

**ADVANCE COPY**

**Malawi  
Parliamentary and Presidential Election  
20 May 2004**

**REPORT OF THE  
COMMONWEALTH OBSERVER  
GROUP**

**Commonwealth Secretariat**

**Malawi Parliamentary and Presidential Election  
20 May 2004**

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25 May 2004

Dear Secretary-General,

We have pleasure in submitting our Report on the Parliamentary and Presidential Elections in Malawi, held on 20 May 2004.

We have taken into account the electoral environment as a whole, as well as the election day itself. We have 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.

We thank you for inviting us to observe these Parliamentary and Presidential Elections. We wish the people of Malawi well for the future, hope that they have a better election next time and urge that those in power begin now on the vital work of ensuring that there is a level playing field before all future elections.

Yours sincerely,

Justice Joseph Warioba  
Chairperson

Rt Hon Don McKinnon  
Commonwealth Secretary-General  
Marlborough House  
Pall Mall  
London SW1Y 5HX  
United Kingdom

Senator Raynell Andreychuk

Mr Victor Ashby

Ms Nicolette Balcombe

Ms Justina Cumbe

Senator Alan Ferguson

Mr Michael Holman

Ambassador Olujimi Jolaoso OFR

Ms Gugulethu Matlaopane

Ms Koki Muli

Begum Sarwari Rahman

Hon Wavel Ramkalawan MP

Mr Kingsley Rodrigo

Ms Elizabeth Solomon

## **Chapter One**

### **INTRODUCTION**

On 15 March 2004 the Malawi Electoral Commission invited the Commonwealth Secretary-General, Rt Hon Don McKinnon, to send observers for the Parliamentary and Presidential Elections, which were then scheduled for 18 May 2004.

The Commonwealth Secretary-General confirmed his intention to send a Commonwealth Observer Group. However, before confirming that he would constitute such a Group he sent a two-person Assessment Mission of Commonwealth Secretariat officials in April 2004. This Mission reported that the political parties and civil society would welcome the presence of Commonwealth Observers and that the Electoral Commission had provided the necessary guarantees that Commonwealth Observers would have access to polling stations and counting centres and generally be free to pursue their mandate.

The Secretary-General then decided to constitute an Observer Group. An Advance Group, consisting of Observer Ms Koki Muli and Commonwealth Secretariat staff member Mr Linford Andrews, began work in Malawi on 4 May. The purpose of this Advance Group was to assess the electoral environment and to report to the full Observer Group on its arrival. The Advance Group held a series of meetings with Electoral Commission, party and NGO officials in Blantyre and Lilongwe and then travelled extensively, meeting voters and assessing the pre-election mood and arrangements.

The full Observer Group began work in Blantyre on 10 May 2004. It consisted of fourteen prominent Commonwealth citizens supported by a staff team of eight from the Commonwealth Secretariat. It was led by Justice Joseph Warioba, former Prime Minister of the United Republic of Tanzania. (The composition of the Group is set out in *Annex One*).

### **TERMS OF REFERENCE**

The Terms of Reference for the Group were as follows:

*"The Group is established by the Commonwealth Secretary-General at the request of the Malawi Electoral Commission. It is to observe relevant aspects of the organisation and conduct of the Parliamentary*

*and Presidential Elections scheduled to take place on 18 May 2004, in accordance with the laws of Malawi. It is to consider the various factors impinging on the credibility of the electoral process as a whole and to determine in its own judgement whether the conditions exist for a free expression of will by the electors and if the results of the elections reflect the wishes of the people.*

*The Group is to act impartially and independently. It has no executive role; its function is not to supervise but to observe the process as a whole and to form a judgement accordingly. It would also be free to propose to the authorities concerned such action on institutional, procedural and other matters as would assist the holding of such elections.*

*The Group is to submit its report to the Commonwealth Secretary-General, who will forward it to the Government of Malawi, the Malawi Electoral Commission, the leadership of the political parties taking part in the elections and thereafter to all Commonwealth governments”.*

## **ACTIVITIES OF THE GROUP**

An Arrival Press Conference was held on Monday 10 May and the Arrival Statement, which was read by the Chairperson, was circulated to the national and international media (see *Annex Two*). The Group then embarked on a series of briefings whose purpose was to provide information and views on the electoral process and to provide background on the overall environment in which the elections were being held.

Following the press conference on 10 May the Group was briefed by the Chairperson of the Electoral Commission and the Chief Elections Officer, Justice James Kalale and Mr Roosevelt Gondwe, and then by its own Advance Group. The following day the Group met representatives of a number of the Presidential candidates and the main alliances and parties that were contesting the Parliamentary Elections. They were followed later that day and on Wednesday and Thursday 12 and 13 May by non-governmental organisations (separate sessions for the NGO umbrella body, the domestic election observers, gender organisations, youth organisations and human rights NGOs). The Group also met representatives of the main media organisations, the media monitors (both from civil society and the Electoral Commission), other international observers and the Commissioner of Police. On Friday 14 May the Group travelled to the capital, Lilongwe,

to be briefed by Commonwealth High Commissioners. It then deployed to its base locations in ten four-person teams (in each case two Observers, plus a driver and an interpreter).

The Chairperson, Justice Warioba, accompanied by Staff Support Team Leader Professor Adefuye, travelled from Lilongwe to Mzuzu in the North, then back to Lilongwe and Kasungu in the Central Region and then to Blantyre in the South. From Blantyre he observed in Chikwawa to the south-west and Zomba to the north-east. He met with election and party officials, other international and domestic observers and ordinary voters, and saw the display of the register, the distribution of ballot papers and the Electoral Commission's other preparations for the elections at first hand. The other teams' base locations were as follows:

*Northern Region*

Karonga	Hon Wavel Ramkalawan MP Mr Michael Holman
---------	--

Mzuzu	Senator Alan Ferguson Mr Christopher Mupita
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*Central Region*

Kasungu	Senator Raynell Andreychuk Ms Justina Cumbe
---------	--

Lilongwe	Begum Sarwari Rahman Mr Martin Kasirye
----------	---

Salima	Mr Kingsley Rodrigo Ms Gugulethu Matlaopane
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*Southern Region*

Blantyre	Ambassador Olujimi Jolaoso Ms Geraldine Goh
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Mangochi	Ms Koki Muli Ms Nicolette Balcombe
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Zomba	Mr Victor Ashby Ms Katalaina Sapolu
-------	--

Chikwawa	Ms Elizabeth Solomon
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Mr Lach Fergusson

A Deployment Statement, which was issued to the media at the time of the Group's deployment, is attached at *Annex Three*.

Each of the Teams travelled widely from their base locations to familiarise themselves with their areas of deployment and sought to assess the atmosphere, to observe the final stages of the election campaign and to evaluate the Electoral Commission's preparations for the election.

On arrival at their base locations Observer Teams generally visited the police, election officials, political parties, civil society organisations and other observers. They also met with voters on the street, in their places of work and in public places, to hear their views on the process. Teams travelled throughout their respective areas, making a point of being visible without being intrusive. All Team vehicles were identifiable by blue and yellow Commonwealth logos and many were also equipped with a Commonwealth flag. All Observers wore blue Commonwealth Observer polo-shirts while on deployment.

On the afternoon of Friday 14 May, shortly after the deployment of the Commonwealth Teams, the High Court ruled that insufficient time had elapsed between the display of the register and the scheduled election day, 18 May; decided that the elections should not be held on 18 May; and urged the Electoral Commission to postpone the elections. To comply with the law the new date would have to be no later than 25 May. On Saturday 15 May the Malawi Electoral Commission decided that the elections would be held on Thursday 20 May 2004. Accordingly, the campaign would end on the morning of Tuesday 18 May. Further detail on this is given in Chapter Four.

On Election Day each Observer Team was present at a polling station in time to observe the opening at 6.00am. Each Team then visited as many polling stations as possible, usually for fifteen minutes in each case. At the end of the day most Teams saw the closure of a polling station, observed the count and followed the results, ballot boxes, documentation and other equipment through to the District Collation Centre where possible. Here the Returning Officer would compile the constituency results for the Parliamentary Elections and pass on to the Electoral Commission in Blantyre both these and the Presidential Election results from her/his District. The Commonwealth Teams visited 366 polling stations, 17 counts and 10 Returning Officer's offices on 20 May, and were present in 57 constituencies.



Most Observer Teams were able to pick up the results process again on the morning of 21 May prior to returning to Blantyre, meeting election officials, police, party agents, civil society organisations, the media and other observers to get their views on the poll, count and results process. Further details are given in Chapter Five.

On 21 May the Chairperson's Team was present at the National Results Centre in Blantyre to observe preparations for compilation of the final results. As and where possible, Observer Teams checked on the integrity of the transmission of results as they were transmitted from the Polling Stations to the Returning Officers.

The Group was assisted in its work by Observation Notes and Checklists (which are shown at *Annex Four*). On the basis of Teams' reports during deployment and on the polling day itself, the Chair issued an Interim Statement on 21 May 2004 (see *Annex Five*).

On Tuesday 25 May the Group concluded its Report for the Secretary-General, issued a Departure Statement (see *Annex Six*) and left Malawi.

## **PREVIOUS OBSERVATION**

Prior to the arrival of the Commonwealth Observer Group two Commonwealth Expert Teams were present in Malawi to observe important elements in the preparations for these Parliamentary and Presidential Elections.

In January 2004 Jamaica's Director of Elections Mr Danville Walker and Commonwealth Secretariat staff member Ms Charlene Lee-Ling were present in Malawi to observe the voter registration process. This Expert Team expressed a number of concerns about the process, urged a review of registration procedures and plans and recommended that as a priority extra financial assistance and technical support be provided to increase the capacity of the Electoral Commission's Information Technology Centre.

In April 2004 former Chief Elections Officer of Trinidad and Tobago Ms Joyceln Lucas and Commonwealth Secretariat staff member Mr Linford Andrews were present for the display of the Voters Register. In the event the computerised roll was not available for inspection. Accordingly, the Commonwealth Expert Team concluded that "the

exercise failed to achieve the objective for which it was conducted". It also recommended the introduction of a system of continuous registration.

The reports of these two Expert Teams were made available to the Commonwealth Observer Group. Extracts can be found at *Annex Seven* and *Annex Eight*.

## **Chapter Two**

# **THE POLITICAL BACKGROUND**

## **INDEPENDENT MALAWI**

Nyasaland achieved independence on 6 July 1964 as Malawi, following a nationalist campaign spearheaded by the Malawi Congress Party (MCP), originally known as the Nyasaland African Congress, under the leadership of Dr Hastings Kamuzu Banda as Prime Minister. Three years earlier, in multi-party elections to a Legislative Assembly, the MCP won 94% of the vote, claiming all seats. Further elections scheduled before independence, in April 1964, did not take place as all Members of Parliament were returned unopposed. At independence Malawi adopted a parliamentary system of government, on the Westminster model. On 6 July 1966 Malawi became a republic, with Dr Banda as President and the MCP as the sole political party under a new Constitution. All opposition was suppressed and its leaders were either detained or fled into exile. President Banda adopted an increasingly authoritarian leadership style, and was voted Life President by Parliament in 1971. All constitutional powers were vested in him.

From independence to 1979 no Parliamentary Elections were held as Dr Banda only approved one candidate per constituency, thereby resulting in all chosen candidates being returned "unopposed". This arrangement was modified for the 1979, 1983, 1987 and 1992 elections, when a number of individuals (all members of the MCP) were allowed (only with Dr Banda's personal approval) to stand for each constituency, though candidates were not allowed to campaign.

The Banda dictatorship unravelled as a result of a combination of factors. Democratisation was sweeping not only through Africa, but across the world. In South Africa apartheid was coming to an end. Malawi could not forever withstand the pressures these and other developments generated. The approach of non-racialism and democracy in South Africa, the sub-region's biggest country, was a particularly powerful factor.

In addition, development partners which had previously supported Malawi under Dr Banda started to demand respect for human rights and democratic reforms as a condition for continued aid. Falling living standards, the influx of more than one million refugees from the then war-torn Mozambique and the success of the opposition in the 1991 elections in neighbouring Zambia all hastened change in Malawi. The support of Malawi's influential Catholic Church for the opposition to Dr Banda's one party system and the regrouping of the splintered opposition also had a major effect.

## **RETURN TO MULTI-PARTY POLITICS**

At the end of 1992 Dr Banda gave in to growing pressure and announced a referendum on changing the political system. The referendum, held on 14 June 1993, resulted in a 63% vote for multiparty democracy. Soon thereafter opposition parties were legalised and Dr Banda announced an amnesty for all political prisoners and exiles. An interim parallel administration with representatives from all parties was put in place, charged with steering the transition to pluralism. A new Interim Constitution was adopted by Parliament on 16 March 1994, weeks before the Parliamentary and Presidential Elections.

## **1994 ELECTIONS**

In Malawi's first post-independence multiparty elections, held in 1994, the leader of the United Democratic Front (UDF), Mr Bakili Muluzi, a former Cabinet Minister who fell out of favour with Dr Banda in the early 1980s, ousted Dr Banda from the Presidency, but his party failed by three seats to win a majority in Parliament. Voting in the elections was split along regional lines with the UDF winning in the south, the former ruling MCP in the central region and the Alliance for Democracy (AFORD) in the north. In his inaugural address Mr Muluzi committed his Government to poverty alleviation as well as placing an emphasis on democratic freedoms, respect for human rights and stamping out corruption.

A Commonwealth Observer Group present at the election declared that "the Malawian people were able to exercise their will in an open and transparent manner...and that the results of the election reflected the expressed wishes of the people of Malawi".

In September 1994 Mr Chakufwa Chihana, President of AFORD, joined the UDF Government as Second Vice-President and a coalition Government was formed. AFORD and UDF did not enjoy a comfortable relationship. Following public accusations of corruption and incompetence made by Mr Chihana against some UDF ministers, Mr Chihana resigned as Vice President in May 1996, just as the President was reportedly about to dismiss him.

At an ad hoc National Conference held in June 1996 AFORD voted to withdraw from the coalition Government. Despite this decision not all the AFORD ministers resigned: four remained loyal to the Government. Two further AFORD MPs also agreed to join the Cabinet. In protest at what they saw as the 'poaching' of opposition MPs AFORD and the MCP boycotted the parliamentary session in December 1996. Following the State Opening on 5 March 1997 some opposition MPs, mainly from the MCP, began to drift back to Parliament. In early April 1997 MCP and AFORD decided to end the boycott and MPs returned to Parliament.

At the MCP convention held in July 1997 Dr Banda's wish to retire was accepted. The former Vice President, Mr Gwanda Chakuamba, was elected as the new MCP President. The convention voted against a formal merger with AFORD, which had been under discussion for some months. Dr Banda died in November 1997; he was given a state funeral.

