of willingness by political parties to select women candidates. For these elections, there were a series of endeavours to support women candidates under the umbrella of the 50:50 campaign. However, it was reported to the COG that prospective women candidates face economic and social obstacles, and also that the 'rough' nature of the campaign and the prevalence of personal insults deters a lot of women from entering the political fray.

Youth Participation

It was reported to the COG that youth represent the largest number of voters in Malawi, yet they feel they are largely left out of national leadership structures; their involvement is limited to grassroots activity. Participation of youth as party candidates remains minimal, particularly as they lack adequate financial resources and the main parties do not actively select youth as candidates.

It is felt that youth require systematic programmes to support capacity building, promote leadership skills and possible attitudinal changes within parties and in society generally.

Recommendations

1. MEC needs to undertake a comprehensive strategic and operational review, involving all stakeholders, of what went well during these elections and where the problems and challenges were. This can result in the development of a Strategic Plan outlining MEC's full operational requirements – reflecting 'lessons learned' – based on the full electoral cycle. The preparation for future elections should be viewed as a long-term electoral cycle, and not as a single event.
2. 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. As part of the strategic review mentioned in (1), MEC should also review the procedures for registration, ensuring registration officials are properly trained, the technical procedures are suitable and the equipment is reliable.
3. Consideration might be given to the procedure for the nomination and appointment of the Electoral Commissioners. Whichever procedure is chosen, it is imperative that the process results in public and political confidence in the national election management body. At present, the laws provide for "consultation" on the appointment of Commissioners. However, this is vague and, as has been proven during these elections, does not guarantee an inclusive and transparent process.

Consideration might be given, for instance, to a more formal role for parliament in the nomination of commissioners.

4. At present, District Commissioners play a key role in the organisation of elections and the results process. In a sense these bodies are an anomaly in the election management structure, as District Commissioners are public servants working for government, as opposed to independently appointed election officials. This can raise a question as to the neutrality of District Commissioners in some instances and of also their responsiveness to MEC instructions.
5. 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.
6. MEC needs to improve its communications and consultation procedures with all stakeholders, especially parties. The Party Liaison Meetings are important for transparency and confidence-building as well as for conflict resolution. These need to be institutionalised, with regular and effective liaison meetings with parties throughout the electoral process.

Chapter Four

The Election Campaign and Media Coverage

Code of Conduct

The formal campaigning process for the 2009 elections began on 21 March, a day after the announcement by the MEC of nominated candidates. The campaign period ended 48 hours before the opening of the polls. There is an Electoral Code of Conduct for Political Parties and Candidates, whose Preamble begins:

"One crucial tenet of free, fair and transparent elections is freedom of political campaigning by all contestants. All persons have a right to express their political convictions and views without fear of intimidation or threats from anybody. Freedom of campaigning also carries responsibilities, which include tolerance of others to express their own independent views and opinion".

The Code also details the rights of parties and candidates; measures and mechanisms for cooperation with police, the MEC, the Media; freedom of access; prohibited conduct and sanctions; resolution of conflicts and a commitment to accept results of any election or challenge the results under relevant laws.

In addition, the main political parties agreed upon a Declaration on 13 March 2009, which together with the Code set out the broad parameters of how parties would conduct themselves during the campaign. Multiparty Liaison Committees were also established to deal with campaign related issues and complaints.

Broad Observations

The basic freedoms of association, assembly, expression and movement were provided for and respected. Political parties, on the whole, campaigned freely without hindrance or interference. There were isolated reports, however, of some traditional leaders and chiefs exerting undue influence on the campaign, or otherwise exercising their authority in a partisan manner. A small number of rallies were also reportedly disrupted by opposing parties, and in the final week of the campaign, stones were thrown at the convoys of senior party leaders.

Political parties and candidates employed a variety of campaign methods, ranging from mass rallies for the main presidential candidates to smaller, more localised gatherings for parliamentary candidates, door-to-door canvassing at the grassroots level, and campaign posters. The DPP and to a lesser extent the UDF, MCP and other parties distributed various forms of campaign branded materials, including t-shirts and printed branded cloth, and also commodities such as sugar and maize.

Whilst these rallies were often conducted in a jovial atmosphere, several stakeholders expressed concern that at some rallies defamatory and abusive language was used.

During the campaign, there was an imbalance between the huge resources the DPP had at its disposal and the limited resources of the other parties. This resulted in a lack of a level

playing field for the elections. We saw evidence of an inordinate exploitation of the incumbency advantage, relating to the use of state institutions, facilities, security services, vehicles and other resources, as well as state media. We saw, for example, armed security personnel in uniform in lorries parading through the centre of Blantyre with electronic billboards of the incumbent President, just days before the election. There was also extensive use of conventional billboards giving public service messages in which the image of the President was prominent. Furthermore, the Malawi Communications Regulatory Authority (MACRA) funded the printing of campaign materials for the ruling party.

Overview of Media Landscape

Malawi has a varied media – print, broadcast, and online -- which devoted considerable coverage to the Presidential and Parliamentary Elections.

Malawi has 3 national daily newspapers- *The Daily Times*, *The Nation* and *The Guardian*. *The Daily Times* and *The Nation* each has a circulation of 15,000 on week days. Their weekend editions are 30,000 for *Malawi News* (*Daily Times* sister publication) and 40,000 for *Weekend Nation*. *The Guardian* has a circulation of fewer than 10,000. Malawi media experts estimate that each newspaper copy is read by at least 7 people, bringing the total readership of daily newspapers to an estimated 210,000 and 490,000 during the weekend.

Malawi has 23 broadcasters, of which 3 are state controlled, 6 commercial, 9 religious and 5 community. The state-controlled MBC 1 and 2 radio channels and Television Malawi – the only terrestrial channel in the country – have the widest geographical reach. State radio has the largest audience penetration.

Internet penetration is still below 5 percent, meaning that online publications eMalawi and Nyasa Times are read mainly by Malawians in the diaspora and Malawi watchers overseas.

Therefore state radio, MBC 1 and 2 and TVM remain the primary means by which Malawi's 14.2 million people receive the news and information.

There is one news agency – Malawi News Agency (MANA), which is also state-owned.

SMS messaging was used by political parties in the May elections. Phone messages were used to mobilize people to political rallies or to urge people to vote for certain political parties and/or candidates.

The Internet played a less prominent role because of the miniscule penetration referred to earlier.

Regulations on Election Coverage

The Parliamentary and Presidential Elections Act provides for equal news coverage of both ruling and other parties and candidates by media.

