



European Union
Election Follow-Up Mission

MALAWI 2022

Final Report



21 October 2022



European Union
Election Follow-up Mission to Malawi
20 September to 16 October 2022

FINAL REPORT

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EXECUTIVE SUMMARY

An EU Election Follow-up Mission (EFM) was deployed to Malawi from 20 September to 16 October 2022 to assess the progress made in electoral reform and the implementation status of the 2019 EU Election Observation Mission (EOM) recommendations. The EFM was led by Miroslav Poche, the Chief Observer of the 2019 EU Election Observation Mission (EOM) to Malawi. The Mission met with representatives of the Malawi Electoral Commission (MEC), political parties, parliament, government, judiciary, media, civil society, domestic observers, development partners, and the diplomatic community. This report reflects the situation up to 21 October 2022.

The EFM noted some progress in the implementation of the 2019 EU EOM recommendations, although in certain areas more political will is needed to move forward. Positively, the three pending electoral reform bills were gazetted early enough – on 7 October 2022 – to allow good time for stakeholders to study them before they are tabled and discussed in parliament, which it is hoped will be in the November 2022 session. The bills are the product of consultative discussion led by the National Task Force on Electoral Reform (NTER), involving the MEC, political parties, and civil society. There is a broad consensus that they should be approved as soon as possible.

No other election-related legal reform initiative is currently underway, although there is still enough time available ahead of the next elections to address some of the recurring problems of the electoral process in Malawi. There are many recommendations that could be implemented through administrative and procedural changes, not requiring legislative change.

Out of the 24 recommendations offered by the 2019 EU EOM, three have been fully and four partially implemented. In the case of another 12 recommendations, either some activity is ongoing toward their implementation, or it is too early in the electoral cycle to determine their implementation status. Out of the five priority recommendations, only one was partially implemented. Out of ten recommendations requiring change in the legal framework, one was fully and one partially implemented.

The recommendations that were fully implemented include strengthening the independence and integrity of presiding officers, harmonisation of the legislation with regards to the date on which a voter must be 18 to be eligible to be registered, and entry into force of the Access to Information Act. Partially implemented recommendations relate to the review of parliamentary constituency boundaries, reinforcement of the internal communication flow within the MEC, provision for additional presiding officers, and extension of the minimum period for the swearing-in of elected officials.

On the other hand, the recommendations where implementation is clearly lagging behind include increasing transparency in political party and campaign finances, making party primaries more transparent and inclusive of women, enforcement of the campaign codes of conduct, and removal of presidential powers in the appointment of board members of the public broadcaster and communications regulatory authority. This will, however, require political will and efforts by the government, which, on some of these more sensitive issues has so far been lacking.

The election legal framework was amended in 2020 to implement the court judgments that nullified the 2019 presidential election and ordered the fresh presidential election. The principal change was to specify that the majority required for electing the president is an absolute majority of more than 50 percent of the votes. The three pending electoral reform bills would introduce needed improvements to the integrity and efficiency of the elections and would harmonize the laws. It is now up to the government and parliamentary authorities to prioritize the bills so that they make swift progress through parliament. Many interlocutors wish to see the legal reforms in place as soon as possible to allow time for stakeholder familiarisation, staff training, and civic and voter education campaigns.

As to the contents of the bills, positive elements include a ban on the use of state resources in campaigns; providing that the national identity card will be the only valid form of identity for voter registration (although this requires the National Registration Bureau (NRB) to issue cards expeditiously otherwise it potentially entails the risk of disenfranchising voters); details for determining vote validity; and an extension of time for the MEC to declare the results. The NTER initially planned a wider set of reforms but dropped some issues because they did not enjoy sufficient support among stakeholders or were deemed to enjoy insufficient support in parliament, including quotas (reserved seats) for women, and opening up the nomination process for MEC members. The government also dropped some issues from the bills, including provision for constituency tally centres, and an extension of tenure for MEC members.