## **1999 ELECTIONS**

Four candidates competed for the Presidency in June 1999, and eight parties contested the Parliamentary Election. The turnout was high; 93.69% participated in the Presidential poll and 91.14% in the Parliamentary poll. International observers (including a Commonwealth Secretariat Team), while expressing concerns about the voter registration process and media coverage, deemed that the conditions existed for a free expression of will by the voters and that the results reflected their wishes. The build-up to the elections was chaotic and poorly organised, and polling day was twice postponed because of problems with voter registration. In addition, constituency boundaries were redrawn shortly before the elections, amid controversy over the regional allocation of the new seats. In a move designed to consolidate the opposition vote and oust the UDF Government the MCP and AFORD fought the Presidential Election as an alliance. Nonetheless, Mr Muluzi was re-elected with a narrow majority of 52.3% of the vote to Mr Chakuamba's 45.2 % of the vote.

The UDF once again failed to win a majority in the Parliamentary Election. However, by October 1999, after the UDF had won three by-elections and with the support of four independent MPs, Mr Muluzi's party succeeded in gaining control of Parliament. As in the 1994 elections, the distribution of parliamentary seats followed clear regional voting patterns, with the UDF strong in the more populous

Southern region, the MCP strong in the Central region and AFORD dominating in the Northern region. An opposition legal challenge to the election results was defeated in May 2000.

## **CONTEMPORARY POLITICAL CONTEXT**

### ***The "Third Term" Campaign***

Political manoeuvring for the 2004 Presidential Election dominated domestic politics virtually from the announcement of the 1999 election result. President Muluzi was elected for a second and constitutionally final term in 1999. A campaign for a third term for Mr Muluzi was launched. Efforts initially focused on drumming up support for a referendum to alter the Constitution to allow Mr Muluzi to stand for another term. Once it became clear that there was insufficient public support to win such a referendum the Government tried to pass a parliamentary bill that would remove the term limit. This failed by only three votes in July 2002, as some MPs changed their minds at the last moment; the vote was only held because the UDF was convinced that the bill would be passed. In a final effort Mr Muluzi tried to get the limit increased from two to three terms, but it was clear that there was not enough support for this motion to be passed when it was discussed in an emergency session of Parliament in January 2003. The matter was finally laid to rest in November 2003 when President Muluzi acknowledged that he was stepping down from the Presidency while addressing the final session of Parliament before the elections.

The "third term" issue and its aftermath impacted on most facets of recent Malawian political activity. In April 2003 President Muluzi announced the formation of a government of national unity, which included five members of the opposition AFORD. The appointments to the new Cabinet were clearly made to reward those who supported President Muluzi's third term bid. The outgoing UDF Ministers had all voiced their concerns over the third term, whereas the incoming faction of AFORD members, headed by the party President Mr Chihana, campaigned in favour of the issue. Mr Chihana was appointed Second Vice-President. The remainder of AFORD formed a new party, the Movement for Genuine Democratic Change, in October 2003.

### ***Other Political Developments***

In January 2001 a leading member of the UDF and Cabinet Minister, and de facto number two, Mr Brown Mpinganjira formed a pressure group, the National Democratic Alliance (NDA), to campaign against a

third term of office for President Muluzi. He was subsequently expelled from the UDF and his pressure group then registered as a political party.

The National Executive Committee of the UDF chose Dr Bingu wa Mutharika, the new Minister for Economic Planning and Development, to be the party's candidate for the Presidential Election. Dr Mutharika competed for the Presidency against Mr Muluzi in the 1999 election. A party congress endorsed this decision in August 2003. This decision caused serious splits in the UDF. President Muluzi was re-appointed to the powerful position of National Chairman of UDF for a further five year period.

The Malawi Congress Party (MCP) has also experienced serious setbacks in recent years, largely caused by in-fighting between two leaders, Mr John Tembo, originally regarded as heir apparent to Dr Banda, and Mr Chakuamba, who was elected party leader in 1997. In August 2000 the two factions held parallel leadership elections and a High Court battle over the party's leadership lasted until early 2003. In April 2003 Mr Tembo was elected President of MCP and the party's presidential candidate. He was later convicted on contempt of court charges, but the Supreme Court upheld his appeal at the end of December 2003, clearing the way for him to contest the forthcoming Presidential Election. On 8 January 2004 Mr Chakuamba, the Vice President of the MCP, left the party and formed the Republican Party. Another leading figure in the MCP, Publicity Secretary Dr Hetherwick Ntaba, also left the party to join the New Congress for Democracy (NCD).

On 1 January 2004 Vice President Mr Justin Malewezi resigned from the ruling party but refused to resign as Vice President, setting off a constitutional crisis. Government efforts in the courts to compel him to resign as Vice President failed, and according to the Constitution, he could not be dismissed by the President. Mr Malewezi contested the Presidential race as an independent.

Earlier this year, after months of talks coordinated by the clergy under the leadership of Anglican Bishop James Tengatenga, seven opposition parties agreed to form a coalition to contest the Parliamentary Elections and also to field a joint Presidential candidate. They agreed to do so under the banner of the Mgwirizano (unity in Chichewa) Coalition. Attempts to broaden this coalition to include the other major opposition parties failed.

## **POLITICAL PARTIES**

There are more than thirty registered political parties in Malawi, though only fifteen of these took part in the elections, with two broad alliances. The ruling United Democratic Front (UDF) was in alliance with the Alliance for Democracy (AFORD) and the New Congress for Democracy (NCD). The opposition Mgwirizano Coalition comprised the Republican Party, the People's Progressive Movement (PPM), Malawi Forum for Unity and Development (Mafunde), Malawi Democratic Party (MDP), National Unity Party, Movement for Genuine Democratic Change (MGODE) and the People's Transformation Party.

Other parties which participated in the election were the Malawi Congress Party (MCP), National Democratic Alliance (NDA), Congress for National Unity (CONU), National Solidarity Movement (NSM) and Pamodzi Freedom Party (PFP)

There were five Presidential candidates (one candidate, Mr Hetherwick Ntaba of the New Congress for Democracy, withdrew from the race after nomination and accepted a Cabinet position in Government):

Mr Gwanda Chakuamba	Mgwirizano Coalition
Mr Justin Malewezi	Independent
Mr Brown Mpinganjira	National Democratic Alliance
Dr Bingu wa Mutharika	UDF/AFORD/NCD
Mr John Tembo	Malawi Congress Party

A total of 1,258 candidates contested the 193 parliamentary seats, including 373 independents.

Several political parties underwent serious leadership wrangles in the run-up to the elections, attributed in part by some commentators to a lack of internal democracy and transparency. Many political parties were new, with weak financial bases, and a lack of nationwide coverage.

In contrast to previous elections a relatively high number of independent candidates were nominated to contest this election. We were informed that this was in reaction to what was perceived by many as the imposition in some constituencies of party candidates by party leaders without due regard for internal democracy and transparency. Vice-President and independent Presidential candidate



Mr Malewezi was said to have taken the decision to contest independently in protest against the alleged imposition Dr Mutharika as the UDF Presidential candidate. Only 154 women candidates were nominated for the Parliamentary Elections, and many of these were independents.

## **HUMAN RIGHTS**

Dr Banda's human rights record was appalling, with an almost total absence of civil and political rights. The police were empowered to detain anyone indefinitely without trial. Torture and poor prison conditions were the order of the day. Extra-judicial killings were not uncommon. Under President Muluzi Malawi's human rights record has improved. Basic freedoms such as freedom of life, conscience, thought, religion, association, assembly, press and access to information are all provided for in the 1995 Constitution and are largely respected. Two key human rights institutions, the Malawi Human Rights Commission and the Office of the Ombudsman, were created in 1998.

## **SOCIO-ECONOMIC CONTEXT**

Malawi remains one of the world's least developed countries, graded 163 out of 174 countries on the UN Human Development Index, and the tenth poorest country in the world with an annual per capita income of under US \$200 and a life expectancy of thirty-nine years. The economy is predominantly agricultural, with over 80% of the population living in rural areas. Malawi has a high rate of illiteracy, with a poor communications infrastructure. Economic assistance from donors plays a critical part in the country's development. In this context, the main issues and challenges that dominated the election campaign were proposals regarding economic development, the role of women, education, youth, agriculture, employment, health and HIV/AIDS.

## Chapter Three

# THE ELECTORAL FRAMEWORK AND PREPARATIONS FOR THE ELECTION

## THE ELECTORAL FRAMEWORK

### ***The Constitution***

The Constitution of the Republic of Malawi entrenches the protection of human rights and freedoms, including freedom of association, expression and assembly. The protection of these rights facilitates the participation of the citizens of Malawi in making free political choices. Every person has the right to vote, to do so in secret, and to stand for election for public office.

The Constitution provides that the National Assembly stands dissolved on 20 March in the fifth year after its election. The polling day for the next National Assembly Elections is held on the Tuesday in the third week of May that year. This year that Tuesday fell on 18 May 2004. If it is not practicable for polling to be held on the day fixed by the Constitution then polling shall be held on a day within seven days from that Tuesday. The Parliamentary and Presidential Elections for 2004 were shifted from 18 May 2004 to 20 May 2004 by the Malawi Electoral Commission after the High Court (Constitutional Division), in its judgment of 14 May 2004<sup>1</sup>, ordered that the period for verification of the voter register be extended.

Section 75 of the Constitution establishes an Electoral Commission and empowers Parliament to make laws relating to the appointment of members of the Electoral Commission and the powers and functions of the Electoral Commission.

### ***The Electoral Laws and Codes of Conduct***

The conduct of elections for Members of Parliament and for the President of Malawi is governed by the Parliamentary and Presidential Elections Act 1993.

To assist the electoral process the Electoral Commission publishes, amongst other things, a *Code of Conduct for Political Parties and*

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<sup>1</sup> Miscellaneous Civil Cause No.84 of 2004: Republican Party v Malawi Electoral Commission, United Democratic Front and Attorney General

*Candidates, a Handbook for Political Party Monitors, a Handbook for Security Forces on the Enforcement of Electoral Laws, a Voters' Registration Procedures Manual and a Polling Procedures Manual.* We noted that to enhance understanding of the electoral process it would be useful, not only for political parties but for members of the public, if the Code and the manuals were to be consolidated for ease of reference and widely publicised.

### ***Qualifications to vote or to stand for Member of Parliament***

Every citizen of Malawi who has attained the age of 18 is eligible to register as a voter in an election. To stand for election as a Member of Parliament a person must be a citizen of Malawi who has attained the age of 21, can speak and read the English language well enough to participate actively in the proceedings of Parliament and is a registered voter in a constituency. Amongst the grounds on which a person is not qualified to be nominated or elected as a Member of Parliament are a previous conviction within the last seven years of a crime involving dishonesty or moral turpitude, or conviction within the last seven years of any violation of any electoral law relating to the election of the President, or the election of Members of Parliament, or local government elections.

### ***The Voting System***

A person's right to vote and to do so in secret is entrenched in the Constitution. The conditions for franchise are set out under Section 77 of the Constitution and Section 15 of the Parliamentary and Presidential Elections Act.

To exercise the right to vote a person is required to be physically present and is entitled to cast her/his vote once. The person should vote at the polling station located at the registration centre where she/he is registered, but if that is not possible she/he may, on request, be authorised by the registration officer to vote at a location where she/he would be present on polling day.

The ballot papers for candidates for Parliamentary and Presidential Elections contain the name of each candidate, her/his photo, her/his election symbol, or the election symbol of her/his political party.

Consistent with the doctrine of secrecy of the ballot the voter would cast her/his vote in a voting booth which would screen the voter from observation. In order for a person to vote, Section 85 of the

Parliamentary and Presidential Elections Act requires that the person must first present his or her Voter Registration Certificate. This statutory requirement was waived on polling day in light of the problems with the Voters Register. The manner of casting the vote is regulated by statute. Where a voter is blind or affected by other disability that voter may vote accompanied by another registered voter of her/his choice, or that voter may be assisted by a polling station officer.

The law stipulates that the hours of voting are from 6 o'clock in the morning to 6 o'clock in the evening and the voting shall continue uninterrupted until closed.

### ***The Malawi Electoral Commission***

The Electoral Commission Act 1998 makes provision, *inter alia*, for the appointment of members of the Electoral Commission, the establishment of a Secretariat for the Electoral Commission and the functions and powers of the Electoral Commission.

### ***Appointments, tenure of office, and removal***

The members of the Electoral Commission are appointed by the President in consultation with the leaders of the political parties represented in Parliament. The terms and conditions of the appointments are determined by the Public Appointments Committee of Parliament.

The tenure for appointments to the Electoral Commission is four years and may be renewed. Section 75 (4) of the Constitution grants the power of removal of a member of the Electoral Commission to the President on the recommendation of the Public Appointments Committee. The grounds for removal are incapacity or incompetence in the performance of the duties of that office.

### ***Independence of the Electoral Commission***

The Electoral Commission, by law<sup>2</sup>, is an independent body which shall perform its functions and exercise its powers independently of the direction or interference of any public official, organ of the Government, political party, or any person or organisation. Notwithstanding the independence given to the Electoral Commission

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<sup>2</sup> Electoral Commission Act 1998, Section 6

by law, for purposes of accountability the Electoral Commission is answerable and reports directly to the President on the overall fulfilment of its powers and functions<sup>3</sup>.

We are of the view that the independence of the Electoral Commission can be compromised if it is answerable to the President. We recommend that the law which obliges the Electoral Commission to do so should be repealed.

Given that the Electoral Commission is established with wide powers under the Constitution and that its budget is provided by Parliament, it would strengthen its independence for it to be answerable to Parliament rather than to the President.

The overall impression we formed from our briefings by various groups is that there is a general perception that the Electoral Commission is not independent. One reason for this perception is that there is no confidence in the method of appointing members of the Electoral Commission.

### ***The Functions and Duties of the Electoral Commission***

The Electoral Commission has powers under the Constitution to determine constituency boundaries, to review existing constituency boundaries and to determine electoral petitions and complaints related to the conduct of elections.

The Electoral Commission is required by the Constitution to exercise the power to determine constituency boundaries impartially so that constituencies contain approximately equal number of voters eligible to register. Other factors that may be considered are population density, ease of communication and geographical features.

Concerns were expressed to us about the delimitation of constituency boundaries, especially when it could lead to gerrymandering to benefit some political parties. The National Assembly however confirms all determinations by the Electoral Commission in relation to the drawing up of constituency boundaries, and this could provide a safeguard to any gerrymandering.

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<sup>3</sup> Ibid, proviso.

Under the Electoral Commission Act the Electoral Commission is charged with all matters pertaining to the preparation for and conduct of elections.

### ***Funds of the Electoral Commission***

Funds for the Electoral Commission include funds appropriated by Parliament; grants, subsidies, bequests, donations, gifts, subscriptions from the Government or any other person; and sums donated to the Electoral Commission by any foreign government or international agency. Section 15(3) of the Electoral Commission Act provides that the funds of the Electoral Commission shall exclusively be under the control of the Electoral Commission. We are of the view that control of its own funds is one factor that ensures the independence of the Electoral Commission.

We gathered from our various briefings that one of the main constraints on the Electoral Commission in the performance of its duties was the lack of resources. We understood that funds for the Electoral Commission are in practice controlled by the Ministry of Finance and that during the preparations for these elections funds were released to the Electoral Commission from time to time in insufficient amounts. This is contrary to the power given to the Electoral Commission to have exclusive control over its funds.