Section 63 (1) of the Act states:

“Every political party shall have the right to have the substance of its campaign propaganda reported on radio news broadcasts of Malawi Broadcasting Corporation and in any newspapers in circulation in Malawi.”

In Section 63 (1) sub-section (b) and (c), the law demands that MBC remains neutral in reporting the news of parties and also refers in explicit terms the requirement to provide equal news coverage to parties.

Section 63 (2) states:

"The Commission may, by arrangements with the Malawi Broadcasting Corporation, allocate time on radio during which political parties may be allowed to speak in campaigning for election and the Commission shall allocate equal time for every political party."

The Malawi Communications Act of 1998 requires the Malawi Communications Regulatory Authority (MACRA), in issuing licenses, to meet the demand that broadcasters ensure provision of regular news services and programmes on matters of public interest.

MEC followed this up by getting all media in Malawi to agree, draft and commit to a Code of Conduct, which was signed by media houses, political parties and the government in 2008. This signing was witnessed by the UNDP, the European Union and MEC.

MEC Chairperson Justice Anastasia Msosa, SC, posited in the Code:

This code has been written by the leaders of Malawi's media as a promise to the people of this country... It is an opportunity to remind themselves once again of the ethics of their profession and to commit themselves to live up to those standards.

The Code of Conduct and Malawi laws appear to have been followed by newspapers and private radio stations, with the exception of the 'opposition' oriented Joy FM, whose coverage excluded the ruling party.

The state broadcaster, MBC 1 and 2 and TVM, however, gave overwhelming coverage to the ruling party and incumbent President Bingu wa Mutharika (97%), in full disregard to the Code to which MBC 1 and 2 and TVM had committed themselves.

Reports on Conduct of Media

We were extremely concerned at the conduct of state-owned media in its coverage of these elections. Despite the fact that the Election Law provides that every political party shall have the right to have its "campaign propaganda" broadcast on radio by the Malawi Broadcasting Corporation, MBC 1 and 2 blacked out any parties that were not the DPP. The broadcaster was unashamedly partisan to the detriment of providing a level playing field to all parties.

Monitoring by MEC concluded that in the weeks leading up to the day of the election, the President and his party were afforded over 97% of airtime by MBC and TVM. At the same time, the same media refused to provide virtually any access to other candidates and parties or to abide by agreements to air party political broadcasts. Conversely, it was reported that Joy FM, a private radio station which offered extensive coverage to the opposition, was closed down on the eve of the election by police for allegedly breaking the 48 hour period of campaign silence.

More balanced coverage of the election was provided by some private radio stations, such as Zodiac FM and Capital FM, which is an encouraging development. Opposition parties did have access to coverage in newspapers and private radio stations but this in no way equates to the blanket coverage afforded to the President and the governing party by the state-owned media.

Newspapers lived up to the media code, providing more balanced coverage for all parties. We concluded that MBC 1 and 2 and TVM, as well as Joy FM failed to comply with both electoral laws of Malawi as well as the media code.

We also concluded that MEC did not attempt to enforce the code, save for a belated statement on Election Day in which MEC sharply criticised MBC 1 and 2 and TVM for their obvious bias.

Recommendations

1. 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 necessary.
2. 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.

Chapter 5

The Voting, Counting and Tabulation

The Process

On 19 May 2009 Malawi held direct elections for the President of the Republic and for the Parliament in 192 of the country's 193 constituencies. The parliamentary election in Blantyre Centre constituency was postponed due to the death of a candidate.

Distribution of materials was conducted through the Regional Office to District Commissioners and thereafter to the Returning Officers and local levels. The ballot papers were delivered from the UK – where they were printed – to Lilongwe International Airport. They were stored in a warehouse at the Airport and distributed around the country directly from there.

For the purpose of voting, 3,897 Polling Stations were established across the country. Commonwealth Observers were present in all three Regions (North, Centre, South) of the country, being based in Blantyre, Mangochi, Zomba, Salima, Lilongwe and Mzuzu. In addition on the day of the election, teams from Blantyre also visited Mulanje, Thyolo and Chikwawa.

Each of the Polling Stations was run by a Presiding Officer (PO). They were sub-divided into Streams to accommodate places where large numbers of voters were registered. In total, there were some 18,000 Streams, with each Stream managed by an Assistant Presiding Officer (APO) and various poll officers (such as a ballot issuer, inking clerk, voter identification clerk and usher), all under the authority of the PO. It was noted that a good portion of the polling officials in the Polling Stations were women.

Two Security Officers were appointed to each Polling Station, being drawn from the police and army. Observers felt that the presence of security personnel on the day of the election was generally helpful.

Each party and independent contesting the election in the Constituency had the right to appoint monitors to each Polling Station. The Law provided that two monitors could be appointed per Polling Station, but with only one allowed in the Polling Station at any one time. It was noted that they were present in quite large numbers, but that they did not always appear to be familiar with the process and that more than one monitor was often allowed to be present at the same time, creating a degree of congestion in some instances.

Voting was from 06.00 – 18.00. Prior to commencement of voting, the empty ballot box had to be shown to be empty to assembled party representatives and observers and thereafter it was sealed with plastic security seals. Boxes had to be placed in good view of polling officials and spaced to avoid confusion between parliamentary and presidential ballot boxes. Voting booths had to be placed so as to ensure secrecy of the vote.

The basic voting process was prescribed as follows:

- Voter arrives at polling station
- Voter presents voting certificate and identity is checked against certified register (and if necessary the numeric register)

- Finger of eligible voter is checked for ink
- Register is ticked against voter's name and name of elector is called out
- Electoral roll is marked against number and name of voter
- Voter moves to next desk, fingers are checked then right index finger is inked
- Voter gets ballot from parliamentary ballot issuer
- Voter proceeds to booth, marks ballot and places ballot in parliamentary box
- Voter then returns to inking clerk, and is left index finger is inked
- Voter then proceeds to presidential ballot issuer for presidential ballot
- Voter proceeds to booth to mark ballot, places ballot in presidential ballot box
- Voter leaves polling station

Polling closed at 18.00. If people were waiting in line they were allowed to vote so long as they had been waiting at 18.00.

Where a polling station had more than 1,200 registered voters, voting was organised by alphabetical stream.

Some other features of the procedures are:

- Blind, illiterate or incapacitated persons could be helped to vote by a person of their choice, or in the absence of such a person then by a polling official.
- If a voter spoils a ballot paper then they could request a replacement, and the original would be identified as spoilt and cancelled.