The EFM convened a roundtable that 55 stakeholders attended on 5 October to discuss progress in the implementation of the EOM recommendations and electoral reforms more generally. Participants agreed on the need for electoral reforms to take place as soon as possible. From the discussion, it was clear that political will is needed to improve issues within political parties and the political culture, such as campaigning, political finance and primaries. The need for continued support to the MEC and other institutions was also emphasized.

For the successful conduct of the 2025 tripartite elections, it is imperative that the Government of Malawi allocates sufficient financial resources to the MEC in a timely manner, so that it can proceed with electoral preparations as needed. Further donor support is needed as well to strengthen the capacity of the MEC, the NRB and civil society organisations (CSOs). The NRB in particular is currently facing serious operational problems, which if unresolved could undermine the credibility of the 2025 elections.

The EU Delegation has provided substantial long-term support to strengthening democracy and electoral processes in Malawi, in the context of its support to improved governance and rule of law more generally. This includes advocacy and dialogue at political and policy levels, and contributing to cooperation programmes. The EU was the largest single donor to the electoral support basket fund 2017-2021, which supported the MEC, civil society, women candidates, and the Malawi Police Service. Plans are underway to continue this support through a contribution of 3 million EUR to the next electoral support basket fund 2022-2025, which should provide further opportunity to implement the EU EOM recommendations. The EU has also made significant bilateral contributions to CSOs working on civic and voter education, citizen observation, and gender issues, and plans to continue this support, as well as spearheading a dedicated CSO-led initiative on gender and youth participation throughout the period 2022-2025.

MISSION INFORMATION

An EU Election Follow-up Mission (EFM) was deployed to Malawi from 20 September to 16 October 2022. The EFM was led by Miroslav Poche, former Member of the European Parliament, and the Chief Observer of the 2019 EU Election Observation Mission (EOM) to Malawi. The EFM was further composed of a representative of the EEAS GLOBAL VMR 2 Democracy and Electoral Observation Division and two independent experts, electoral and legal. The main objective of the EFM was to assess the progress made in electoral reform and the status of implementation of the 2019 EU EOM recommendations since the delivery of the final report. The Mission met with representatives of the Malawi Electoral Commission (MEC), political parties, parliament, government, judiciary, media, civil society, domestic observers, development partners and diplomatic community. This report reflects the situation up to 21 October 2022.

CONTEXT

Since the end of one-party rule and introduction of multi-party elections in Malawi in 1994, the EU has deployed four EOMs to observe the presidential and parliamentary elections in 2004 and 2009, and the tripartite – presidential, parliamentary and local – elections in 2014 and 2019. In addition, an EFM was deployed in 2017.

The 2019 EU EOM concluded that *“many aspects of the electoral preparations were well managed, including a much improved voter registration, electoral logistics and a number of positive operational reforms, including the creation of constituency tally centres. The campaign was competitive, but women’s participation in political life remains relatively low. Campaign freedoms were largely respected but the campaign was marked by some tensions, misuse of state resources and handouts and bias in state media. Election Day was well managed, and the vote count was transparent. However, the administration of results and the handling of complaints were poorly managed and marked by errors and poor practices, which affected stakeholder confidence. Overall, many international standards were met but some standards, notably relating to some campaign practices and accounting for the results, were not met.”*

The incumbent President Peter Mutharika of the Democratic Progressive Party (DPP) was declared the winner of the 21 May 2019 presidential election with 38.57 per cent of the total votes. The two presidential candidates who finished second and third, Lazarus Chakwera of Malawi Congress Party (MCP) (35.41 per cent) and Saulos Chilima of United Transformation Movement (UTM) (20.24 per cent) contested the presidential election results by filing petitions with the High Court. In February 2020, eight months after the elections, the High Court sitting as a Constitutional Court nullified the 2019 presidential election due to widespread and systematic irregularities and ordered a fresh presidential election (FPE) to be held in 150 days, based on the absolute majority (“50%+1”) system. The Supreme Court in May 2020 confirmed the High Court’s ruling. The FPE were held on 23 June 2020 and Lazarus Chakwera (with Saulos Chilima as his running mate) was declared the winner with 58.6 per cent of the total votes.