The Electoral Commission should be adequately resourced at all times to enable it to effectively and independently perform its functions. We recommend that the Electoral Commission should be allowed to have control of its funds as provided by law.

### ***The Administrative Framework of the Electoral Commission***

The Electoral Commission comprises a Chairman, who is a Judge of the Supreme Court nominated by the Judicial Services Commission, and at least six members appointed by the President in consultation with the leaders of political parties. The current Electoral Commission was appointed in 2002 and its term ends in 2006. It is serviced by a Secretariat headed by the Chief Elections Officer.

The Electoral Commission has three regional election offices, in the North, South and Centre of Malawi. There are six districts in the North, nine in the Centre, and eleven in the South. The country is divided into 193 constituencies. The regional offices do not have a permanent structure. A Returning Officer is appointed by the Electoral Commission

for each district and in most cases, the District Electoral Commissioner is appointed as Returning Officer. It is the District Electoral Commissioners who, with District Elections Supervisory Teams (DEST), manage the electoral process at the district level. The DEST is normally made up of the District Education Manager, District Information Officer, District Police Officer-in-Charge, District Investigations Officer, and the Directors of Administration, Finance, and Development and Planning in the District Electoral Commissioner's office. The Returning Officer chairs the Multi-Party Liaison Committee which is responsible for conflict management at the local level and the District Civic Education Coordinating Committee which oversees the conduct of civic and voter education in a district.

We have observed and consulted on the electoral process prior to and on polling day. We are of the view that the electoral process could have been better facilitated in terms of voter registration, civic and voter education, management of polling centres, polling counts and polling results as they arrive for collation, had the Electoral Commission established District Electoral Commission Offices staffed by professional and experienced electoral officers, rather than delegating its powers and functions to officers who do not have the required expertise. Further, the Electoral Commission would maintain its independence at the district level by having its own offices and officers instead of delegating to the District Electoral Commissioner's office, which is a local government institution.

## **PREPARATIONS FOR THE ELECTIONS**

The 2004 Presidential and Parliamentary Elections were the third to be held in Malawi since the end of one-party rule in 1994. There were significant shortcomings in the preparations for the 2004 elections, many of which were reminiscent of those experienced during the 1999 elections, including the postponement of elections due to problems with the compilation of the Voters Register.

As these previous operational and capacity shortcomings were well known and identified five years ago, after the 1999 elections, it is surprising to the Group that the Electoral Commission should again have to address very similar difficulties, again at the very last possible moment. As a result of problems in the preparation process stakeholder confidence in the Electoral Commission was greatly reduced and a thorough re-examination of electoral management in Malawi needs to be undertaken. To improve the electoral process for

the next election in 2009 the Electoral Commission will need to plan more effectively.

### ***Registration of Political Parties***

The Constitution of Malawi guarantees the right of every person to form and participate in a political party.<sup>4</sup> Political parties in Malawi are required to register under the Political Parties (Registration and Regulations) Act of 1993.

### ***Voter Registration***

The Electoral Commission is responsible for the registration of all eligible voters and the updating of existing voters registers, as well as the provision of a Voter Registration Card to identify each registered voter. To be eligible to register a person must:

- (a) be a citizen of Malawi and reside in Malawi, or if not a citizen, be ordinarily resident in the Republic for seven years;
- (b) must have attained the age of eighteen on or before polling day;
- (c) be ordinarily resident in that constituency, or be born there, or be employed, or be carrying out business there;
- (d) state that she/he is not registered at any other registration centre, and present to the registration officer sufficient and cogent proof of her/his eligibility.

The voter registration period for the 2004 Presidential and Parliamentary Elections in Malawi took place from 5-23 January 2004. It was originally scheduled for 5-18 January, but this was extended by one additional week.

Voters registered at the same centre where they would vote, which must be where they were born, live or work, but only at one centre in one constituency.

The Voters Register that was eventually produced was based on the 1999 register, with additions made during this January 2004

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<sup>4</sup> Section 40 (Political Rights) of the Constitution of Malawi, Revised May 2002.



registration exercise. It should be noted that the 1999 register itself was a contentious document. The registration exercise in January was intended to add names to this registry and expunge the names of the deceased.

Though concerns regarding the possibility of multiple registrations were raised the Electoral Commission assured the public that voters would not be able to register twice, as the new computerised system compiling all registration information would identify multiple registrations.

The final output of the registration process was the production of a Voters Register, containing the name, photograph and voter's number for each registered voter. On 9 May the Electoral Commission announced that the total number of registered voters was 5,745,455. This followed a 'cleaning' of the register by a South African company, which had reduced the figure from its previous 6,673,023.

A Commonwealth Expert Team was deployed in January of this year to observe the conduct of voter registration. It was evident to the Team that the Electoral Commission experienced a number of problems during the registration process, including a shortage of materials such as forms, film, and duplicate certificates. There was no genuine verification of voters' residency. As well, registration centres were not open for the entire prescribed period.

The final report of the Commonwealth Team highlighted a number of concerns. The Team was concerned with the overall technological capacity of the Electoral Commission, in terms of printing capacities and data retrieval, management, and backup. It specifically recommended a quality control procedure for data capture at the constituency level, as well as providing political parties with non-picture versions of the Voters Register for their review. The Team also recommended adjustments to registration procedures to protect the system from abuse and ensure transparent record keeping (see *Annex Seven*).

### ***Candidate Selection and the Nominations Process***

The political parties of Malawi have their own constitutions and regulations regarding the selection of candidates. It is important that these rules should be based on fundamental democratic principles of transparency and fairness, to which political parties should adhere in the selection of their candidates. There was a high degree of

dissatisfaction with the party candidate selection process prior to these elections, illustrated by the very high rate of independent candidates: 29% of all candidates stood independently. A large proportion of these candidates opted for independent status after leaving their original parties over disputes in the selection processes.

There were only 154 women out of a total of 1,258 candidates in the Parliamentary elections. This low number of women candidates is regrettable. The political parties are urged to make further progress towards greater inclusion and empowerment of women as candidates in their selection and campaigning processes.

A parliamentary candidate must meet the basic qualifications of office as stipulated by the Constitution, needs to be nominated by ten voters registered in the constituency in which the candidate intends to stand and must declare for which political party she/he will stand, as verified by an office bearer of that party. The same basic qualifications apply for Presidential candidate nominations, though she/he must be at least 35 years of age and be nominated by at least ten registered voters in each electoral district. We noted no complaints or challenges to the candidate nominations process.

### ***Civic and Voter Education***

The responsibility for voter and civic education in preparation for the polls is one that should and has been shared amongst the Electoral Commission, political parties and civil society. It is important to stress that civic and voter education are two distinct undertakings and the roles of actors in these endeavours should be clear. Voter education and disseminating knowledge and awareness of how to vote are accepted responsibilities of all stakeholders in the electoral process. However, civic education on the basic rights and obligations of citizens is fundamentally the responsibility of the State, with the crucial participation of non-partisan civil society.

The Electoral Commission did conduct some civic and voter education activities, as specifically mandated in the Malawi Electoral Commission Act "to promote public awareness of electoral matters . . . . and to conduct civic and voter education on such matters."<sup>5</sup> A number of civil society organisations were active to varying degrees in both the voter and civic education processes, the largest being the National Initiative for Civic Education (NICE), the Public Affairs Committee (PAC) and the

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<sup>5</sup> Section 8(2)(j), Malawi Electoral Commission Act, 1998.

Catholic Committee for Justice and Peace (CCJP). Political parties also undertook voter education activities.

The Electoral Commission produced and distributed a large number of posters, stickers and signs for voter and civic education. The Electoral Commission did not undertake any large scale civic and voter education programmes through either broadcast media or through community-based initiatives. The Electoral Commission itself admitted that it did a poor job of voter education.<sup>6</sup> Civil society organisations wishing to conduct and receive funding for voter education initiatives had to be accredited by the Electoral Commission. In the end, very few organisations received accreditation and civil society voter education programmes were largely under-funded. As well, civil society initiatives predominantly targeted the rural populations and had little to no impact on the urban centres. Political party voter education initiatives were conducted extensively in various ways; however, these cannot be assessed to have been either comprehensive or non-partisan.

The Group did not believe that the civic and voter education activities in Malawi were adequate to ensure a fully informed and mobilised voting public. Few people were knowledgeable of the Voters Register verification process and, as described in Chapter Five, a large number of voters required extensive explanation at polling stations, causing delay in the polling process. The Group recommends that the Electoral Commission take a more pro-active role in educating voters. The Electoral Commission will need to ensure that adequate resources are allocated for such a role, including for the development of specific education programmes and the utilisation of proposed District-level Electoral Commission offices to implement community-based initiatives.

### ***Selection of Polling Centres and Stations***

Under the Malawi Electoral Commission Act the Electoral Commission is responsible for establishing and operating polling stations (which are contained within larger polling centres). Polling centres were set at the same sites where voters registered.

Many Returning and Presiding Officers briefed Observers that the total number of stations in each District had been dramatically reduced, to reflect the decrease in the official number of registered voters. Most

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<sup>6</sup> *The Daily Times*, 10 May 2004, p. 5.

of these Returning Officers expressed frustration with this decision as they believed that the new registered voters total dramatically underestimated the true number of voters and they were concerned a reduced number of stations would leave them under-equipped. In many Districts appeals by Returning Officers resulted in last minute increases in the official number of polling stations. The Electoral Commission should have consulted more closely with Returning Officers in regard to both the designation of the number of polling stations as well as voter registration.

### ***Display of the Voters Register***

The Electoral Commission undertook a display and verification exercise for the period of 26-30 April with the objective of "opening the voters register to inspection for purposes of verifying the entries therein". The Commonwealth Expert Team deployed to Malawi to observe that exercise found that the computerised register was not available and therefore that "the exercise failed to achieve the objective for which it was conducted".

### ***Postponement of the Elections***

On 14 May the High Court ruled on a suit by the Republican Party against the Electoral Commission, deciding that insufficient time had elapsed between the display of the register and the scheduled election day. It decided that the elections should not be held on 18 May and instructed the Electoral Commission to postpone the elections to a date no later than 25 May so that there would be sufficient display and verification of the Voters Roll. On Saturday 15 May the Electoral Commission decided that the elections would be held on Thursday 20 May 2004<sup>7</sup>.

The adequate display and verification of the Voters Register is a crucial element in the credibility of the electoral process. It should ensure that genuinely registered voters will not be disenfranchised and that ineligible or multiple-registered voters are expunged from the register. Particularly in light of the dramatically reduced numbers of registered voters on the computerised Voters Register adequate and credible verification of the Voter Register should have been of paramount importance to the Electoral Commission. However, the Electoral Commission did not make any genuine attempt to ensure an adequate

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<sup>7</sup> Although the Courts also initially ruled that the large number of "excess" ballots be held under the custody of the Courts, this decision was later overturned and the Electoral Commission remained in control of all ballot papers.

opportunity for voters and political parties to verify the Voters Register.

### ***Further Display Period***

The newly computerised Voters Register was only distributed to polling stations beginning 13 May, and in some cases never reached polling stations in time for polling day. In most polling stations no official instructions were received to pro-actively display the Register; most stations only passively conducted verification because they were informed through radio news reports that this was occurring. On 17 May an additional computerised Voters Register was distributed in some Districts, even though officials were unaware of how it was any different from the previously distributed computerised Voters Register.

Many Returning Officers complained that they were trying their best to deal with the situation, but were fundamentally frustrated with the Electoral Commission for issuing the computerised Voters Register without properly consulting them to verify the Register. The Electoral Commission also failed to provide Returning Officers with instructions on what should be done in the event of massive voter turn-aways on polling day due to absence of names on the Voters Register. As a contingency to address this possibility, most Returning Officers planned to use the 1999 Voters Register and the Voter Registration Card records to verify voters on polling day. Just days before the election a serious risk existed that a significant number of voters could be disenfranchised because their names were removed from the Voters Register. In response to the situation, on 17 May the Electoral Commission issued instructions to Returning Officers on revised procedures regarding the Voters Register and Transferred Voters. These instructions permitted polling stations to utilise the 1999 Voters Register and the Voter Registration Card records in addition to the computerised Voters Register to verify eligible voters on Polling Day. They were also allowed to use other records to prove the legitimacy of transferred voters where Voter Transfer Lists were not available.

In the end, not much pre-election display and verification of the Voters Register took place. This led to confusion on the part of voters who did not know if their names would be included on the Voters Register. In many places the Voters Register was never present at any time for display and verification. In places where the Register was eventually present ahead of election day there was inadequate time or genuine

opportunity for voters to verify the Register. The Group recommends that the Electoral Commission undertake better planning to ensure that there is adequate time to implement the necessary voter registration and display processes well before the day of elections. Crucially, the Voter Register needs intensive rehabilitation and requires a genuine verification process.

### ***Training of Polling Staff and Monitors***

Polling station Presiding Officers each received one-day training sessions conducted by their respective Returning Officers. As more fully described in Chapter Five, most Presiding Officers appeared to be adequately trained in polling procedures, but many did not have a fluent understanding of the counting and documentation processes, causing significant delays in concluding proceedings at a high number of stations. The Group recommends that greater emphasis be placed on the complex counting and documentation procedures in the training for Presiding Officers.

Polling Clerks and other officials received training from their respective Presiding Officers on 19 May, the day before polling. Training generally consisted of presentation of the polling station materials and a review of the Electoral Commission *Polling Procedures Manual* by the Presiding Officer. The Group recommends that polling staff should be trained more comprehensively, uniformly and sooner than the day before polling.

The quality of party and domestic monitor training appeared to be mixed. The Electoral Commission issued a specific *Handbook for Political Party Monitors* and conducted training for all accredited monitors. Accredited domestic monitoring groups implemented their own training initiatives.

### ***Supply and Distribution of Polling Materials***

The postponement of the elections by two days had a significant impact on preparations for polling. Training and material distribution had to be rescheduled at the very last minute, while operations for Voters Register distribution and display also needed to be conducted. The postponement caused a considerable degree of confusion amongst polling staff and officials who generally did not receive adequate official instructions on how to proceed at the local level. It was not known up until the very last moment in many locations whether

Presiding Officers would be able to re-organise their operational plans and equip their polling stations and staff in time for 20 May.

The Returning Officer and the District Election Supervisory Team (DEST) were responsible for the distribution of all polling materials, as supplied by the Electoral Commission. Distribution of ballot boxes and the basic polling station materials (secured within the ballot boxes) to Presiding Officers occurred from 15 May until even the day before polling in some instances. Some Districts experienced delays in the distribution process due to the lack of an adequate number of vehicles. Returning Officers and polling staff seemed genuinely committed to doing as good a job in preparation for the elections as the challenging circumstances would allow.

The distribution of ballot papers and other sensitive materials, as well as paraffin and some remaining materials, largely took place on 18 May, although this continued in many Districts up until late in the afternoon on 19 May. The ballot distributions observed were largely orderly.

During observations on 19 May it was noted that most stations were supplied with all required materials, though in some circumstances stations were still not properly equipped with paraffin fuel for lamps (necessary for counting at night) and Voter Transfers Lists.

Lastly, the Group noted that there appeared to be inadequate selection of venues for counting: sometimes those chosen were clearly inappropriate. The transport arrangements for the return of the results and materiel was inadequate and, as described in Chapter Five, this resulted in significant delays in the results process.