Following the close of the Polling Station, seals of the boxes were checked, the number of persons having voted according to the register was ascertained and checked against the number of ballot papers issued. Ballot boxes were opened and ballot papers sorted. Votes were counted at the Polling Station, by Stream. Party monitors and observers were allowed to be present. The final result for each Stream was signed by the poll officials and party monitors. Results for the overall Polling Station were then entered onto a collation sheet by the Presiding Officer, sealed in an envelope and then delivered to the Constituency Returning Officer. Transportation was provided for the transfer of results and materials from the Polling Stations to the Returning Officers – who were based at the office of the District Tally Centre, under the control of the District Commissioner (this was problematic and is discussed below).

The Returning Officers (RO) tabulated the result for their respective Constituencies. For the parliamentary election, the plan was for ROs to check and fax the results to MEC for verification. ROs were then to announce parliamentary results for their Constituency. For the presidential election, the RO was to pass the result to the District Election Coordinator, who then was to transmit to MEC for verification. MEC was then supposed to announce the results for the Presidential election. The tabulation and transmission and announcement of results suffered from various delays and did not in all instances comply with the plan and this is discussed below.

Assessment of the Voting, Counting and Tabulation

The turnout at the polling stations across the country was some 75%, and in all three regions the vote appeared to be well managed and peaceful, with voters waiting patiently in often long queues. Polling materials generally arrived on time and Commonwealth teams were impressed by the organization of the poll and the dedication of the staff to their duties as well as the positive role played by security officers. Women were well represented as poll officials and women voters were present in large numbers. Polling stations were generally

well laid out and the flow of voters was well controlled and directed, though this did appear to vary.

Voter Certificates proved to be successful, with voters presenting them for identification purposes. Observers reported that Presiding Officers managed the process in a decisive manner and the general use of Head-teachers was a good initiative as they brought authority to the position.

Overall we found that voters were free to express their will and cast a secret ballot in a credible voting process.

In some instances the count at the polling stations was undertaken in quite difficult circumstances – notably a lack of adequate light, buildings with no windows and prone to gusts of wind. It was a careful process and necessarily slow. It was well conducted and was fully transparent under the close scrutiny of party monitors and domestic and international observers.

The physical handover of the results by the PO to the RO was more problematic, mainly because of inadequate transport organised to pick up the PO and the results, especially in rural areas. A party monitor was allowed to accompany the delivery of the results from the Polling Station level to the District level. The transmission by fax of the results by the RO to the National Tally Centre in Blantyre on a Polling Station-by-Polling Station basis was not handled in a timely fashion, with procedures being unclear to many. Further, the overall management of the District Tally Centre was apparently controlled by the District Commissioner rather than a MEC official.

It was very positive, however, that political party representatives were present in the polling stations and at the District level and had the right to a copy of the certified result. This is an important factor in providing for transparency and confidence.

In terms of team reports from different Districts some specific points raised were:

Zomba

- As evidence of the unfair campaign environment: A home of a traditional leader in Zomba had recently been painted blue in DPP party colours and the book allowance for students at the Chancellor University College was increased from K10,000 to K15,000 the day before the election.
- Polling materials, including the sensitive materials, were delivered with minimum security to polling stations a day or two prior to election day. There were no party representatives to follow the process or confirm delivery. In some instances the premises were deserted. Also premises were often extremely basic, with no provision for accommodation for polling officials or toilets or food even though officials ended up spending 3 days at some locations.
- The counting process in the Polling Station was extremely slow. For example at a Polling Station in Zomba Thondwe Constituency, there were 635 voters but it took almost nine hours to complete the count and accounts.

Mangochi

- Presiding Officers were not drawn from the education system in all instances, the team found civil servants were being used in some observed instances, contrary to MEC's instruction.

- At a polling station in St Augustin, party monitors were located too close to the voting booth and were talking to voters as they approached the booth to vote.
- At the District Tally Centre ROs had gone without sleep for three nights as the process went on until the 21st of May. Further, the fax machines provided by MEC for transmission of results ran out of ink, further delaying the process.

Lilongwe

- The Polling Station at Bwaila School in the Lilongwe City West Constituency was the first polling station to submit its results to the Lilongwe Tally Centre, shortly after 21.00. The PO managed the process extremely well and any disagreements relating to spoilt ballots were settled amicably and quickly.
- The delay in collecting results from POs to ROs appeared to be particularly serious in relation to polling stations in remote areas. This had a domino effect on the entire results and tabulation process. Equally importantly, this delay also had a human dimension. For instance, the RO for the Lilongwe North Constituency who had reported to the Lilongwe Tally Centre on polling day, 19 May, was still at post waiting for results from 15 more polling stations as at 08.00 on 21 May. Some ROs also reported that they had been without water or food for over 24 hours.
- Faxing of results from the Lilongwe Tally Centre did not commence until 4pm on 20 May.

Salima

- In many parts, the polling materials were only delivered late the evening before election day, but they were all present in time for the commencement of voting.
- Some Presiding Officers had to wait the entire night of the election to be picked up to transport their results to the District Tally Centre.

Mzuzu

- At a polling station in Mzuzu City, the Presiding officer informed observers that people had started queuing at 02.00 on the day of the election.
- In many of the polling stations observed across Mzuzu, physically challenged, illiterate, elderly persons and pregnant women were helped by polling staff and given priority to vote
- Results did not start to arrive at the District Tally Centre until the early morning of the day after the election, and even by noon on the 20th there were still several polling stations results not declared.
- Problems with the transportation of results was highlighted as an issue, and control of vehicles for electoral purposes was under the jurisdiction of the DEC and not the MEC office.
- At the District Tally Centre in the room where results were received, there were approximately 120 chairs and some two-thirds of them were occupied by party monitors, which was excessive.

Blantyre

- Voting in Blantyre was calm and well managed. But at polling stations in central Blantyre, there was a lack of adequate light for the final stages of the process, once darkness fell.
- As elsewhere, the count at the polling station was transparent and carefully conducted but slow. Party monitors had full view of the process and were consulted on decisions to invalidate a ballot where necessary.

Key Issues

The Voter Register

Given the problems with the voter registration, there had been a concern that problems with the voter register may cause problems on election day. It was clear that the certified voter register still contained errors, but the problem was averted by the use of the numeric register to help identify voters from their Voter ID number, as well as allowing voters who may not have appeared on either list - but whose voter ID number fell within the polling station range - to vote. Processing of voters in the polling station was somewhat slowed down by the time it took to find names on the register.

The pragmatic and transparent mechanisms put in place in the polling station to deal with voter identification were successful.

District-Level Tabulation and Role of the District Commissioner

There were some delays in the tabulation at the District level. This appeared to be due in large part to a lack of transportation to ensure the timely delivery of results from the Polling Stations to the Returning Officers based at the District Tally Centre. There were also delays in the transmission of results from the District National Tally Centre.