The publication of the final report of the 2019 EU EOM with 24 recommendations was delayed until after the High Court decided on the petition in February 2020, i.e., more than eight months after the elections.

A. Election-Related Developments

The 23 July 2020 fresh presidential election (FPE) was organised relatively successfully in a very short timeframe by the newly appointed MEC chairperson and commissioners. Due primarily to the Covid-19 pandemic and related travel restrictions, there were no international observation missions deployed to observe this election. Domestic observers assessed the process quite positively, noting some recurring problems as well as some improvements compared to the 2019 elections. The results were unsuccessfully challenged in the High Court by the DPP.

It should be noted that the 2020 FPE, with only one race and four candidates in one nationwide constituency, was much easier to organise than tripartite elections with three races and more than 3,300 candidates in 193 parliamentary and 462 local council constituencies. In addition, the same voter register was used as in 2019, only the candidates who ran in 2019 could run again, and the key technical staff at the MEC Secretariat remained in post. Since then, the MEC has conducted, reportedly successfully, some 11 parliamentary and 4 local council by-elections in constituencies where the courts had ordered fresh elections after deciding on petitions, or elected members had died.

The legal framework was amended in 2020 to take account of the courts’ judgments, by providing for the absolute majority system in presidential election and by extending the parliamentary and local

council terms of office until 2025. At the time of writing, a package of further legal reforms is pending introduction to parliament for the November 2022 session, discussed in section 5 below.

B. Political Context

Malawi is undergoing a period of economic crisis, manifested in unsustainable public debt, a shortage of foreign exchange, devaluation of the national currency, high inflation, a rising cost of living, soaring food prices and fuel shortages. This has a negative impact on public perceptions of the government's performance, as well as on voting intentions of Malawians, as documented in the most recent [Afrobarometer survey](#) results published in August 2022.¹

The ruling nine-party MCP-led Tonse Alliance is holding together despite several challenges and strains. Together with affiliated independent members, the Alliance commands a comfortable parliamentary majority of some 115 out of 193 members. This is enough to pass any legislation except for constitutional amendments, where a two-thirds majority of 129 members out of 193 is required. Although the government has declared its commitment to electoral reform, to date only a few court-mandated election-related legislative reforms were implemented.

The intra-party dispute within the main opposition party DPP over the election of the leader of the opposition in parliament appeared to be settled in September 2022. The two groups agreed to maintain in post the current leader of the opposition until a fresh election is held involving all DPP members of parliament.

The next tripartite elections are scheduled to be held in September 2025, i.e., in less than three years. The MEC started electoral preparations already in 2021 with a politically sensitive and long overdue process of delimitation of the new parliamentary constituency boundaries. Currently there are 13 political parties conditionally registered to contest the elections, including all parties represented in the current parliament.

C. Institutional Context

Malawi Electoral Commission

The Supreme Court and High Court decisions overturning the results of the 2019 presidential election questioned the competence of the MEC commissioners. The High Court stated that the Public Appointments Committee of the parliament should inquire into the "capacity and competence" of the MEC commissioners to oversee the conduct of the fresh election. Nonetheless, all six MEC commissioners maintained their positions until their term of office expired some two weeks before the date of the fresh presidential election, with the Chairperson Justice Ansah resigning one month before the election. In June 2020, shortly before the FPE, President Mutharika appointed the new MEC Chairperson Justice Dr Chifundo Kachale and six MEC commissioners, four nominated by DPP (two of whom had previously served as commissioners) and two by MCP.

The MCP successfully challenged the appointment of the four DPP commissioners at court on the grounds that each eligible party can nominate maximum three candidates. The High Court one year later ordered removal of the four DPP-nominated MEC commissioners. President Chakwera then in June 2021 appointed four new Commissioners, three from DPP and one from MCP. This means that currently the MEC is composed of three commissioners from MCP and three from DPP and an impartial chairperson who is a High Court judge nominated by the Judicial Service Commission. The lack of consensus among the commissioners nominated along party lines reportedly often leads to a 3:3 tied vote, with the chairperson having the deciding vote.