## Chapter Four

# THE CAMPAIGN AND THE MEDIA

## THE CAMPAIGN

The official campaign period began on 20 March 2004. The election appeared to be contested less on the basis of policies, and rather more on personality and regional interests. We did not discern any significant ideological differences among the major political parties. Their manifestos were remarkably similar and general in nature, and expressed aspirations more than specifics on how the parties intended to implement their campaign promises.

### ***Modes of Campaigning***

During the campaign all the usual techniques were employed, including campaign rallies, motorcades, door-to-door visits, radio spots, stickers, hats and loudspeaker vans.

The ruling UDF was especially visible. Outgoing President Bakili Muluzi was to the fore, campaigning on behalf of his chosen successor, Dr Bingu wa Mutharika, dominating the campaign trail as he criss-crossed the country. His party supporters followed in similar outfits bearing his image. At his rallies supporters draped themselves with the UDF fabric and donned UDF T-shirts, clapping and cheering in response to President Muluzi. Anyone would have easily gained the impression that President Muluzi was campaigning for his own re-election.

Other candidates were less visible and appeared to us to have fewer resources. However, even though their campaigns were on a smaller scale, they also toured the country addressing rallies. We observed several rallies towards the end of the campaign.

We noted the absence of violence during the campaign, even when rallies were near to one another. However there were several controversial issues during the campaign and a number of serious allegations were made against presidential candidates.



### ***Regional Patterns***

We were not always able to understand the influence of regionalism in Malawian politics. However, there is little doubt in our minds that regionalism was an issue and that it was used as a campaign tool.

### ***Use of State Resources for Campaigning***

The Group noted that Government resources were used during the campaign by the ruling party. Government and parastatal vehicles were observed at UDF rallies. Complaints to the MEC by the Opposition against the UDF in regard to the use of public resources were not addressed by the Commission but were, instead, referred to the Office of the President.

The Government was also accused of improperly using state resources to influence sectors of the electorate. In the weeks preceding polling day donations were regularly made by government officials to special interest groups, such as women's groups, and patronage appointments and promotions were made.

The Republican Party sued the Electoral Commission, the UDF and the Attorney General over the alleged abuse of public resources in campaigning. The High Court found that the Electoral Commission had erred and that it had abdicated its constitutional and statutory duty in referring the complaint to the President's Office. The Supreme Court upheld the High Court's finding. However, the Electoral Commission still took no action on this matter.

### ***Treating and Bribery***

The Group also observed some candidates giving out money to potential voters. Allegations were also made regarding the buying of voters' certificates by political parties. Vote buying and other forms of treating are illegal under Malawian law; however, the authorities took no action against this behaviour.

### ***Role of Religious Institutions***

Some religious institutions attempted to influence the voters, including *Radio Islam* and *Radio Maria*. Hate speech was reported to have been aired in call-in programmes on *Radio Islam*. *Radio Maria* reportedly urged listeners not to vote for the ruling UDF presidential candidate. The Malawi Communications Regulatory Authority (MACRA) threatened to withdraw the licence of *Radio Maria* for its partisan electoral coverage.

In his sermon on Easter Sunday in a Catholic church, a priest who is also the leader of the Public Affairs Committee (PAC) urged the congregation not to vote for the ruling alliance candidates. The UDF demanded that the PAC's accreditation as election monitors be revoked by the Electoral Commission. The demand was not acceded to.

### ***Multi-Party Liaison Committees***

Multi-Party Liaison Committees were formed in all Districts, chaired by the respective Returning Officer and comprised of representatives of political parties, civil society organisations and members of the District Elections Supervisory Team (DEST). The committees were formed to provide a community-level mechanism for conflict resolution during the campaigning period. The Group received differing accounts regarding the effectiveness of these committees, often with Administration officials claiming great success in settling disputes before major incidents occurred. Many civil society organisations complained that the committees met very rarely and would not adequately address incidents and complaints.

### ***Party Income and Expenditure Controls***

The Constitution of Malawi explicitly provides for the provision of State funds to political parties that obtain more than ten percent of the vote in national elections, to ensure that those parties have sufficient funds to continue to represent their constituencies.<sup>8</sup> A leader of the Malawi Congress Party complained that these funds were insufficient. This provision also came under criticism from smaller parties, which claimed that it put them at a financial disadvantage.

No limits are stipulated in Malawian law on campaign expenditures and there are no regulations on party income. There are no mechanisms to ensure the transparency of party finances. We believe that this undermines accountability.

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<sup>8</sup> Section 40(2), Constitution of Malawi.

## **THE MEDIA**

### ***Introduction***

Ten years into multi-party democracy the media in Malawi has diversified. The country now has a small but vigorous privately owned press and a handful of commercial radio stations. But the state-run Malawi Broadcasting Corporation (MBC) radio station, established in 1964, dominates the airwaves, as well as public broadcaster Television Malawi (TVM), which was set up in 1999; and the legacy of the country's first 30 years of one-party rule still shapes the information sector to an unhealthy degree.

None of the information outlets were without fault but MBC radio deserves to be singled out for critical comment. It is the main, if not the sole, source of information for the majority of voters. This is why its responsibilities are set out in the Parliamentary and Presidential Elections Act (1993). Part V Section 63 (1) states that: "Every political party shall have the right to have the substance of its campaign propaganda reported on radio news broadcasts of the Malawi Broadcasting Corporation and in any newspapers in circulation in Malawi." Yet in the run-up to the 2004 election MBC radio and TVM failed to meet the statutory terms and news output almost exclusively reflected the views of the ruling alliance.

Three decades of one-party rule under the first independent government of the Malawi Congress Party (MCP), which ruled from 1964 to 1994, have been instrumental in the conduct of the state-run media to date. Since 1994, with the transition of power from the MCP to the ruling UDF/AFORD alliance, the media monopoly has given way to allow the entry of private radio stations and newspapers. But the ruling coalition has continued to use the state media - MBC radio and TVM - for propaganda and political campaigns.

### ***Background***

There have been many changes in all information sectors - newspapers, radio and television - since the first democratic elections in 1994, (when Commonwealth observers were last present), and the 1999 elections, (which were assessed by a team from the Commonwealth Secretariat). The emergence of privately owned press and radio after decades of dominance by state-controlled media is undoubtedly a positive development, and one of the fruits of democracy.

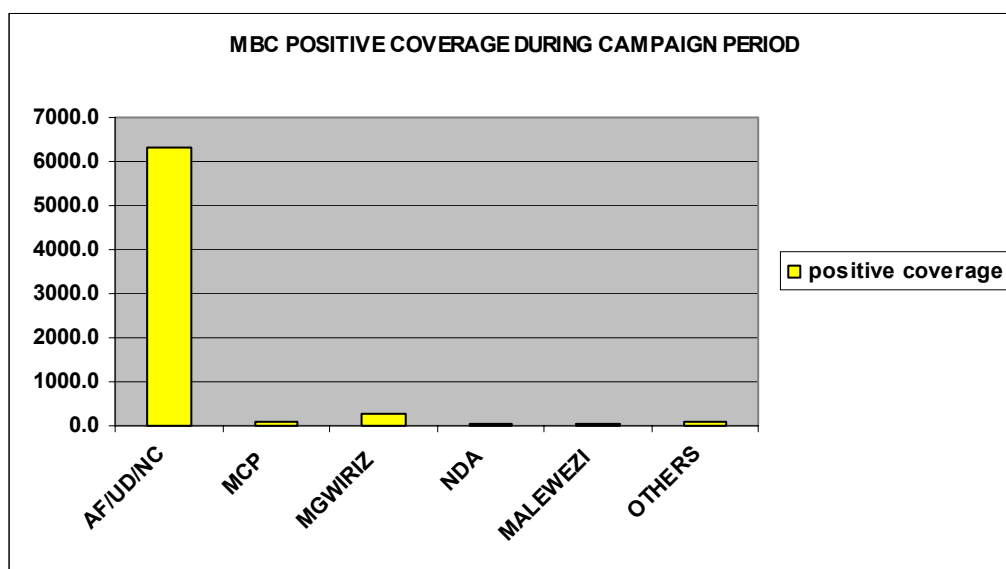
## Radio

MBC radio remains the main source of news for the 70 to 80 per cent of Malawians who live in rural areas. Many cannot afford to buy a newspaper and, even if they could, newspapers are rarely available outside urban areas. Low literacy levels are a further barrier.

In terms of the level of coverage, MBC radio remains the most important medium of communication, followed by private radio stations (most of which are limited to the capital Lilongwe, Blantyre and Mzuzu), TVM and newspapers, in that order. MBC radio's transmitter footprint covers almost the entire country. Wireless ownership is fairly extensive with almost every village thought to have at least one set for group listening. Private radio is extending steadily from the main urban centres, but its reach into the rural areas is dependent on the growth in advertising revenue, commercial sponsorship of programmes and the willingness of the Government to grant transmitter licences.

The spill-over of these new urban transmitters does allow for listening in rural areas within 30 kilometres or so radius. However, for a large majority of voters MBC radio is the only source of information available to them.

MBC radio has continued to give totally unlimited access to the incumbent party. This has produced a lack of balance in the amount of time given to news of the rallies, meetings, the manifestos, policies and personalities of the contesting parties and independent candidates.



On MBC radio very little time was given in the main news bulletins to parties other than the ruling alliance of UDF/AFORD/NCD. Often during the campaign period several days passed without any mention in the main news bulletins of the campaigns of Opposition candidates or parties. Both MBC radio and TVM chose to restrict their extended coverage of election rallies to those of the ruling alliance's Presidential candidate, Bingu wa Mutharika, almost all of which were dominated by the Head of State, outgoing President Bakili Muluzi. The justification claimed for this monopoly of rally coverage is said to be the right of the Head of State to have all his or her activities covered live by the media. The degree of the imbalance was so large that the Commonwealth Media Adviser to the Malawi Electoral Commission reported (from a detailed monitoring operation he had been supervising for the Commission since the beginning of the year) that over 90% of all election coverage on MBC radio during the eight-week official campaign period had been about and of positive benefit to the ruling alliance (UDF/AFORD/NCD). The figure for TVM had been just over 80%. In the final few days of campaigning our Observers saw a small measure of improvement in TVM's balance, but this was too late to be any remedy for the grossly undemocratic coverage throughout the official campaign period and before.

Of the private radio services, which are now having an impact and providing an alternative voice for the voters, Capital Radio (FM 102.5) - which broadcasts news bulletins every half hour - has provided the most balanced election coverage since the start of campaigning on 20 March. The MEC Media Monitoring Unit noted that Capital Radio gave 24 per cent of its campaign coverage to the UDF/AFORD/NCD coalition; 24 per cent to the Mgwirizano Coalition; 20 per cent to the National Democratic Alliance (NDA); 15 per cent to independent candidate Justin Malewezi; 10 per cent to the Malawi Congress Party (MCP) and 7 per cent to others. The Malawi Institute of Journalism (MIJ) radio (FM 90.3) and Power 101 FM, while giving substantial positive coverage to all the main parties, showed bias against the ruling UDF/AFORD/NCD alliance and its Presidential candidate by the much larger amount of negative news broadcast about them compared with that given to opposition parties.

### **Television**

TVM said it would work closely with the Electoral Commission and all the contesting political parties to provide coverage in the run-up to the Presidential and Parliamentary elections. However, 80 per cent of its

election coverage was focused on the ruling alliance. TVM was one of the signatories to the Malawi National Peace Commitment, an initiative of the Government-backed Forum for Dialogue and Peace that promoted dialogue, peace-building and non-violent conflict resolution within Malawian society. One of the principles of Chapter Six of the Commitment states that the media will commit itself: "To provide all political parties equitable access to our media houses."

TVM said that it had provided the opportunity for interested political parties to purchase airtime for advertising their manifestos and meetings, but that this opportunity had not been taken by many because of the cost. It also argued that the Electoral Commission had not bought any airtime for party political broadcasts.

The ruling coalition was able to capitalise on its access to TVM for its political campaigning. This dominated the news and campaign broadcasts from 8 pm to 10 pm, and sometimes close to midnight in the final days of campaigning.

TVM said that there was a lack of equipment and resources to provide equitable coverage of all political parties during the campaign period. They argued that election coverage required additional resources such as transport, tapes, cameras and editing equipment, but that the station had not received any additional budget or equipment to support them. TVM was also unable to cover some political rallies as some parties had barred them from covering their events.

#### **Guidelines, Monitoring and Action**

Both MBC radio and TVM television have ignored key elements in the Media Guidelines and the requirements of the Parliamentary and Presidential Elections Act of 1993, the Local Government Elections Act of 1996, and the Communications Act of 1998, which all call for full, fair and balanced political coverage at all times in news and other broadcasts related to campaigns of all registered candidates and parties during the campaign period. These guidelines are intended to require that the media provide the public with civic education and information about the electoral process and the rights of each citizen to cast his/her ballot. Voter education is a crucial building block of democracy, and in this election, voter education and balanced information were inadequate.

At the request of the Electoral Commission a media adviser was provided by the Commonwealth Secretariat for a series of visits from

mid-2002 to May 2004. The adviser, Tim Neale, helped the Commission, the political parties and the news organisations to re-draft the guidelines for media coverage of the elections. From January 2004 he was also tasked with establishing and supervising a media monitoring operation to allow the Commission to acquire detailed information about the relative balance being provided throughout the campaign by radio, television and the press. In the run-up to the elections the Commonwealth Secretariat made clear that it was disturbed by the bias of the state media.

The Electoral Commission and the Malawi Communications Regulatory Authority (MACRA) failed to ensure that the media abided by the law by providing equal coverage to the political parties and their candidates during the campaign. The ruling UDF/AFORD/NCD coalition had a distinct advantage in the election campaign, with MBC radio and TVM at its disposal. Almost all of the ruling party's campaign rallies were covered in the news and in extended broadcasts often amounting to 20 hours per week. There was no distinction made between coverage of the Head of State in the performance of his duties and his campaign advocacy for his UDF presidential candidate, Bingu wa Mutharika. There was a clear bias towards the ruling party led by President Muluzi and his chosen successor. Over 90 per cent of election coverage on MBC radio was given to the UDF/AFORD/NCD party.

The Electoral Commission acknowledged in a newspaper advertisement in the *Weekend Nation* (15-16 May 2004) that "election coverage by MBC has been weighted in favour of the current Government. This is unacceptable and poses a threat to democracy."

The Commission said it had "requested the balance be redressed", but the pro-ruling party bias continued until the eve of polling day. MBC radio and TVM had agreed in writing to abide by the Electoral Commission's media guidelines on electoral coverage, but failed to do so.

#### **Party Broadcasts**

Recordings of party manifestos that the Electoral Commission had sent to MBC radio on 3 May for broadcast were not aired. This contravenes Part V Section 63 (2) and Part V Section 63 (1) (b) of the Parliamentary and Presidential Elections Act (1993) which called for neutrality and balance.