For example, observers in Mangochi reported that some Presiding Officers were only turning up at the District Tally Centre on the morning of 21 May, some 36 hours after the count was completed. In Lilongwe some Presiding Officers who completed the count at midnight were still waiting the following afternoon to be picked up and taken to the District level to deliver the results to the RO.

Also exacerbating the problems in the flow of results, it was reported that some District Election Coordinators were not following the plan established by MEC and were not faxing the results as they were available. It became apparent that ROs were often not aware of the operational plan regarding results transmission and transport, with the District Coordinator responsible for all such matters.

The role of the District Election Coordinator (DEC) was a concern. The position is filled by the District Commissioner, which is an appointed position beholden to the state structure. DEC's are not formally part of the MEC management structure and are therefore not directly accountable to MEC or in some cases responsive to its instructions. In addition, in terms of ensuring the impartiality of the bodies responsible for the conduct of an election, even at the level of perception, it is not ideal to use state officials for such a sensitive and crucial role.

Training, Preparation and Resources

The delays in the process for transportation of results, tabulation and transmission as well as the national-level tabulation by MEC, could have been overcome or minimised through increased training and preparation time. There had not been a real training exercise involving simulation of such a key and vital part of the process, including the inputting of results into computers at the national level, which also experienced some problems. This may have been a consequence of the reduced timelines as well as of the enormous drain on MEC resources and time caused by the need to check, verify and clean the voter register so late in the process.

MEC informed the Group that government departments allocated two vehicles per constituency. It is not sure if these vehicles were provided in every case or if they had extra resources in addition, but it is clear from the delays experienced by Presiding Officers that MEC was severely under-resourced in terms of transportation for the collection of polling station results. The process at this level also suffered from poor planning in some instances, with ROs, for example, not in control or even involved in the plans for transporting results.

Division of Polling Stations into Streams

A Polling Station Stream was supposed to have a maximum of 1,200 voters. If there were more voters than this registered for the station, then the station was divided into Streams organised in alphabetical order. However, the sub-division did not take account of the number of voters in each alphabetical group. As a consequence, in some instances there were major imbalances between the streams, with at times long queues in some Streams and relatively few voters in others.

Handling of Voter Transfers

On the day of the election, voters could present themselves at a different polling station from where they were registered, so long as they had applied for and received a transfer certificate. However, voters could apply for a transfer certificate up to one week before the election and it appears that the certificates had not been processed in all cases. There may need to be a longer cut-off period for transfer applications. It was also clear that there was not a uniform format of the transfer certificate.

On the day of the election a number of voters who had requested a transfer certificate had not yet received it. During the voting period, MEC issued an instruction via radio to change the procedures, allowing any person with a voter certificate to be allowed to vote whether they had a transfer certificate or not. This new instruction was inconsistently applied and deliberately ignored by some POs. This meant that in places where it was applied, a voter presenting their self in the afternoon was treated differently to a voter presenting their self in the morning. It is not good practice to change the rules of the process on the day of the election.

Polling Hours

Polling stations closed at 18.00. However, it started to get dark around 17.30, meaning the final part of the voting process and the close of the polling station were conducted in darkness in most instances, creating difficulties for voters and poll staff as well as a potential threat for the security of the ballot box.

Transparency

The high level of transparency in the process was a major positive feature. Political parties had monitors in every polling station, domestic observers were present in many polling stations and played an important role, and the processing of voters was conducted in an open manner. The count was also fully scrutinised and the results certified by party monitors present, who received a certified copy of the result. Party monitors could also accompany the delivery of the result to the District Tally Centre. At the District level, parties were again present and the process was open and transparent. Further, the results at the National level were publicised on screen and parties were present throughout.

Recommendations

1. MEC should conduct a thorough process review and lessons learned exercise, drawing upon the experience of a selection of Returning Officers and Presiding officers from around the country. The review should be comprehensive, but with particular focus on aspects of the process which have been identified as key stress points, notably 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.
2. In preparation for future elections it is vital that MEC conducts 'real-time' training for staff in key positions, notably on the tabulation and transmission of results. Such a vital aspect of the process, which if it goes wrong can undermine political confidence and create tension, must be coherent and deliver a timely output. Further, in order to more fully meet its responsibilities, MEC requires adequate resources for its task. This is particularly pertinent with regard to transportation and communication facilities.
3. 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.
4. General Matters Relating to Polling
 - It would be far cleaner and more effective to use ink marking pens for the inking of voters as opposed to the bottles of ink.
 - Polling officials need to be made aware that ballot box seals must be fully tightened on the box so the lid cannot be lifted.
 - The signage and control of voter flow in polling stations could be improved, by, for instance the 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.
 - The cut-off date for transfer certificates needs to be more than one week prior to the election, to allow time for adequate processing of certificates.
 - Changes to procedures on the day of the election should be avoided, as it causes confusion and inconsistencies.
5. 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.

Chapter 6

Conclusions and Recommendations

Conclusions

The 19 May 2009 elections are Malawi's 4th post-independence multi-party elections. The elections were credible overall and are a major step forward for Malawi.

The elections met many of the standards for democratic elections to which Malawi has committed itself. There was a reasonable legal framework for the election; candidates and political parties enjoyed participation rights; voters generally enjoyed universal suffrage, despite some problems with voter registration; there was an independent election management body; freedoms of expression, association, movement and assembly were provided for; the process was largely transparent, particularly relating to voting and counting; and voters were free to express their will.

However, the election did fall short of meeting some other key standards. There was a lack of a level playing field for the campaign; state resources were used to the undue advantage of the incumbent; state-owned media failed to provide balanced coverage or reasonable access to all parties; and the failure to conduct a demarcation of parliamentary constituencies meant that equal suffrage was not provided for.

It took a major effort by MEC to ensure that the elections were held as scheduled, and the generally peaceful nature of the campaign and conduct of the voting on the day of the election are a credit to the people of Malawi, the officials conducting the voting process in Polling Stations and, to an extent, the Malawi Electoral Commission as well. There were some shortcomings in the campaign environment and some aspects of the organisation of the poll but, overall, the process was credible and voters were free to express their will. Further, the process on the day of the election and during the vote count and tabulation was transparent.

The election campaign was generally peaceful, with basic freedoms provided, and voters were offered a choice between political alternatives. Given the tensions which existed in the lead up to the election, it is a credit to political parties that the campaign was conducted in a largely peaceful manner.

However, the overwhelming impact of the exploitation of the incumbency advantage, especially the blatant bias of the state TV and radio, created a markedly unlevel playing field, tarnishing the otherwise democratic character of the campaign.