¹ https://www.afrobarometer.org/wp-content/uploads/2022/08/MLW_R9_Summary-of-results_Afrobarometer-29Aug22-.pdf

The current tenure of office of the MEC chairperson and commissioners is four years. This means that the chairperson and two commissioners will finish their terms in June 2024 and the remaining four commissioners in June 2025, some 15 and 3 months respectively ahead of the 2025 elections. If not reappointed, the 2025 elections would be supervised by a newly appointed chairperson and commissioners. The MEC sought to address the issue of rotation timing by proposing to extend the tenure of office from four to five or alternatively to seven years, but the government rejected this proposal, and it is thus not included in the package of legal reforms to be tabled before the parliament.

The MEC recently conducted competitive recruitment for several senior positions in the secretariat, including the chief elections officer (CEO) who heads the secretariat, and some department directors. The CEO plays a crucial role in the day-to-day management of the MEC, s/he is responsible for implementing the MEC's decisions and the MEC may delegate to him/her all or any of its powers and functions. The new CEO was appointed in August 2022 after he emerged as the best candidate following two rounds of interviews conducted by all the MEC commissioners. The DPP has called on the MEC to revoke his appointment on the grounds that he is politically biased due to his previous work as an assistant to then-leader of the opposition, now President Chakwera, and his previous partisan public statements. The MEC rejected the DPP's calls and expressed confidence in the newly appointed CEO. The DPP has challenged the appointment at the High Court and the case is pending. Reactions of other stakeholders towards the CEO's appointment were generally positive or neutral.

In September 2022, the MEC started to work on the new strategic plan for 2023 – 2027 using in-house expertise. The plan is likely to include several objectives which, if achieved, could contribute to the implementation of some EU EOM recommendations. However, the actual implementation of the plan will largely depend on availability of resources. Timely and sufficient funding is a prerequisite for successful organisation of the 2025 tripartite elections. The MEC in its public statement of 9 September 2022 “emphasized to the government the need for early funding starting from the 2022/23 financial year in order to commence preparations for the 2025 elections.” The MEC also stated that they “will soon issue a calendar that will detail the critical steps to be taken as we prepare for the 2025 elections so that all stakeholders can follow and participate effectively.”

National Registration Bureau

The NRB plays a critical role in voter registration. Since the 2019 elections, a national ID card issued by the NRB is the sole proof of eligibility during the voter registration update conducted by the MEC ahead of any elections.² The MEC relies entirely on the NRB database for the personal data of registered voters.

The NRB is currently facing significant technical problems in managing timely in-house production and distribution of ID cards to new registrants as well as to those who applied for a new ID card after their previous one had expired. In order to address these problems and clear the backlog of reportedly some 3 million unprinted cards, the NRB is hiring extra staff and contracting external printing houses abroad. To avoid any voter registration problems during the 2025 elections, it is vital that the NRB is able to provide any Malawian who would be 18 by the day of elections in 2025 with a valid national ID card sufficiently in advance of the voter registration update. While the problem of expired ID cards could be potentially solved by legally extending their validity, there is no alternative solution for the new registrants waiting for their first ID card.

² Though to date there is no legal basis for such limitation of permissible documents. The Presidential, Parliamentary and Local Government Elections Bill gazetted on 7 October 2022 stipulates that “a person who is eligible to be registered as a voter in an election shall, as proof of eligibility, present in person to a registration officer, proof of his or her national registration issued by the National Registration Bureau.” This formulation implies that apart from the National ID card itself, it is also possible to present a civil registration receipt issued when a person applies for a new or replacement card.