MBC radio said some political party broadcasts could not be aired due to the low quality of the programmes subcontracted to private production houses by the MEC, which was "the substandard nature of some of the recordings." MBC radio also cited "the lack of commitment from some of the parties to record with MBC and the non-availability of Opposition politicians for interviews." Despite the setbacks faced by MBC radio, its spokesman said the station was determined to "send out reporters to all the districts for unofficial results announcement."

### **The Print Media**

Several newspapers emerged during the pre-election period. While some ran strongly partisan stories and comment, most avoided the worst excesses of personal abuse directed at individual candidates.

The main permanent daily papers (*The Nation* and *Daily Times*) took, overall, a line against the ruling alliance (UDF/AFORD/NCD). Nevertheless, they still gave substantial coverage to the manifestos of all the main parties and coalitions. Readers of either paper would therefore, over the period of the campaign, have had the chance to absorb the main thrust of all the policies being proposed by all contenders.

So far as the weekly newspapers were concerned, *The Chronicle*, a weekly newspaper, was strongly against the ruling alliance and favoured the Opposition. *The Enquirer* featured positive headlines and stories on the ruling UDF/AFORD/NCD coalition and negative stories on the Opposition, portraying them as being in disarray, lacking cooperation and unity, with no manifestos and vision for the leadership of the country. The *Saturday Post* and *Malawi Standard* are pro-ruling alliance newspapers. *The Exclusive*, a pro-ruling coalition paper which emerged only early this year, was blatantly against the Opposition, branding the candidates as liars and incompetent to govern the country.

### **Voter Education**

Both MBC radio and TVM performed poorly in providing voter education. MBC radio acknowledged that the station's role included civic education and information. Its representatives had met Electoral Commission officials in March 2003 to discuss voter education programmes and this led to the establishment of an MBC radio task force on elections. But MBC said it faced many constraints in producing



programmes: it said that these included a lack of transport and allowances from the Electoral Commission for MBC radio reporters.

We noted that the NGO Gender Coordination Network cooperated with MBC radio to profile female parliamentary candidates in their campaign programmes.

TVM said it was not accredited as a civic education provider for the elections but was open to cooperation with accredited NGOs responsible for civic education. It had worked with the National Democratic Institute and GTZ in running some political debates.

The print media did a better job in voter education compared to the electronic media. *The Nation*, *Daily Times* and *The Chronicle* featured articles on the candidates, with editorial comments and analysis of various political parties and the impact on the political landscape of the country if respective parties or candidates were voted into power.

*The Nation* ran a seven-page supplement on several occasions produced by the NGO Gender Coordination Network. This profiled female parliamentary candidates and highlighted the Southern Africa Development Community (SADC) objective that 30 per cent of parliamentarians in each member country should be female.

### **Conclusion**

Most of the privately-owned media made a useful contribution to democratic debate. As for MBC radio and TVM, the impact of their many good special election programmes was lost because of the biased pro-Government news in the main bulletins and their continuous coverage of ruling alliance political rallies.

All media must be legally required to be balanced in all electoral and other political reporting. We believe that the law already provides sufficient scope for the Electoral Commission not just to monitor but also to take action to ensure balance in media coverage. However, since this has been disputed by, amongst others, the Chairman of the Electoral Commission himself, we believe that the law should be made as clear as possible and strengthened so that the Electoral Commission is obliged to meet its responsibilities in full in future.

The state broadcast media should be required to monitor its own performance more adequately and take effective steps to ensure balanced coverage and equitable access. There should also be a

statutory requirement that they run an independent and balanced daily programme of news and opinion at peak time during the campaign period.

## **Chapter Five**

### **THE POLL, COUNT AND RESULTS PROCESS**

Before dawn on Thursday 20 May Commonwealth Observer Teams deployed from their base locations across the country, in all three regions, to see the opening of the poll, followed by the count and the rest of the results process up to the level of the Returning Officers' office. This is what they found.

#### **THE PRESCRIBED POLL, COUNT AND RESULTS ARRANGEMENTS**

##### **Voters**

As noted earlier, on 9 May 2004 the Electoral Commission announced that "the total number of registered voters has settled at 5,745,455", following a 'clean-up' of the register by South African information technology firm Computer Storage Inc in which some 927,568 names had been removed. In explanation Electoral Commission Chief Election Officer Roosevelt Gondwe was quoted as saying that "the drop is due to double registration". However, on 15 May the Chief Elections Officer announced that "some errors have been detected in the computerised voters' roll". He later advised that "the Commission may not have all the details on their computer roll".

The Group was informed that on election day each polling station would be equipped not only with a copy of the 2004 computerised voters' roll, but also with the larger manual register from which it had been drawn and the 1999 register, as well as the original Voter Registration Cards. Officials would check against these if the voter's name was not to be found in the computerised register.

In these circumstances it was difficult to say how many people would be eligible to vote at the 2004 Parliamentary and Presidential Elections.

The law states that to be allowed to vote a person has to be on the register and to possess and present a Voter's Registration Certificate obtained from the Malawi Electoral Commission during any registration period from 1999 to January 2004. On 17 May advertisements informed the public, and the Chief Elections Officer informed Returning Officers, that those who had lost their Certificates but were on the register would still be allowed to vote.

### ***Polling Stations and Staff***

According to the Electoral Commission's plans there would be 3,884 polling centres (at the locations formerly used as the voter registration centres). Each centre would comprise one or more polling stations, of which there would be 7,168. 1,128 of these would be in the Northern Region, 2,916 in the Central Region and 3,124 in the Southern Region. Each station would cater for a maximum of 1,100 voters.

Polling stations would mostly be located outside public buildings, including schools, community or social halls, government and local authority offices. Most of the staff would be civil servants, mostly teachers. At each there would be seven election staff - a Presiding Officer and six polling officials. At each centre there would also be armed police and soldiers to provide security. Where there were two or more stations at a centre there might also be a Supervisory Presiding Officer.

The polls were due to open at 6.00 am with the display of the empty ballot box and a public declaration of the number of ballot papers received. They would close at 6.00pm. The ballot boxes would be labelled clearly and be placed in full view of everyone.

Polling day would be an official holiday. There would be six constituencies where the Parliamentary Elections would not be held.

### ***Voting Process***

This was due to be as follows:

- the voter would present her/his Voters Registration Certificate to a poll clerk, who would call out the voter's name and number so that it would be audible to the party monitors; then she/he would check the name against the register or the Voter Record Card file (the file of the original applications for registration);
- once the voter's name had been found her/his Voter Registration Card would be stamped on the back with the official stamp and the register would be marked;
- she/he would then have her/his fingers checked by a polling official who, assuming no ink marks were found, would apply indelible ink to the right index finger;

- the next stage would be for the voter to be issued with a ballot paper for the National Assembly election and to have the voting procedure explained to her/him;
- the voter would then be shown to the voting compartment, where she/he would place one mark opposite the name, symbol, party name and photograph of her/his choice;
- finally, the voter would deposit the completed ballot paper in the National Assembly Election ballot box, folded so that the voter's mark could not be seen.

The procedure would then be repeated for the Presidential Election. This time the voter's left finger would be marked with indelible ink, she/he would be issued with the Presidential ballot paper and then vote according to the same procedure as for the National Assembly Election, but this time depositing the completed ballot paper in the Presidential Election ballot box.

Prior to election day the Chairman of the Electoral Commission urged that the aged, those with disabilities and pregnant women should be allowed to go straight to the head of the queue, so that they could vote without waiting too long. Voters with disabilities could be assisted by a person of their choice or, if no such person was available, by the Presiding Officer. The stations were due to close at 6.00 pm, but those still in the line at that time would be allowed to vote.

### ***The Closure***

After everyone in the queue at 6.00pm had voted the Presiding Officer would seal the boxes with plastic seals and special padlock-type seals and supervise the closure of the station, in the presence of party monitors and observers. Records would be taken of the numbers on the padlocks, the number of unused ballot papers and the number of spoilt and cancelled papers. All the ballot papers, used and unused, would be packed away according to a specific procedure, and the Presiding Officer would ensure that her/his records balanced.

### ***The Count***

This would begin with the counting of the National Assembly ballot papers. The ballot papers would be sorted by candidate in bundles of 50, with the name marked on each called out. At the end the final figure would be announced and the 'Official Record and Summary

Form' would be signed by all the poll officials and the at least one representative of each party. The same procedure would then be used for the Presidential Election. At the completion of the count the ballot papers and other materials would be packed away in special envelopes, copies of the results would be provided to each party representative and official forms showing the results would be displayed at the polling station for public viewing. The count would be a 'lock-in': no one would be allowed to leave or enter once it had begun. Police and/or soldiers would be present to provide for security.

### ***Collation at the Returning Officer's Office***

At the end of the polling station count and after all materials had been packed away and sealed, the Presiding Officer and the Assistant Presiding Officer, accompanied by a police or army escort, would travel to the Returning Officers' office. They would have with them sealed envelopes containing the results, a sealed ballot box containing the Voters Register and the Voter Record Card File; another sealed ballot box containing the ballot papers for both elections, separately packaged and properly sealed and signed by party representatives and monitors; and all the other key materials.

The Presiding Officers were under firm instructions that while party monitors could follow in separate vehicles they should not travel in the same vehicle as the Presiding Officer and Assistant Presiding Officer.

At the Returning Officer's office the 'Official Record and Summary Form' (Form MEC065) showing the polling station results would be handed directly to the Returning Officer. The Returning Officer would then compile and announce the constituency results for the National Assembly Election and the figures for the Presidential Election in that District, and then pass these on to the National Results Centre in Blantyre.

### ***National Results Centre***

The day before the election the Malawi Electoral Commission moved its operations centre from Development House to the COMESA Hall at the Chichiri Conference Centre, a venue for conferences and trade fairs located on the outskirts of Blantyre. Here the Commission would compile and announce the official results and representatives of the political parties, the Malawian monitors, international observers and the media would be able to follow the results from election night

through to the next day. The formal results announcements would be made on Saturday 22 May.

### ***Monitors and Observers***

Each political party and candidate was entitled to appoint an agent, known in Malawi as a 'monitor', for both the poll and the count. In addition there would be international and domestic observers. The Malawian civil society domestic observers, again known as 'monitors', were co-ordinated by the Malawi Electoral Support Network (MESN). MESN told us they would have 11,000 monitors on polling day. Some 7,000 of these would be drawn from the Public Affairs Committee, a coalition of faith-based groups, with a further 4,000 from the National Institute for Civic Education (NICE).

In addition the Malawi Human Rights Commission, a state body, would deploy its own monitors. Both MESN and the Human Rights Commission would conduct separate Parallel Vote Tabulation (PVT) exercises: the polling station results as recorded by their monitors would be added together so that the accuracy of the Electoral Commission results and others' reporting of them could be tested. MESN told us that they would provide their PVT results to Capital Radio and that they would exchange information with the Human Rights Commission.

The Electoral Commission said on 17 May that it had accredited over 300 international observers. The main international groups were the European Union Election Observation Mission (25 long-term and 53 short-term observers, led by Dutch Member of the European Parliament Ms Marieke Sanders-Ten Holte); the African Union (9 observers, led by Tanzanian politician Dr William Shija); the SADC Parliamentary Forum Observer Group (39 observers, led by the Speaker of Zimbabwe's Parliament, Hon Emmerson Mnangagwa); the EISA (Electoral Institute of Southern Africa) Observer Mission (35 observers, led by former President of Botswana HE Sir Quett Ketumile Joni Masire); and the Commonwealth Observer Group. These Groups also exchanged information, for instance on their deployment, and in the field their Teams liaised to ensure that the observer effort was maximised and duplication minimised.

### **EVALUATION**

Several important question marks hung over the process at the beginning of election day. Would the confusion at earlier stages affect

the turnout? Would the low level of political violence during the campaign period be maintained on election day itself? Would the voters' register prove to be accurate and an effective aid to the process, or would it be unreliable and a source of confusion? In general, would the Malawi Electoral Commission's plans and its operational capability be up to the job of delivering a credible poll, count and results process?

In the event, the voting itself went well. The counting of the votes was grindingly slow, but open to scrutiny. So far as we could see the results process was even slower, but in most places was sound.

Turnout was difficult for us to estimate. The Electoral Commission said that it was 61.99% in the Presidential Election and 60.86% in the Parliamentary Election, compared with their figures of 93.69% for the 1999 Presidential Election and 91.14% for the 1999 Parliamentary Election. We question the Commission's figures: since several different registers were in use it is not clear to us how the Commission can say exactly how many people were eligible to vote. We can say, however, that from our observations the postponement of the election had little impact on voting numbers. We can only speculate as to what other factors may have been involved.

We saw no violence and heard of only a few incidents. It was a calm day, characterised by good humour and orderliness on the part of the voters and responsible behaviour on the part of the parties. We noted that in several places both the Multi-Party Committees and the District Election Supervisory Teams were active on the day, resolving disputes and sorting out problems: we commend this<sup>9</sup>.

As for the register, every stage of the registration process was the subject of continuing criticism and this continued through to election day itself. In strict adherence to good electoral practice there should not have been an election without a proper register.

Our first finding is that the state of the register did not allow for efficient processing at the polling stations. Because many voters had to be looked up not only on the computerised register but on the station's other records as well, the process of checking against the registers was extremely slow and queues were often long. This was not helped when the registers were not in alphabetical order. We also noted that there was a lack of consistency and uniformity in the use of

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<sup>9</sup> See pages 20 and 31 for a description of their work before polling day.



the registers: polling stations varied as to exactly which they used. One was even using the register for the last municipal elections.

Secondly, members of our Group noticed that while the 2004 computerised register was in good condition, the manual register from which it had been drawn (and which was frequently used when names were not found on the computerised version) was often not in such a good state.

Thirdly, the Electoral Commission as a matter of policy - and the local polling station officials on their own initiative - had put the emphasis on not disenfranchising people. Indeed, few people were turned away. This was because while many of the names of those who presented themselves at polling stations were not on the 2004 computerised register they were mostly found on other records. However, that arrangement meant that the Commission was using not one unreliable register, but two. As noted above, the Commission itself acknowledged that the computerised register was deficient because data was missing. By also now authorising the use of the manual register it was introducing a further document which it had much earlier said was inflated. That, taken together with the fact that people were allowed to vote without Voter Registration Cards, inevitably gave rise to suspicions that, for example, there may have been multiple voting. The only guard against that was the use of indelible ink, not the register itself. The truth is that we have no way of knowing how accurate the registers in use on election day were.

For the future, we recommend that the Electoral Commission should immediately review every aspect of its registration arrangements; cleanse, update and consolidate all registers into one; and move to a continuous registration system.

So far as other Electoral Commission arrangements were concerned, where members of our Group were present:

**The Voters:** the voters were generally patient, despite the delays when their names had to be looked up on more than one list. Generally they were happy with the polling station arrangements. They were often enthusiastic about voting and almost always orderly. Most voters knew about the postponement of the election: the High Court ruling and the subsequent change of date did not appear to have caused any confusion, even in remote areas. However, in a number of places we visited the voters appeared not to understand the

voting system well and it had to be explained to voters in the queue at the station. We recommend that there should be better voter education in future.