The Malawi Electoral Commission is independent and expended great effort to conduct the election on schedule. But, there was concern among stakeholders regarding its appointment by the President without due consultation with the other parties; its often poor communications with parties on aspects of its management process, such as the highly problematic voter registration; and its failure to supply parties with copies of the register in good time prior to election day. The parties nevertheless accepted the authority of MEC

On election day, voters turned out in large numbers and were peaceful and patient. Their conduct was exemplary and impressed all observers. The process was well managed, as

polling officials worked hard to process the voters and security officers played a positive role. Shortcomings in the certified voter register were apparent, but were mostly overcome through the use of pragmatic back-up measures.

Overall, observers reported that voters were free to express their will through a secret ballot. The count at the polling station was generally well conducted. However, there were delays in the transportation of results to the District Tally Centre due to a lack of an adequate transportation plan, which caused frustration for polling officials. At the District Tally Centres, the process remained transparent, but there were again some delays in the transmission of results to the National Tally Centre, due to a lack of tight management and coordination on behalf of district-level officials and some problems with the faxing equipment. In the end, however, the final national results were announced within the legal timeframe and the swearing-in of the newly-elected President occurred 3 days after the day of the election.

While we have identified a number of very positive aspects of the 2009 electoral process and the elections are a step forward for Malawi, it is a concern that some of the shortcomings identified – such as media bias, exploitation of incumbency and problems with the process of voter registration - were also highlighted as concerns during the 2004 elections.

In order to fully meet benchmarks for democratic elections, Malawi needs to address these issues ahead of the next elections, through capacity-building and legislative reform if necessary, before they become entrenched in the Malawi electoral process. We are sure that the Commonwealth stands ready to assist as required and we have offered some recommendations to assist the Malawi authorities in their task.

Recommendations

Electoral Framework and Election Administration

- MEC needs to undertake a comprehensive strategic and operational review, involving all stakeholders, of what went well during these elections and where the problems and challenges were. This can result in the development of a Strategic Plan outlining MEC's full operational requirements – reflecting 'lessons learned' – based on the full electoral cycle. The preparation for future elections should be viewed as a long-term electoral cycle, and not as a single event.
- 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. As part of the strategic review mentioned in (1), MEC should also review the procedures for registration, ensuring registration officials are properly trained, the technical procedures are suitable and the equipment is reliable.
- Consideration might be given to the procedure for the nomination and appointment of the Electoral Commissioners. Whichever procedure is chosen, it is imperative that the process results in public and political confidence in the national election management body. At present, the laws provide for "consultation" on the appointment of Commissioners. However, this is vague and, as has been proven during these elections, does not guarantee an inclusive and transparent process.

Consideration might be given, for instance, to a more formal role for parliament in the nomination of commissioners.

- At present, District Commissioners play a key role in the organisation of elections and the results process. In a sense these bodies are an anomaly in the election management structure, as District Commissioners are public servants working for government, as opposed to independently appointed election officials. This can raise a question as to the neutrality of District Commissioners in some instances and of also their responsiveness to MEC instructions.
- 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.
- MEC needs to improve its communications and consultation procedures with all stakeholders, especially parties. The Party Liaison Meetings are important for transparency and confidence-building as well as for conflict resolution. These need to be institutionalised, with regular and effective liaison meetings with parties throughout the electoral process.

Election Campaign and Media

- 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 necessary.
- 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.

Voting, Counting and Tabulation

- MEC should conduct a thorough process review and lessons learned exercise, drawing upon the experience of a selection of Returning Officers and Presiding officers from around the country. The review should be comprehensive, but with particular focus on aspects of the process which have been identified as key stress points, notably 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.
- In preparation for future elections it is vital that MEC conducts 'real-time' training for staff in key positions, notably on the tabulation and transmission of results. Such a vital aspect of the process, which if it goes wrong can undermine political confidence and create tension, must be coherent and deliver a timely output. Further, in order to more fully meet its responsibilities, MEC requires adequate resources for its task. This is particularly pertinent with regard to transportation and communication facilities.

- 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.
- General Matters Relating to Polling:
 - It would be far cleaner and more effective to use ink marking pens for the inking of voters as opposed to the bottles of ink.
 - Polling officials need to be made aware that ballot box seals must be fully tightened on the box so the lid cannot be lifted.
 - The signage and control of voter flow in polling stations could be improved, by, for instance the 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.
 - The cut-off date for transfer certificates needs to be more than one week prior to the election, to allow time for adequate processing of certificates.
 - Changes to procedures on the day of the election should be avoided, as it causes confusion and inconsistencies.
- 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.

Annex 1

Composition of the Group

H E John Kufuor (Chair, Ghana)

Mr. John Agyekum Kufuor was President of Ghana from 2001 – 2008. His public service spans over thirty years. In 1967, he was appointed Chief Legal Officer and Town Clerk (City Manager) of Kumasi, the second largest City of Ghana. He was a member of the 1968-69 and the 1979 Constituent Assemblies that drafted the Constitutions of the Second and Third Republics respectively. In addition he was a Founding Member of the Progress Party (PP) in 1969, the Popular Front Party (PFP) in 1979 and is a Founding Member of the New Patriotic Party (NPP). He has twice been elected as a Member of Parliament, during the Second and Third Republics. As Deputy Minister of Foreign Affairs (1969-January 1972), he represented Ghana at various international fora.

As a leading member of the All People's Party (APP), which was an alliance of all opposition parties, in 1982 Mr Kufuor accepted an invitation from the Provisional National Defence Council (PNDC) to serve in what was purported to be a National Government. He was appointed the Secretary for Local Government in this new Government. He however resigned within seven months of acceptance of the position due to political differences with the PNDC.

In 1996 Mr Kufuor was nominated as the presidential candidate of the NPP for the elections on December 10, 1996 (the NPP lost that election). On October 23, 1998, he was re-nominated by the New Patriotic Party and won the presidency in the 2000 election. In December 2004 he was re-elected for his second and final term. Mr Kufuor is married to Theresa (Nee Mensah) and they have five children.

Mr Mahfuz Anam (Bangladesh)

Mr Mahfuz Anam started his career in print media in 1972. He is presently the Editor-Publisher of The Daily Star, the largest circulation English daily in the country. He is the Managing Director of its owning Mediaworld. He is also publisher of 'Prothom Alo', the largest vernacular daily of Bangladesh. From 1977 to December 1990, he worked for the United Nations Educational, Scientific and Cultural Organisation (UNESCO) in Paris, New York and Bangkok in the field of media development, international media and co-operation and public affairs. He resigned from UNESCO and returned to Bangladesh and launched the Daily Star in 1991.