**Polling Staff:** despite all the confusion and the inadequacies of the preparations for these elections the electoral staff rose to the occasion and should be congratulated: it was the people involved in this election rather than the policies and plans of the Electoral Commission which made it work. Although the confusion resulting from the inadequate registration process caused some problems, especially with regard to voter transfers and absence of names on the computerised roll, the electoral staff did their best to ensure that anyone entitled to vote got the opportunity to do so. The envisaged assistance to the elderly, those with disabilities and pregnant women was provided in almost all places we visited. While in the days prior to election day many staff appeared to be waiting for a lead from above, on the day they took the initiative to make sure things worked.

At the same time, it was clear almost everywhere that training had been inadequate and too manual-based. It was provided late and it was not sufficiently thorough or uniform. This meant that on the day itself the staff were often very cautious, adding to the slowness of the process. For the future we recommend that much greater attention should be paid to training, including additional training well ahead of election day.

**Polling Stations:** with the exception of the delays occasioned by the need to consult various registers, arrangements worked reasonably well. The organisation of the polling stations was mostly good, the atmosphere was peaceful, open and friendly, and most stations opened on time or shortly afterwards. The sites of the stations appeared to be well known to local people and the locations were adequate. The layout was generally satisfactory. We were satisfied with their distribution. However, at some polling stations people had much too far to walk; and we noted that not all stations were properly signed and demarcated. All but two of the stations we visited had the necessary materials – the exceptions were one station which had no register and one which ran out of ballot papers. All had the required complement of staff.

**Polling procedures:** we were surprised that in some places people were being allowed to vote even when not on the

register, while in others only those who were on the register were allowed to vote. We noted earlier that the Commission put the emphasis on not disenfranchising people. We were concerned, however, that their approach meant that people who were not entitled to vote could do so more easily. In some places we noted with concern that people were allowed to vote simply on their assurance that they had applied for a transfer and were a registered voter.

We also have concerns about identity checks at the polling station. We recognise that the local knowledge of the polling officials was intended to be used as a guard against abuse and are not necessarily recommending the use of ID cards. However, we believe that better identification arrangements would strengthen the system, especially in the case of transfers, and hope they will be considered.

Although last-minute guidance from the Electoral Commission helped, in many places there was still confusion and difficulty over the arrangements for transfers. In some places there were lists of transfers, in others not.

The polling procedures were not always implemented exactly as prescribed. For instance, the numbers of ballot papers were not always declared at the opening. Similarly, the voter's name was not always called out as she/he entered the polling station. Procedures were also not always implemented in a uniform and consistent way: the local officials used considerable initiative to overcome this in such a way that voters were assisted rather than hampered.

As for irregularities, polling officials told of allegations of vote buying. However, we saw no irregularities ourselves and we came across no cases of intimidation or coercion.

The ink was applied in line with the stipulated procedure and checked for at all the stations we visited. However, we noticed that it smudged easily and too much of it was applied. This could have resulted in many voters' ballot papers being declared null and void. We recommend that the ink procedures need to be reviewed before the next election: in particular there should be a better method of application.

**Secrecy of the ballot:** in all but one of the stations where we were present the voters were able to mark their ballot papers in secrecy, in a properly screened voting compartment. The exceptions were one station where a policeman was 'assisting voters' and another where the voting booth was positioned incorrectly.

**Gender:** the Group found no evidence that the participation of women was being impeded. On occasions – when, for instance, pregnant women were brought to the head of the queue to vote – it was facilitated. As well as observing at the polling stations we also spoke to women away from the polling stations and concluded that they had not been deterred from attending. Of the few people who we saw being turned away or complaining about the polling station process there was no particular pattern by gender. We estimate that about half those in the queue waiting to vote were women.

Most of the junior election officials and domestic and party monitors were female. However, only a small number of the Presiding Officers were female. We recommend that the Electoral Commission should take steps to ensure that in future there is gender balance at all levels of polling station and other Commission staff.

**Security:** while the police and soldiers on duty at the polling stations were not intrusive the security they provided was good and both people and materials were well protected.

**Closure:** the closure procedures were generally adhered to. However, they took time and seemed to us to be overly elaborate and unnecessarily complicated. We recommend that the Electoral Commission should reconsider all these procedures with a view to simplifying them for future elections.

**The Count:** in some places there were departures from the stipulated procedures. For instance, the 'lock-in' requirement was not always implemented, and the ballot papers were not always held up so that monitors could see them clearly. In most places, however, the counting of votes went according to the rules. Security was tight and the process was transparent: party and domestic monitors were allowed to be present, and the results forms were signed by and provided to both and displayed at the polling stations, in line with the stipulated procedure.

However, the count was painfully slow, mainly because the counting procedures were much too bureaucratic and over-elaborate. In several places it took longer to complete the paperwork after the count than it did to undertake the count itself. There were some irregularities: one of our teams saw count officials marking the ballot papers with ballpoint pens because they said that the pencil marks on them made by the voters were too indistinct. Conditions at the counts varied. Lighting was a problem and the candles, lamps and torches provided were inadequate. All the counts took place during hours of darkness: we believe that consideration might usefully be given to reducing polling station hours in future. This, together with a streamlining of the counting process, might ensure that the count is conducted in daytime. If counts are in fact to be held during darkness and the lighting is still poor pencils should not be used, since the marks they make are not always clear.

**Results Process:** the polling station results were often slow in being transmitted to the Returning Officers, in many cases because transport was not readily available. In turn the District results were very slow to come through from the Returning Officers to the Commission in Blantyre: by midday on the day after the election none had reached the National Results Centre. The delay from the Districts to the centre seemed to us to be because the Returning Officers had been told to keep all the polling station results until they had received every one and were in a position to declare the constituency result. However, radio stations were broadcasting individual polling station results, so there was some public frustration at the delay in making the official announcements. We recommend that the Commission should take a further look at its procedures in this area: faster systems can be devised without sacrificing transparency and accuracy, and we believe that they should be. Finally, we noted that at the Returning Officers' offices the polling station results were often announced and not simply transmitted by paper: we commend this procedure.

**Party and Domestic Monitors:** both party and domestic monitors were present throughout the process. The former seemed to us to be better trained; about half were women.

**International Observers:** no obstacles were placed in the way of members of our Group. On the contrary we were made

welcome wherever we went. We co-operated with other international observers to ensure the most effective coverage and exchanged notes when we met 'on the road'.

## **Chapter Six**

# **CONCLUSIONS AND RECOMMENDATIONS**

## **CONCLUSIONS**

We have in the preceding chapters considered the various factors affecting the credibility of the process.

The polling day, count and results arrangements to the level of Returning Officer were in many ways quite acceptable and the voters deserve to be congratulated for their commitment to democratic principles. In the Interim Statement we observed that generally polling day went well. The voting was extremely slow because of the use of several registers, about which we say more below. But the secrecy of the ballot was assured. The laid down procedures for opening and closing the polls were observed. There was no evidence of intimidation or cheating during the voting. Enough polling centres and stations were established to give voters access to the poll. The polling stations generally opened on time and the atmosphere during the voting was peaceful. The electoral staff did their best to minimise the problems that arose as a result of the confusion during the registration process. Domestic and international observers, monitors of political parties and the media were present. As for the counting, although it was extremely slow it was basically sound. To that extent conditions existed for the free expression of the voters' will.

However, the national results process gave considerable grounds for concern: the delay in the announcement of the results at the National Results Centre aroused unease and suspicion concerning the integrity of the process.

While polling day, the counting of the votes at the polling stations and the transmission of the results to Returning Officer level was done well, albeit extremely slowly, that cannot be seen in isolation from the rest of the electoral process.

Our three major concerns throughout our time in Malawi have been the incompetence of the Commission's handling of the voter registration process, the overwhelming pro-ruling party bias in the State media over the months prior to the election and the unfair and blatant exploitation by the ruling coalition of the advantages of their incumbency.

The first of these was clearly reflected in arrangements on the day: the Commission used registers which cannot be said with any certainty to be accurate or reliable and which it had itself earlier said were faulty. This was not a good arrangement. The Commission also increased the chances of multiple voting by, in effect, removing the requirement that voters needed to show their Voter Registration Card.

In the months prior to polling day there was a sustained manipulation of the most powerful media to get the people to vote in a particular way. The impact of the state media's bias is difficult to gauge. Nonetheless, we believe that it would be surprising if it and other abuses of the advantages of incumbency did not make a significant difference where the contest was close. The bias of MBC radio would also have had particular impact in those parts of the country – most of Malawi – where it is not only the most authoritative but also the only mass media.

Our conclusion is 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.

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## **RECOMMENDATIONS**

Our Terms of Reference empower us to “propose to the authorities concerned such action on institutional, procedural and other matters as would assist the holding of such elections”. It is therefore in a constructive spirit that we put forward the following recommendations<sup>10</sup>.

First, we commend and associate ourselves with the recommendations made by the Commonwealth Expert Teams which were present in Malawi in January and April 2004 to observe, respectively, the voter registration process and the display of the register.

As for our own recommendations, these are the points that have emerged from the preceding chapters:

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<sup>10</sup> Recommendations were similarly made by the Commonwealth Secretariat Team which was present for the 1999 Parliamentary and Presidential Elections. These are attached in *Annex Nine*.



- **THE ELECTORAL COMMISSION:** in our view, the Electoral Commission – which has known for five years that it had to organise a Parliamentary and Presidential Election in 2004 – did not fully discharge its obligations.

The Malawi Electoral Commission must be genuinely independent: *inter alia* this will require making the Commission accountable to Parliament rather than to the President, adequate funding and action to give the Commission control of its funds and the appointment of its own regional officials independent of local or national government; the Electoral Commission itself should be restructured so that it is composed of individuals who have the confidence of the political parties but are independent of them.

- **POLITICAL PARTIES AND CANDIDATES**

- **Women Candidates:** there were only 154 women candidates (most of whom were independent) out of a total of 1,258: we regret the low number of women candidates. We urge the political parties to choose more women candidates in future and to make rapid progress towards the objective of one-third of the candidates in winnable seats being women. Similarly, we urge gender balance at senior levels in the political parties, whether appointed or elected.
- **Use of state resources:** we noted the abuse of state resources by the ruling party at this election and urge the Electoral Commission to introduce binding regulations to prevent such abuse in future.
- **Treating and bribery:** we noted that some candidates were openly giving out money to voters in order to win their support: this is illegal and we urge the authorities to enforce the law to prevent it in future.
- **Party income and expenditure:** we were concerned to discover that there are no requirements for parties and candidates to report on their income and expenditure and no limits on either: we believe that appropriate laws or regulations should be put in place as soon as possible to ensure openness and accountability.

- **THE MEDIA**

- all media must be legally required to be balanced in all electoral and other political reporting; we believe that the law already provides sufficient scope for the Electoral Commission not just to monitor but also to take action to ensure balance in media coverage: however, since this has been disputed by, amongst others, the Chairman of the Electoral Commission himself, we believe that the law should be made as clear as possible and strengthened so that the Electoral Commission is obliged to meet its responsibilities in full in future;
- the State broadcast media should be required to monitor its own performance more adequately and take effective steps to ensure balanced coverage and equitable access; there should also be a statutory requirement that they run an independent and balanced daily programme of news and opinion at peak time during the campaign period.

- **THE PROCESS**

- **Planning:** if there are to be better elections next time the Electoral Commission must, above all, plan effectively: we urge the Commission to immediately devise a thorough and detailed plan for the 2005 local government elections and the 2009 Parliamentary and Presidential Elections, embracing all stages of the process.
- **Training:** we recommend that much greater attention should be paid to training for election officials: it should not be so manual-based, it should be more thorough, uniform, earlier and generally better: in particular, Presiding and Returning Officers need much more help on the post-counting procedures.
- **Voter Education:** the Commission itself said that voter education was insufficient, and there was considerable evidence on election day that more needed to be done. We urge that all involved – including political parties and civil society – should develop plans to do more in good time before the next election: however, the Electoral Commission itself has a particular responsibility and we hope that the new Commission will therefore review its voter education arrangements as soon as possible.

- **Voter registration:** we recommend that the Electoral Commission should immediately review every aspect of its registration arrangements so that there is one accurate and reliable register, and move to a continuous registration system as soon as possible.
- **Voter identification:** we believe that better identification arrangements would strengthen the system.
- **Polling station procedures:** we recommend that the procedures for the use of indelible ink be reviewed before the next election, that a better method of application be devised, and that pencils not be used to mark the ballot papers (as the marks they make are not always clear).
- **Gender balance:** we recommend that the Electoral Commission should take steps to ensure that in future there is gender balance at all levels of polling station and other Commission staff.
- **The Closure:** in view of the time they took and their complexity, we recommend the reconsideration of all the polling station closure procedures, with a view to simplifying them for future elections;
- **Polling Hours:** in the interests of greater efficiency and commencing the count in daylight, we recommend that the Electoral Commission reduce the hours of voting on election day by two hours (i.e. from 6.00 am to 4.00 pm).
- **The Count:** we urge a streamlining of the counting process
- **The Results Process:** the Commission should devise a faster results process and, while the Presidential Election results should still be announced centrally by the Commission, it should consider allowing the official parliamentary results announcement to be made in the Districts by the Returning Officer rather than at the centre by the Commission.

## **ACKNOWLEDGEMENTS**

We would like to place on record our thanks to the people of Malawi for the warm welcome extended to the Commonwealth Observer Group. All those we met during our stay gave us their views in an open and candid manner.

We appreciate the assistance given to our Group by the Chairman of the Malawi Electoral Commission, Justice J.B. Kalaile and his staff, and the polling station officials who worked tirelessly and patiently on polling day. We appreciate the co-operation of Commonwealth High Commissions, the political parties, the media, the domestic observers, youth organisations, the non-governmental organisations and the police. We also want to thank the other international observer groups from the African Union, EISA, the European Union and the SADC Parliamentary Forum for their co-operation and useful exchange of information.

We are grateful for the assistance given by our interpreters and drivers and thank all of them, particularly Mr Faizir Bakari and Mr Cedric Mmangisa. Above all our warmest tribute goes to the people of Malawi for the peaceful manner in which they exercised their democratic rights.

We wish to pay warm tribute to the Secretariat staff for their hard work, their professional skills and the integrity with which they consistently performed their tasks.

We extend our appreciation to the Commonwealth Secretary-General, HE Rt Hon Don McKinnon, for giving us the opportunity to serve the Commonwealth in the promotion of democracy.

## **Annexes**

## **Annex One**

### **COMPOSITION OF THE OBSERVER GROUP**

#### **Justice Joseph Warioba (Chair, United Republic of Tanzania)**

Justice Warioba served as Prime Minister and first Vice-President of the United Republic of Tanzania from 1985 to 1990. From 1976 to 1985 he was Attorney-General and Minister of Justice. Justice Warioba was Chairman of the United Nations Preparatory Committee on the International Seabed Authority from 1983 to 1986, Judge of the International Law of the Sea Tribunal from 1996 to 1999 and, from 2001 to 2002, Chairman of the United Nations Secretary-General's Advisory Panel on the World Summit on Sustainable Development. He is currently a Judge of the East African Court of Justice and has led election observer missions in Zambia (2001) and Nigeria (2003).