Mr Anam is a regular columnist and a television commentator. He is the founder President of the Newspaper Owners' Association of Bangladesh, a founder Trustee of Transparency International (Bangladesh Chapter) and founder chair of the philanthropic organization called Bangladesh Freedom Foundation.

Mr Anam holds an MA degree in Economics and is a recipient of Honolulu-based East-West Centre's Jefferson Fellowship. He is a well known public speaker and is an activist for environmental, gender, human rights and press freedom issues.

Ms Alexandra Devon (Canada)

Ms Devon, an international governance consultant, has a Masters Degree in Sociology in the areas of social justice and social change, and has pursued those goals through a twenty-five year government career in Canada in the field of human and democratic rights. In that

capacity she has served as Human Rights Investigator, Policy Manager of the Provincial Status of Women Office, Chairperson of a Committee on Aboriginal Health Policy, and Deputy Commissioner of Vulnerable Persons. Ms Devon has chaired or presented at local, national, and international conferences and forums on discrimination, disabilities, aging, families, democratic, human, and minority rights, and elections, and has published policy and other government reports with national initiatives. She has provided training to local, national, and international government departments, municipal and federal police forces, educational institutions, non-government organizations, and international visiting delegations, on issues including social justice, social change, human and democratic rights and legislation, elections, gender and culture.

Over the last 12 years, Ms Devon has worked in the field of elections in South America, Canada, the Balkans, Europe, the Middle East, and Africa, in conjunction with the IOM, the EU, the OSCE, the UN, and the Commonwealth, in the capacity of Election Commission Advisor, Chief of Outreach, Chief of Voter Education, Co-ordinator of Election Observers, Long- and Short-Term Observer, Special Projects Manager, and Training for Women Candidates. As well, Ms Devon's international work has included working as NGO Co-ordinator with local and international NGOs and project development for persons with disabilities. Ms Devon was awarded the Government of Canada Canadian Peacekeeping Service Medal, 2004, for service in Kosovo, FRY, from 1999 to 2002.

Mr David Henry (New Zealand)

David Henry was formerly the Chief Electoral Officer in New Zealand responsible for the conduct of parliamentary elections, by-elections and referenda. He has previously held a number of other senior appointments including Chief Executive and Commissioner of Inland Revenue responsible for national revenue collections and the delivery of certain social policy programmes through the tax system. He is currently chair of the Assurance Board of the Department of Corrections.

Dr Jibrin Ibrahim (Nigeria)

Dr. Jibrin Ibrahim is the Director of the Centre for Democracy and Development (CDD). He is a Nigerian scholar-activist with degrees in Political Science from the Ahmadu Bello University, Zaria, Nigeria and a doctorate in Politics from the University of Bordeaux in France. He was an Associate Professor in Political Science at the Ahmadu Bello University. Dr. Ibrahim has lectured, published and consulted extensively on democratisation and governance in Africa. A well-regarded leader in civil society, Dr. Ibrahim has been the founding Director of *Global Rights* in Nigeria – the international human rights NGO. He has also served in the leadership of several national and international advocacy and research networks on constitutional reform, electoral reform and civil society strengthening.

Hon (Ms) Sheila Kawamara-Mishambi (Uganda)

Hon. (Ms) Sheila Kawamara-Mishambi is former Parliamentarian in the East African Legislative Assembly, 2001 – 2006, representing Uganda. She is currently the Managing Director of the BF School for International Leadership Training, based in Kampala. The institute trains and mentors young people into leadership. She is an acclaimed woman rights activist, and the chairperson of a leading women's advocacy network, the Uganda Women's Network (UWONET).

Ms Mishambi is a teacher and journalist by training with a Masters Degree in Development studies, specializing in Politics of Alternative Development Strategies from the Institute of Social Studies in The Hague, The Netherlands. She also holds a Bachelor of Arts Degree in

Education, Economics and History, Makerere University and a Diploma in Journalism from the Uganda Management Institute in Kampala.

Ms Mishambi has impeccable leadership experience, an in depth knowledge of African and global affairs, extensive Civil Society Organisations experience, skills in policy advocacy, lobbying and campaigning in the African region and at the international level. She has been involved in the designing and executing of various media and political campaigns and done several consultancies as a trainer in Politics; Policy Advocacy; Media Relations; Gender and Development.

Mr Desmond McNulty (United Kingdom)

Desmond McNulty has been Deputy Minister for Social Justice and Deputy Minister for Communities in Scotland, UK. He is currently the Labour Party's Shadow Minister for Transport, Infrastructure and Climate Change in Scotland. Before entering the Scottish Parliament in 1999, Mr McNulty was a senior academics, specializing in social science methods and political sociology. He was the co-ordinator of the most successful local referendum held in the UK in recent years. He has previously worked with the World Health Organisation (WHO) and the Westminster Foundation for Democracy and was the co-founder of the Scottish Parliament's Cross Party International Development Group.

Mr Malleh Sallah (The Gambia)

Mr Malleh Sallah is a graduate of Political Science. He served the Commission firstly as Principal Registration Officer; Logistics Officer and then Director of Operations from 1996 to 2001. In 2001 he left the Commission to start a business in tourism sector of the Gambia: Africa Adventure Tours of which he is the Managing Director. Mr Sallah was appointed a Member of the Commission in July 2006.

Mr Sallah was officially elected among the Members as Vice Chairman. He has electoral responsibilities over the Brikama and Mansakonko Administrative Areas. He also has responsibility over the Operations, Finance and IT Divisions of the Commission.

Ambassador Tabitha Seii (Kenya)

Ambassador Tabitha Seii served as the third Kenyan High Commissioner to the Republic of South Africa from 2003 to 2007. From 1997 to 2002, she was a member of the eighth Kenyan Parliament and was appointed as a member of Parliamentary Education Committee and attended two Commonwealth Parliamentary Conferences. She also served as a Chair of the Democratic Party of Kenya (then the main opposition party). She was twice one of the Commonwealth Observers Group for Zimbabwe Parliamentary and Presidential Elections in 2000 and 2002. In 1995 she founded a Women Rights NGO (Education Centre for Women in Democracy). She attended Beijing World Women Conference in 1995. Prior to the above, she worked as a teacher and subsequently co-ordinator of the World Wide Christian Youth Exchange Programme and also worked with World Vision International. In the early 90s she worked with "*Future in Africa*," a leadership program for Women in Africa. She is currently the Chairperson for Education Centre for Women in Democracy and the Director of Great Rift Girls' Educational Centre in Kenya.