#### **Senator Raynell Andreychuk (Canada)**

Senator Raynell Andreychuk has been a Senator in the Parliament of Canada since 1993. She is the Vice-Chair of two Standing Committees - the Legal and Constitutional Affairs Committee and the Rules and Procedures Committee – and is a member of the Senate Standing Committee on Foreign Affairs and International Trade. Senator Andreychuk is a member of the Executive of the Commonwealth Parliamentary Association, was founding Co-Chair of the Canada-Africa Parliamentary Association and recently retired as International Chair of the International Law and Human Rights programme of Parliamentarians for Global Action. She practiced law for nine and a half years, was a Judge of the Saskatchewan Provincial Court, where she started a family court project, and was Associate Deputy Minister of Social Services in the Province of Saskatchewan. Senator Andreychuk was Canada's High Commissioner to Kenya and Uganda and Ambassador to Somalia, the Comoros Islands and Portugal. She was formerly the Canadian Permanent Representative to the United Nations Human Rights Commission.

#### **Mr Victor Ashby (Grenada)**

Mr Victor Ashby is the Supervisor of Elections in Grenada, in which capacity he oversaw the General Elections of 1999 and 2003. Mr Ashby was a member of the Commonwealth Expert Team which was present in Papua New Guinea in November 2002 and has attended several international conferences on democratic and electoral practices.

#### **Ms Nicolette Balcombe (St Vincent and the Grenadines)**

Ms Nicolette Balcombe is a member of the Commonwealth Caribbean Regional Youth Caucus and a former President of the National Youth Council of St Vincent and the Grenadines. She is currently a member of the

Education Advisory Board and Local Government Reform Committees and is employed by the Ministry of Agriculture in the Animal Health and Production Division.

**Ms Justina Cumbe (Mozambique)**

Ms Justina Cumbe is Executive Director of the Institute for Civic Education in Mozambique. She was responsible for managing civic education prior to and domestic observation during the 1998, 1999 and 2003 elections in Mozambique and has participated in three election observer missions elsewhere in Southern Africa. A graduate in educational psychology and an adviser on gender and children, she was a member of the SADC-ESN project management team from 1996 to 2003.

**Senator Alan Ferguson (Australia)**

Senator Alan Ferguson is a Senator for South Australia in the Federal Parliament of Australia. He has been Chairman of the Joint Standing Committee on Foreign Affairs, Defence and Trade since 1999. From 1994 to 1999 he was Chairman of the Senate Economics Committee. Prior to his election to the Senate in 1992 Senator Ferguson had been the joint owner and manager of a mixed farming business for 25 years. From 1985 to 1992 he was a self-employed insurance and finance adviser.

**Mr Michael Holman (United Kingdom)**

Mr Michael Holman was Africa Editor of the London *Financial Times* from 1984 to 2002 and, before that, was the Lusaka-based Africa correspondent for the paper between 1977 and 1984. He was brought up in Zimbabwe and took his first degree at the University of Rhodesia before doing post graduate work at Edinburgh University, Scotland. He lives in London, working as a columnist, writer and novelist.

**Ambassador Olujimi Jolaoso (Federal Republic of Nigeria)**

Ambassador Olujimi Jolaoso was educated at University College, Ibadan, Nigeria, the Institute of Education in London University, Queens College Oxford and the University of Madrid. He served in the Nigerian Foreign Service from independence and was Ambassador to Germany, Liberia, Sierra Leone, the United States of America and Mexico. From 1981 to 1984 Ambassador Jolaoso was Director-General for African Affairs in the Ministry of External Affairs. He was an OAU observer in the Comoros Islands in 1990 and was Head of the OAU mission to observe preparations for the Namibian independence elections.

**Ms Gugulethu Matlaopane (South Africa)**

Ms Gugulethu Matlaopane is a Provincial Electoral Officer in the Independent Electoral Commission of South Africa and heads the Gauteng Province of the Commission. She joined the Electoral Commission in 1993 when South Africa was preparing for its first democratic elections and worked in the Legal Department of the Electoral Commission, based in the Northern Cape Province. After the 1994 elections she left the Electoral Commission to join the newly formed Department of Local Government as its Director and was responsible for managing and co-ordinating the 1985 local government elections. In 1998 she rejoined the Independent Electoral Commission as the Provincial Electoral Officer in charge of the Northern Cape Province. In 2001, at the request of the Chairperson of the Electoral Commission, she was transferred to Gauteng Province to head the Commission's office there.

**Ms Koki Muli (Kenya)**

Ms Koki Muli is the Executive Director of the Institute for Education in Democracy and an advocate of the High Court of Kenya. She has considerable experience in election observation locally and internationally and has been involved in the strengthening the capacity of Electoral Commissions in Eastern Africa and the Constitutional Review process in Kenya. She has written extensively on human rights and gender issues.

**Begum Sarwari Rahman (Bangladesh)**

Begum Sarwari Rahman was elected as a Member of Parliament in 1991 and served as Minister of State for Women and Children's Affairs from 1991 to 1995. She has been an active social worker and politician since the 1960s, is a Vice-Chair of the Bangladesh Nationalist Party and was a member of the party's National Election Committee for the national elections held in 2001. Begum Sarwari Rahman has served in various capacities in several national and international organisations and was founder and President of the SAARC Women's Association.

**Hon Wavel Ramkalawan MP (Seychelles)**

Hon Wavel Ramkalawan was the founder of the Parti Seselwa, the main political party which fought for the return of multi-party democracy in Seychelles in 1991, and has been a Member of Parliament since 1993. He is now Leader of the Opposition and the Leader of the Seychelles National Party, an amalgamation of three opposition parties with 45% of the vote. Mr Ramkalawan is an ordained minister of the Anglican Church and was a member of the Commonwealth Observer Group which was present in Malawi for the Parliamentary and Presidential Elections of 1994.



**Mr Kingsley Rodrigo (Sri Lanka)**

Mr Kingsley Rodrigo is the Chairman of PAFFREL (People's Action for Free and Fair Elections). PAFFREL is a non-profit coalition working to strengthen and expand democracy island-wide and the major election observation organisation in Sri Lanka. Mr Rodrigo is also the General Secretary of a network of organisations known as ANFREL (Asian Network for Free Elections), which organises the observation of elections in Asia. He graduated from Colombo University and worked as an Attorney in the Supreme Court in Sri Lanka.

**Ms Elizabeth Solomon (Ghana)**

Ms Elizabeth Solomon was a member of the Electoral Commission of Ghana from 1993 to January 2004. She is a lawyer by profession and for several years was the legal adviser of the State Insurance Corporation of Ghana. She is an executive member of the International Federation of Women Lawyers and from 1998 to 2002 was the General Secretary of the Federation.

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## **Annex Two**

### ***News Release***

#### **ARRIVAL STATEMENT BY JUSTICE JOSEPH WARIOBA, CHAIRPERSON OF THE COMMONWEALTH OBSERVER GROUP**

The Commonwealth Observer Group assembled in Blantyre over the weekend. Four of our members are still to arrive, but most of us are here, and we begin our work today.

We are present in your country at the invitation of the Malawi Electoral Commission and after a visit last month by an Assessment Mission whose purpose was to consult with your Electoral Commission, the political parties and civil society. That mission concluded that there would be 'broad support' for the presence of Commonwealth observers and that they would be free to carry out their work.

Each of us has been selected by the Commonwealth Secretary-General to participate in our individual capacities, but we represent the whole Commonwealth rather than the countries from which we have come.

We are not here to interfere. We will abide by the laws of Malawi. We are independent of our governments and any organisations to which we belong. Our concern is purely with the electoral process and its credibility.

We are here to consider the various factors impinging on the credibility of the electoral process as a whole; to assess whether, in our own judgement, the conditions exist for a free expression of will by the electors; and to determine if the results of the elections reflect the wishes of the people.

We will travel extensively, consult widely and take every opportunity to see the process for ourselves. We look forward to meeting as many people of Malawi as possible.

We will, of course, co-operate closely with the other observers, both international and domestic. At every stage, we will act with impartiality, objectivity and independence.

Commonwealth observers were here in January and April to look at the voter registration process and we have had the benefit of their reports. One of our members, Ms Koki Muli, has already been here for a week and will be briefing us shortly.

So that we are as fully briefed as possible before we deploy, we have arranged a series of briefing sessions in this hotel over the next four days.

Later today the Chairman of the Electoral Commission, the Chief Elections Officer and their colleagues will brief us. Tomorrow, Wednesday and Thursday, we will meet with political parties, non-governmental organisations, Commonwealth diplomats and others, and on Friday we will deploy to our base locations around the country. We will inform you of these later in the week.

We will see the end of the immediate pre-election period and on election day itself, we will visit as many polling and counting stations as we can. We cannot visit every polling station or be present everywhere. But we can and will attempt to take a representative sample of the process, so that we can arrive at a broad overview.

After we have seen the count and the results process, we will return to Blantyre to consider our report. In reaching our view about these elections, we will take into account not only our direct observations of the polling and results process, but also the electoral environment as a whole – the legal framework, the voter registration process, civic and voter education, the media, the freedom of the parties to campaign and the freedom of the voters to vote as they wish.

We will write our report here and sign it before we depart, on 24 May. We will then submit our report to the Commonwealth Secretary-General, who will in turn forward it to the Government of Malawi, the Malawi Electoral Commission, the leadership of the political parties and then to all Commonwealth governments. The report will be made publicly available, here and throughout the Commonwealth, in printed form and on the internet.

Le Meridien Mount Soche Hotel  
Blantyre  
10 May 2004

## **Annex Three**

### ***News Release***

**14 May 2004**

## **COMMONWEALTH OBSERVERS DEPLOYED IN MALAWI**

The Commonwealth Observer Group – which is present in Malawi for the 18 May General Election – was deployed across the country today, Friday 14 May 2004.

Members of the Observer Group will cover both rural and urban districts and will travel as widely as possible from their base locations, which are as follows:

**CHAIRMAN'S TEAM:**  
(Roving around the country)

Justice Joseph Warioba  
Professor Ade Adefuye

### **NORTHERN**

**Karonga**

Mr Michael Holman  
Hon Wavel Ramkalawan MP

**Mzuzu**

Senator Alan Ferguson  
Mr Christopher Mupita

### **CENTRAL**

**Kasungu**

Ms. Justina Cumbe  
Senator Raynell Andreychuk

**Lilongwe**

Begum Sarwari Rahman  
Mr Martin Kasirye

**Salima**

Mr Kingsley Rodrigo  
Ms Gugulethu Matlaopane

### **SOUTH**

**Blantyre**

Ambassador Olujimi Jolaoso  
Ms Geraldine Goh

**Mangochi**

Ms Koki Muli  
Ms Nicolette Balcombe

**Zomba**

Mr Victor Ashby  
Ms Katalaina Sapolu

**Chikwawa/Nsanje**

Ms Elizabeth Solomon  
Mr Lach Fergusson

As well as observing in Blantyre the Observer Group Chair Justice Joseph Warioba will undertake a number of visits outside the capital to assess the electoral environment and meet with election officials, political parties, other observers and voters.

For further information please contact: Geraldine Goh on 08-379-719.

## Annex Four

# CHECKLIST AND OBSERVATION NOTES

## COMMONWEALTH OBSERVER GROUP

Malawi Parliamentary and Presidential Elections  
18 May 2004

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### CHECKLIST FOR POLLING STATION VISITS

Team Member(s): .....

Constituency & District: .....

Polling Centre/Station: .....

Times of Arrival/Departure: .....

Voters in Queue (est): ..... Rate of Processing: .....

Voters on Register: ..... Votes cast: .....

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- |    |                        |            |                          |        |
|----|------------------------|------------|--------------------------|--------|
| 1. | <b>Opening of Poll</b> | What time? | Procedures followed?     | Yes/No |
|    |                        |            | All materials available? | Yes/No |
|    |                        | Details:   |                          |        |

2. **Party Monitors/Observers** Party monitors present – please specify which and indicate gender:

☐  
☐  
☐  
☐  
☐

Domestic observers  
International observers

Others: please state

3. **Register**
- State of the register?  
(Indicate manual/computerised/2004)  
Are voters names easily found?

Any voters turned away? How many? Why?  
Please identify by gender.

Are parties/agents/observers complaining?  
Details:

**4. Polling Station Layout  
and Facilities**

Good? Adequate? Poor?

**5. Polling Staff**

Adequate? Efficient? Satisfactory? Poor?  
Please indicate gender of staff.

**6. Security Presence**

Police present? Active? Passive?  
Discreet? Intrusive? Oppressive?

**7. Complaints by  
Party Agents**

Any complaints? Yes/No?  
Details:

If complaints, were they dealt with/resolved?  
By whom?

**8. Complaints by  
Voters**

Yes/No      Details:

If complaints, were they dealt with/resolved?  
By whom?      Please indicate gender of  
complainants.

**9. Presence of  
unauthorised  
persons/campaign  
activities/materials?**

Yes/No      Details:

**10. Atmosphere at  
Station?**

Orderly? Tense? Chaotic?

**11. Secrecy of Ballot**                      Assured?    Poor?    Uncertain?    Assisted voters  
(if so how many)? Please explain:

**12. Voting**

(a)      Impersonation attempts alleged:                      Yes/No  
            Details:

(b)      Multiple voting attempts alleged:                      Yes/No  
            Details:

(c)      Women deterred from voting:                      Yes/No  
            Details:

(d)      Is the voting procedure (register/  
            National Assembly ballot/ink/  
            Presidential ballot etc) being followed?                      Yes/No

(e)      Are procedures being followed re                      Yes/No  
            illiterate and incapacitated voters?

**13.      Station Limits** – are they being observed?                      Yes/No

**14.      Numbers** - any voting not on register?  
                    - any voting without ID?  
                    - already voted?  
                    - estimated percentage of women voters in queue?

**15.      Closing of Poll**    On time?    Numbers still in queue?                      Yes/No  
                                    Did voting continue for 12 hours  
                                    irrespective of opening time?  
                                    Adequate seals applied?                      Yes/No  
                                    Procedure followed?                      Yes/No

**16.      Other Remarks**

# COMMONWEALTH OBSERVER GROUP

## Malawi Parliamentary and Presidential Elections

### 18 May 2004

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## THE COUNTING OF VOTES

- 1. The Count**

Opening of ballot boxes/ breaking of seals/ counting of votes: are procedures observed?  
Detail:

Are police present? Yes/No  
Who else is present?

Indicate any inappropriate behaviour:
- 2. Party Monitors**

Are party monitors present? Yes/No  
Which parties?

☐  
☐  
☐  
☐  
☐  
☐

Others: please state

Are there any major challenges to the Presiding Officer's rulings?

Do the party monitors have any complaints or comments?

Name of agent:  
Party:  
Substance of complaint
- 3. Statement of Poll**

Is a copy of the results given to all Party Agents?  
Have the relevant certificates/forms been completed?  
Do they all sign?  
Any fabrication alleged at this point?



Do any of the monitors object? If so why?

**4. Transport Arrangements** What arrangements are there for the transport of the results certificates and to transport and ensure the security of the ballot boxes after the end of the count?

**5. Transmission of results** (a) are the results displayed at the polling station? Yes/No

(b) how are the results transmitted to the District Collation Centre?