Mr Mohamed Zahid (Maldives)

Mr. Mohamed Zahid is the Vice-President of Human Rights Commission of the Maldives. He is also member of National Advisory Committee on Elections in the Maldives. He has overseen two presidential and general elections.

While Mr. Zahid was engaged in social mobilization, good governance, social justice and decentralization, he also took part in the formation and advocated the role of civil society organizations in liberal democracy.

Prior to being elected by parliament and appointed by the President as Vice - President of Human Rights Commission of the Maldives, he worked for, US Save the Children, UNDP & UNOPS, played a leading role in decentralization and governance programs throughout Maldives and contributed to similar programs in SAARC.

Commonwealth Secretariat Staff Support Team

- Mr Mark Stevens, Staff Team Leader, Democracy
- Mr Manoah Esipisu, Media
- Mr Martin Kasirye, Political
- Ms Yvone Apea, Political
- Ms Zippy Ojago, Democracy

Annex 2

Observer Group Deployment Locations

Team No	REGION	LOCATION	NAMES
1	SOUTH	BLANTYRE	H.E. JOHN KUFUOR Secretariat Staff
2		CHIKWAWA	MR. MARTIN KASIRYE
3		ZOMBA	MS. SHEILA KAWAMARA-MISHAMBI MR. MOHAMED ZAHID
4		MANGOCHI	MS. ALEXANDRA DEVON DR. JIBRIN IBRAHIM
5	CENTRE	LILONGWE – Dedza, Kasungu	MS. YVONNE APEA MR. DAVID HENRY
6		SALIMA	AMB. TABITHA SEII MR. MAHFUZ ANAM
7	NORTH	MZUZU	MR DES MCNULTY MR MALLEH SALLAH

Annex 3



Commonwealth Observer Group Malawi Parliamentary and Presidential Elections 19 May 2009

Arrival Statement by H.E. John Kufuor Chairperson of the Commonwealth Observer Group

The Commonwealth Secretary-General, Mr. Kamalesh Sharma, has constituted an Observer Group for the 2009 Malawi Parliamentary and Presidential Elections, following an invitation from the Malawi Electoral Commission.

It is my honour and privilege to have been asked to lead this Commonwealth Observer Group and be here in Malawi at this time.

Democracy and good governance are core Commonwealth principles and ones which our Observer Group is constituted to promote and uphold. These elections are crucially important for the people of Malawi, as they seek to elect their parliamentary representatives and their President. It is therefore imperative that the electoral process is transparent, fair and ultimately reflects the wishes of the people.

Our task as the Commonwealth Observer Group is to observe and report on relevant aspects of the organisation and conduct of the elections. The Group will consider all the factors impinging on the credibility of the electoral process as a whole, and assess whether the elections have been conducted according to the standards for democratic elections to which Malawi has committed itself, with reference to its own election-related legislation as well as relevant regional, Commonwealth and other international commitments.

In this regard, we will consider, among other things, the transparency of the process; the impartiality of state apparatus and state media; whether voters enjoyed universal suffrage and the right to vote; whether candidates were free to campaign on a level playing field, and if voters were able to express their will free of intimidation and if their will was respected.

In conducting our duties and undertaking our assessment, we will be neutral, impartial, objective and independent. Commonwealth Observers are present here in their individual capacities as eminent Commonwealth citizens. The assessment by the Group will be its own and not that of member governments or of the Commonwealth Secretariat. If we offer any criticism in our reports it will be constructive, with the intent to help further strengthen the democratic process in the country.

The team of Observers come from across the Commonwealth, and includes politicians, current and former members of election commissions, representatives of civil society and the media.

In the lead up to the election we will meet with officials from the Election Commission, representatives of political parties, civil society and media, as well as High Commissions and representatives of other international and domestic observer groups.

Prior to election day, Commonwealth teams will deploy to different parts of the country in the South, Centre and North, to observe the voting, counting and results processes. Our Group will co-ordinate closely with other international and domestic observer groups before, during and after the poll.

We will issue an Interim Statement after the election and a Final Report upon completion of our duties.

The conduct of peaceful, transparent and credible elections is vital for Malawi and I urge all concerned to meet their responsibilities in this regard. I wish the people of Malawi well and hope that the coming election is one the country will be proud of.

Blantyre, 14 May 2009

Annex 4



Commonwealth Observer Group

Malawi Parliamentary and Presidential Elections

19 May 2009

INTERIM STATEMENT

H.E. John Kufuor, Chair of the Commonwealth Observer Group

Thursday 21 May 2009

A peaceful election day and a well-managed voting process, but some key benchmarks for democratic elections not met

The 19 May 2009 elections are Malawi's 4th post-independence multi-party elections. The Commonwealth was pleased to be invited by the Malawi Electoral Commission (MEC) to observe the elections, and I am honoured to have been asked by the Secretary-General of the Commonwealth to lead its Observer Group.

The Commonwealth team has been present in the country since 8 May, and will remain for a further period, to continue to follow the culmination of the process. During our time here we have met with a range of stakeholders, including the Chair and members of the Electoral Commission, political parties, civil society, media, other observer groups and Commonwealth High Commissions present in Malawi.

For the voting and counting processes Commonwealth Observers were present in all three regions of the country and we have co-ordinated closely with other regional and international observers, building up a comprehensive picture of the conduct of the process. This is our Interim Statement, and represents an overview of our key findings up to this point. We will continue to closely follow outstanding aspects of the process, and will issue a final detailed report in June, containing conclusions and recommendations.

Key Interim Findings

- It took a major effort by MEC to ensure the 19 May elections were held as scheduled, and the generally peaceful nature of the campaign and conduct of the voting on the day of the election are a credit to the people of Malawi and, to an extent, the Electoral Commission as well. While aspects of the process have been encouraging, there have, unfortunately, also been shortcomings, such as the belated release of the Voter Register and evident bias of state media, which mean some key benchmarks for democratic elections have not been fully met.
- The election campaign was generally peaceful, with basic freedoms provided, and voters were offered a choice between political alternatives. Given the tensions which existed in the lead up

to the election, it is a credit to political parties that the campaign was conducted in a largely peaceful manner.