**6. Fairness overall** Good? Acceptable? Questionable?

**7 . Adherence to the rules, speed, accuracy and transparency**

Is the procedure in line with that stipulated by the Commission? If not please explain:

Are the officials efficient and well-trained?

How long does the count take?

Does it seem to be accurate?

Is it transparent?

**Other Comments**

# COMMONWEALTH OBSERVER GROUP

Malawi Parliamentary and Presidential Elections

18 May 2004

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## COLLATION OF RESULTS AT DISTRICT LEVEL

1. **Who is present?**  
Election officials?  
Candidates/election agents?  
Domestic/international observers?  
Security officers?  
Others? Please state:
  
2. **Are procedures followed?**  
Does the Returning Officer act in line with the procedures? Yes/No?  
If no please give detail:  
  
Are there any major challenges to the Returning Officer's  
Announcements? If so please explain:
  
3. **Transmission of polling station results?**  
Are the results from the count at which you were present conveyed  
accurately? Yes/No. If not please explain:
  
4. **Adherence to the rules, speed, accuracy and transparency**  
Is the procedure in line with that stipulated by the Commission? If not  
please explain:  
  
Are the officials efficient and well-trained?  
How long does the process take?  
Does it seem to be accurate?  
Is it transparent?
  
5. **Overall, is the process fair?**
  
6. **Was the collation process:**
  - ☐ well organised
  - ☐ unsatisfactory
  - ☐ chaotic

# **COMMONWEALTH OBSERVER GROUP**

**Malawi Parliamentary and Presidential Elections**

**18 May 2004**

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## **OBSERVATION NOTES FOR POLL AND COUNT**

### **PART A**

The Observers may focus particular attention on the following aspects of the conduct of the election:

#### **THE CAMPAIGN**

1. Balance of TV/radio election coverage and extent and nature of access by party and other candidates.
2. Print media: nature of coverage and extent of access by the political parties
3. The tone and content of material put out by the candidates, access to printing facilities
4. The conduct of political meetings/rallies (permits for public meetings?)
5. The conduct of house-to-house canvassing of voters.
6. Nature, scale and effectiveness of Electoral Commission and other voter education on radio and television, in the print media and by other methods.
7. Activities/measures to encourage the participation of women, breakdown of candidates by gender.
8. Access to funds and sources of funds
9. Evidence of the abuse of the advantages of incumbency (use of public resources, civil servants etc for party purposes)
10. Election violence/malpractices (corruption etc): potential and actual

#### **THE POLL**

1. The location of polling stations
2. Distances travelled by voters to polling booths, particularly in rural areas.
3. The procedure followed at the opening of the poll, including voter identification.
4. The length of time voters wait to cast their votes: especially the old, and pregnant and breast-feeding women.
5. The adequacy or otherwise of facilities at polling stations and their state of readiness.
6. Availability of adequate supplies, e.g. ballot papers, official stamps, stamp pads etc and, in rural areas especially, lighting facilities
7. The performance of electoral officials at the polling stations visited
8. The procedures in place to ensure proper security of ballot papers, ballot boxes and official seals
9. Arrangements to facilitate voting by women
10. The steps taken to ensure that the secrecy of the ballot is assured.
11. The general atmosphere at the polling stations visited.
12. Access of party agents and domestic observers to polling stations
13. Whether illiterate voters are assured of a vote in secret
14. Whether disabled voters are assured of a vote in secret
15. Whether the ballot boxes are properly sealed at the start and end of the voting, and their security ensured.

## **THE COUNT**

1. Inspection of seals
2. The process of reconciling the number of people who voted with the number of ballots in the boxes
3. The determination of invalid ballots

4. The facilities for party agents and their representatives to witness and verify the count and overall transparency: do they sign the results, are they given a copy?
5. Access by domestic and international observers: do they sign the results, are they given a copy?
6. The conduct of election officers: do they follow procedures, do they display the results at the station?
7. Transport arrangements for the boxes, documentation and other material and arrangements for transmission of the polling station results to the Returning Officer.

## **PART B**

Questions that may be put and which you may ask yourself:

1. Was the Voters' Register compiled in a satisfactory way? Were people missed out? Were the names of dead people or "phantom voters" included? Did these "phantom voters vote"?
2. Who are the election officials? How were they chosen? Are voters confident that they will be impartial?
3. Is the person in the street satisfied with arrangements? Will he/she vote? If not, is he/she afraid to do so? Were there any attempts to discourage/encourage the participation of women and were they effective?
4. Have all parties been able to campaign freely? Has the campaign been free of intimidation etc? Have all parties had full access to the mass media?
5. Is there freedom to advertise and distribute posters, leaflets etc? Is there potential for violence/manipulation/intimidation?

## **ON POLLING DAY**

1. Before polling starts, are the ballot boxes empty? Are they properly sealed? Are all procedures being adhered to?
2. Are all the parties/candidates represented at polling stations? Are they satisfied with the process?

3. Are the voters apparently voting freely? Are they enthusiastic? Do they talk freely? Do they exhibit signs of fear or intimidation?
4. Do voters understand the procedures properly? If not, are the procedures being explained fully and impartially? Are attempts being made to suggest how voters should vote?
5. Does the turnout indicate that women have been deterred from attending to vote?
6. Is only one person at a time being allowed into the voting compartment?
7. How long are voters waiting to vote? If a long time, are some being put off?
8. Will all parties be represented at the polling stations throughout voting and the count? Are agents adequately trained and vigilant?
9. Will domestic and international observers have free access to all stages of the process?
10. Is the security effective/oppressive?
11. Were the proper procedures followed at the end of the day?

## **THE COUNT**

1. Are the boxes kept safe until opened? Are all parties present when they are opened?
2. Does the number of used ballot papers tally with the record of those who voted?
3. Are the papers counted properly? Are counting agents present? Are they satisfied with the procedures of the count?
4. Are the proper procedures followed for declaring votes as invalid?
5. Are the sealing, transport and security arrangements in order?
6. Is the result of the count posted on the wall of the polling station?
7. Is the result transmitted to the Returning Officer accurately?

## **THE CONSTITUENCY RETURNING OFFICER'S COLLATION OF THE POLLING STATION RESULTS**

1. Do the Statements of Poll and the boxes arrive in good order?
2. Are party agents present and are they able to do their job?
3. Are the correct procedures followed? In particular, do the Statements of Poll as declared to the Returning Officer match those given at the polling station?
4. What determinations does the Returning Officer make and do they have a bearing on the overall constituency result? How long does the process take?

## **Annex Five**

### **INTERIM STATEMENT**

***The following Interim Statement was issued this morning by Justice Joseph Warioba, Chair of the Commonwealth Observer Group***

"Commonwealth Observer Teams observed the poll, count and results process closely yesterday across the country, in all three regions.

On the positive side the poll went well. The media, monitors of political parties and properly accredited domestic and international observers were allowed to be present throughout the process.

Despite all the confusion and the inadequacies of the preparations for these elections, the electoral staff rose to the occasion and should be congratulated. With a few exceptions the polling stations opened on time or soon thereafter. The opening and closing procedures were done properly.

The atmosphere at the polling stations was peaceful and we found no evidence of intimidation at the polls. The confusion resulting from the inadequate registration process caused some problems, especially with regard to voter transfers and absence of names on the computerised roll. However, the electoral staff did their best to ensure that anyone entitled to vote got the opportunity to do so.

Though the voting process was slow in some places because of the use of several rolls, the voters were generally patient, orderly and determined to cast their votes. The vote was generally cast in secrecy and we did not detect instances of cheating. The counting of votes was slow but transparent. The results process continues and we will make a final judgement on that at a later point.

Polling day cannot, however, be seen in isolation from the rest of the electoral process. On the negative side we have noted the serious inadequacies in the registration process and the inability of the Electoral Commission to resolve some important issues. We are also deeply concerned about the gross bias of the public media. The misuse of the advantages of incumbency is also a matter of grave concern to us. In our overall assessment of the whole electoral process we will take these matters into account.

The Commonwealth Observers return to Blantyre later today to prepare our final report, which will be signed in Malawi before the Group departs next week".

Blantyre  
21 May 2004



## **Annex Six**

### **DEPARTURE STATEMENT**

***The following Departure Statement was issued this morning by Justice Joseph Warioba, Chairperson of the Commonwealth Observer Group***

When we issued our Interim Statement we said that in arriving at our overall assessment of the electoral process in Malawi we would take a number of factors into account. We have been doing that over the last three days. We have now completed our Report, which we have signed and will send to the Commonwealth Secretary-General. He will then forward it to the Head of Government, the Chairman of the Malawi Electoral Commission, the political parties and all Commonwealth governments. It will then be made public, in printed form and on the Commonwealth web-site.

The conclusion we have reached is that the voters were free to express their wishes on election 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.

We have also made a series of recommendations, which we hope will help for the future. We will now return to our countries, with fond memories of the people of Malawi and the warm welcome we received here. Each of us will follow developments in this country closely. We wish the people of Malawi well in all your work to strengthen your democracy. We hope that our Report will contribute to that effort. As individuals we will do whatever we can to help. We know that the Commonwealth as a whole will do so too.

25 May 2004

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## **Annex Seven**

### **Extract from the Report of the Commonwealth Expert Team on the Voter Registration Process in Malawi, January 2004**

#### **“ Conclusion and Recommendations**

- The registration staff appeared to be well trained, motivated and respectful in manner. The team observed that all tasks were carried out professionally.
- Extra financial assistance and technical support should be provided as a priority to increase the capacity and data security of the IT centre.
- Additionally, it is recommended that the Electoral Commission seek to update its printing capability with, for example, 10 HP 900 printers. The Commission should seek to have the capacity to print the voters' list in under five days.
- A review of the registration procedures needs to take place and adjustments made to protect the system from abuse and to increase accountability for forms and increase transparent record keeping so that the final voters' list can be independently verified. This will enhance the credibility of the system.
- A review of the logistical capabilities and plans should be undertaken immediately with a view to strengthen the capacity of the Commission prior to Polling Day.
- Immediately upon arrival of the forms at the IT centre processing statistics should be gathered to determine if plant size needs any adjustments.
- A non-picture version of the voters' list should be produced and given to political parties. A period of time should also be given for constructive feedback.
- At the end of each day, political party monitors should be provided with a list of names, inclusive of registration numbers of all new registrants and transfers into the constituency. This should be reconciled to the Daily Registration Account Form (DRAF).
- Inventory logs should be kept of all forms sent to the IT Centre. Returning Officers should note all forms used, which elector was registered and which tamper-proof envelope they were placed in.
- The tamper-proof envelope should be double-signed upon collection from the Returning Officer to show acceptance of delivery and receipt . After signature it should be stored in a secure storage box.
- A quality control procedure focusing on data capture on forms should be set up at the constituency level. All forms completed should be reviewed daily and corrected while still in the field. ”

## **Annex Eight**

### **Extract from the Report of the Commonwealth Expert Team on the Observation of the Inspection and Verification of the Provisional Register of Electors in Malawi, April 2004**

#### **“ Conclusion**

An accurate voters register is pivotal to a valid electoral process, as it serves as the basis for exercising one's franchise. Hence, every measure must be put into place to ensure that the voters register is as accurate as possible. One such measure is the inspection and verification process, the purpose of which is to enable the public (registered voters in particular) to:

- (a) Check the voters roll (the document which reflects the data on the register) to ensure their names and particulars appear correctly;
- (b) Submit claims to have their names included, if they have registered, but the names do not appear;
- (c) Make objections to names appearing on the voters roll that should not be included.

Thus, failure to provide the 2004 voters roll during an inspection exercise can only be characterised as a lost opportunity to ensure a high level of accuracy of the voters register.

Having observed the inspection exercise where the key document, the 2004 voters roll was absent, the implicit assumptions that can be made are:

- (a) The Commission was not fully prepared to conduct the inspection and verification of the voters roll exercise. Several postponements of the registration exercise have impacted negatively on the preparations for compiling the voters roll. In essence, there was insufficient time for capturing and verifying all the data gathered during registration, compiling the roll and distributing copies to the relevant centres.

In fact, the actual inspection exercise was postponed on three occasions. However, given its statutory obligation, as provided in Section 31 of the Electoral Laws, the Commission had no choice but to carry out the inspection exercise even in the absence of the computerised voters roll.

- (b) The extremely low voter turnout may be attributed to the lack of understanding on the part of the voters regarding their role during the inspection and verification phase, given the wording and style of the notices published in the media by the Chief Elections Officer.

Moreover, the notice as published on 26 April 2004, placed less emphasis on ensuring that one's name and particulars were

included correctly, and what action should be taken if it is not, than objecting to a name on the voters roll.

While the inspection exercise was launched for the period 26 – 30 April 2004, the objective of the exercise as provided for in Section 31 of the Electoral Laws, i.e. "...opening the voters register to inspection for purposes of verifying the entries therein....", was not achieved due to the unavailability of the 2004 voters roll.

The low voter turnout may have in fact been a blessing in disguise, i.e. if large crowds had indeed turned up to inspect the registers, and were unable to determine with certainty whether their names were included in the voters register, that may have created further problems for the Commission.

### **Recommendations**

Given all the problems experienced during the voter registration exercise and the compilation of the voters roll, the Electoral Commission may wish to consider the introduction of a system of continuous registration.

A continuous system will enable the Commission to conduct registration at its offices year round, during normal office hours, except for the cut off date prior to an election.

More importantly, it also allows for the updating of the master register, weekly or monthly as applicable to the specific situation, or as the Commission sees fit.

It should be noted that a continuous system of registration requires support staff at permanent centres within the districts to conduct registration transactions, and the requisite physical and human resources at the IT centre.

The benefits of a continuous system of registration are:

- The voters register is continuously updated;
- A voters roll can be compiled within the time it takes to print it;
- The problems and anxiety associated with conducting registration prior to elections will be eliminated.

The Commission may also wish to replace the fragile registration certificate with a more substantial document, possibly an identification card."

## **Annex Nine**

### **Recommendations of the Commonwealth Secretariat Team which was present for the 1999 Parliamentary and Presidential Elections**

"For the future, we recommend that the Electoral Commission:

- \* allow more time for preparation, in view of the programming difficulties experienced on this occasion;
- \* review its voter registration arrangements, with a view to ensuring that in future all registration centres should be open for the prescribed period and be fully equipped: consideration might also be given to the adoption in the longer term of a continuous voter registration system;
- \* arrange for the early computerisation of the register: this is important in itself, but it would also enable the appropriate use at polling stations of the file of the Voter's Registration Cards and the Voter Register;
- \* adopt media guidelines at a much earlier stage, monitor media coverage more closely from the start of the campaign period, and take vigorous and prompt action to ensure compliance with the law and adherence to the guidelines: in this way we believe that it will be able to endure a more level playing field regarding media coverage;
- \* devise ways of:
  - preventing under-age voting; and
  - reducing waiting time at polling stations (for instance by ensuring that the number of voters per station never exceeds 1,000).
- \* examine ways of eliminating the considerable delays experienced in the results process, with particular reference to the transmission of polling station results to Returning Officers and of constituency results from Returning Officers to the Electoral Commission headquarters."