- However, the overwhelming impact of the exploitation of the incumbency advantage, especially the unashamed bias of the state TV and radio, created a markedly unlevel playing field, tarnishing the otherwise democratic character of the campaign.
- The Malawi Electoral Commission is independent and expended great effort to conduct the election on schedule. But, there was concern among stakeholders regarding its appointment by the President without due consultation with the other parties; its often poor communications with parties on aspects of its management process, such as the highly problematic voter registration; and its failure to supply parties with copies of the register in good time prior to election day. The parties nevertheless accepted the leadership of MEC
- On election day voters turned out in large numbers and were peaceful and patient. Their conduct was exemplary and impressed all observers. The process was well managed, as polling officials worked hard to process the voters and security officers played a positive role. Shortcomings in the certified voter register were apparent but were mostly overcome through the use of pragmatic back-up measures.
- Overall, observers reported that voters were free to express their will through a secret ballot. The count at the polling station was generally well conducted. At District and Central levels the results process has proven a lengthy undertaking and the receipt of final results by MEC in Blantyre has been extremely slow. It is of course imperative that final results are tabulated fully and transparently with official results issued as soon as available in order to maintain confidence.
- While we have identified a number of very positive aspects of the 2009 electoral process and the elections are a step forward for Malawi, it is a concern that some of the shortcomings identified – such as media bias, exploitation of incumbency and problems with the process of voter registration - reflect some of the problems highlighted in 2004. In order to fully meet benchmarks for democratic elections Malawi needs to address these issues ahead of the next elections, through capacity-building and legislative reform if necessary, before they become entrenched in the Malawi electoral process. We are sure that the Commonwealth stands ready to assist as required.
- Following the final confirmed results there is a period for complaints, and only at the resolution of this stage is the electoral process complete. We will continue to follow events and issue a final detailed report of conclusions and recommendations at a later stage.

The Campaign Environment

The 2009 elections have been competitive, offering a degree of choice between political alternatives, with 1,184 candidates contesting the parliamentary elections across the 193 constituencies and seven candidates contesting the presidential election. We were encouraged that there were 232 women candidates contesting the parliamentary elections as well as one for the presidential election. It is hoped that this can be further built upon, with increased participation of women in political life.

The basic freedoms of association, movement and assembly were provided for, as was freedom of expression. The election campaign was largely peaceful, though there was a tragic traffic accident at the end of the campaign reportedly killing some DPP party supporters. Otherwise only isolated incidents were reported, which is encouraging given the fractious political environment prevalent in the lead-up to the poll.

However, there has been an unlevel playing field for the elections, which has unfortunately tarnished the democratic character of the campaign. There has been an inordinate exploitation of the incumbency advantage, relating to the use of state institutions and resources, as well as state media.

We are extremely concerned at the conduct of state-owned media in its coverage of these elections. The Election Law provides that every political party shall have the right to have its "campaign propaganda" broadcast on radio by the Malawi Broadcasting Corporation. In addition, major media had all signed a Code of Conduct highlighting the need for balanced and fair reporting. However, reporting and coverage of the President and DPP's campaign by state radio and TV was unashamedly partisan.

Monitoring by MEC concluded that in the weeks leading up to the day of the election the President and his party were afforded over 97% of airtime. At the same time, the same media refused to provide virtually any access to other candidates and parties or to abide by agreements to air party political broadcasts. Conversely, it was reported that Joy FM, a private radio station which offered extensive coverage to the opposition, was closed down on the eve of the election by police for allegedly breaking the campaign silence.

We were pleased that more balanced coverage of the election was provided by some private radio stations, such as Zodiac and Capital, which is an encouraging development. While some opposition parties did have access to coverage in newspapers and private radio stations, this in no way compensates for the blanket coverage afforded to the President and the governing party by the state-owned media.

Management of the Electoral Process

The MEC is independent and it is clear that its Chair, Justice Msosa, enjoys widespread respect. However, while it is acknowledged that MEC remains under-resourced for its task and was racing against time, there does appear to be a concern regarding its overall capacity and its management of the process, particularly by opposition parties.

Some of the discontent focused initially on MEC's appointment by the President without due consultation with other parties, but later also on delays and shortcomings in the procurement process, allegations of financial impropriety against some MEC staff, confusion over the timing of the nomination process, claims by parties that MEC was not as open and forthcoming with them as they should have been and problems in the registration of voters. MEC also lacked the time to undertake the overdue demarcation of constituencies. Equal suffrage may not therefore have been fully provided for.

The voter registration process was a major undertaking by MEC and represented a significant challenge. Initial delays in the process were exacerbated by the realisation after the public verification exercise in April, that the list contained numerous errors, including, but not limited to double entries, missing names and mis-allocation of voters to centres. In addition it then became apparent that the paper work for the registration had in many instances not been completed to the requisite standard or was even absent.

Given the strong criticism of the voter register during the 2004 elections it was encouraging that an attempt was made to create a brand new list of voters. It is to its credit that MEC made a major effort to respond to these shortcomings and hold the elections as scheduled on 19 May. But such a late effort was always going to be difficult and possibly distracted the organisation from other key tasks so close to the election. Such a late production of the final register also meant that it was not possible for a final public verification or for parties to have timely access to the list.

Voting, Counting and Results

The turnout at the polling stations across the country seemed very high, and in all three regions the vote appeared to be well managed and peaceful, with voters waiting patiently. There had been a concern that problems with the voter register may cause problems on election day, and whilst the certified voter register clearly still contained errors, the problem was averted by the use of the numeric register to help identify voters from their Voted ID number, as well as allowing voters who

may not have appeared on either list but whose voter ID number fell within the polling station range, to vote.

Polling materials generally arrived on time and Observers were extremely impressed by the organization of the poll and the dedication of the staff to their duties as well as the positive role played by security officers. There was also a prominent role for women poll officials. Overall Observers found that voters were free to express their will and cast a secret ballot.

The count at the polling stations was often undertaken in quite difficult circumstances, but it was carefully conducted and was fully transparent under the close scrutiny of party representatives. The tabulation and results processes have been lengthy, and it has taken an extended time for results to come through to district and central levels. It seems that inadequate access to transportation may have been a problem in some areas to get the results to the district, but thereafter it has also been slow. While aspects of this process are still on-going, the MEC appears to be doing its utmost to be transparent and maintain confidence in the eventual outcome and it is hoped that transparency is maintained throughout ensuring confidence in the final outcome. Political party representatives were present in the polling stations and had the right to a copy of the certified result, so parties have a check on the final tabulation process and recourse to legal mechanisms in the event they find any discrepancies.

For media enquiries, please contact Mr. Manoah Esipisu at +265 (0)995 410 806, +44 789 446 2021 or m.esipisu@commonwealth.int

Declaration of Principles for International Election Observation

The Commonwealth Secretariat is a signatory to both the Declaration of Principles for International Election Observation and the associated Code of Conduct for International Election Observation Missions, which were commemorated on 27 October 2005 at the United Nations in New York.

Commonwealth Observer Groups are organised and conducted in accordance with the Declaration and Commonwealth Observers undertake their duties in accordance with the Code of Conduct.