The other problem that the NRB has to deal with expeditiously is the removal of deceased persons from the database. While the mandatory reporting of deaths by healthcare institutions is reportedly working quite well, there are gaps in reporting from the community level. The MEC removes deceased persons from the voter register only based on information provided by the NRB. If this problem is not addressed in a timely manner, the MEC is considering a fresh voter registration exercise ahead of the 2025 elections to ensure credibility of the voter register. This would however have a significant cost implication for the MEC budget. It would also require a legal extension of the validity of any expired ID cards that have not yet been renewed, since the people concerned would otherwise not be able to register anew.

The judiciary

Following the High Court and Supreme Court judgments of 2020 overturning the presidential election results and criticizing the MEC Commissioners' performance, the independence of the courts in the face of threats and alleged financial inducements has been apparent to all. The courts have received international recognition for this.³ The court decisions set out clear views on necessary law reforms, including the fundamental change to the absolute majority system for electing the president, and the extension of the parliamentary and local council terms to 2025.⁴ There is a growing tendency for elections, and in particular the results, to be the subject of court challenge, so the courts may be asked to rule on these issues in future election challenges.

Civil Society

Civil society has played an important role as well-informed proponents of law reform, with several CSOs and umbrella groups forming part of the National Taskforce on Electoral Reform (NTER) that worked with the MEC on electoral reform proposals during 2020-2021. This process resulted in the three bills currently pending tabling before parliament, following their gazetting on 7 October. The NTER's work followed similar engagement by civil society in the law reform process of 2016-2017 (though those proposals were ultimately dropped by the government). Not all the CSOs' proposals made it into the final draft of the bills, but they helped to get numerous issues on the agenda. Civil society groups were able to bring to the law reform discussions their extensive experience of election observation. For the 2019 elections, two large umbrella groups, the National Initiative for Civic and Voter Education (NICE) and the Malawi Electoral Support Network (MESN) fielded thousands of short-term observers, as well as hundreds of long-term observers to observe voter registration, candidate nomination, the campaign, polling and tallying of results. This included long-term observer monitoring in all districts of violence against women in elections. CSOs also observed the 2020 FPE and have issued numerous reports on both the 2019 and 2020 elections. CSOs are heavily involved in civic and voter education and the holding of public election debates. All these activities relied heavily on donor support, as will future CSO engagement.

D. EU Actions on EOM follow-up

The EU Delegation has provided substantial long-term support to strengthening democracy and electoral processes in Malawi, in the context of its support to improved governance and rule of law more generally. This includes advocacy and dialogue at political and policy levels with the MEC, state authorities and political party leaders, contributing to cooperation programmes, and communications work. Throughout these efforts, the EU Delegation has continued to advocate for the implementation of the 2019 EU EOM recommendations and other electoral reforms. The EU

³ <https://www.nyasatimes.com/malawi-concourt-judges-win-chatham-house-2020-award>, [Malawi Nyasa Times, 25 October 2020](#).

⁴ An academic article explores whether the judgment amounted to a "judicial coup d'état", concluding that it was not, but that the courts could be considered "guilty of usurping parliament's legislative function in changing the electoral system". [The Nullification of the 2019 Presidential Election in Malawi – a Judicial Coup d'Etat?](#) Mwiza Jo Nkhata et al, *Journal of African Elections*, 2021.

Delegation was the largest single donor to the Malawi Electoral Cycle Support project 2017-2021, the basket fund which supported MEC, civil society, women candidates and the Malawi Police Service. Plans are underway to continue this support through a contribution of up to 3 million EUR to the follow-up project, the Malawi Electoral Support Project 2022-2025, which should provide further opportunity to implement the EU EOM recommendations. Furthermore, the EU Delegation has made significant bilateral contributions to NICE to support its work on civic and voter education and citizen observation throughout the 2017-2022 period and to Danish Church Aid on gender issues to build grassroots awareness among young women. Building on these initiatives, the Delegation will continue providing support to NICE, as well as spearheading a dedicated CSO-led initiative on gender and youth participation throughout the period 2022-2025. Through the EIDHR, the EU has provided funding to Oxfam to support civil society awareness of the Access to Information Act. The EU regularly coordinates with other diplomatic missions and development partners involved in the Governance field.

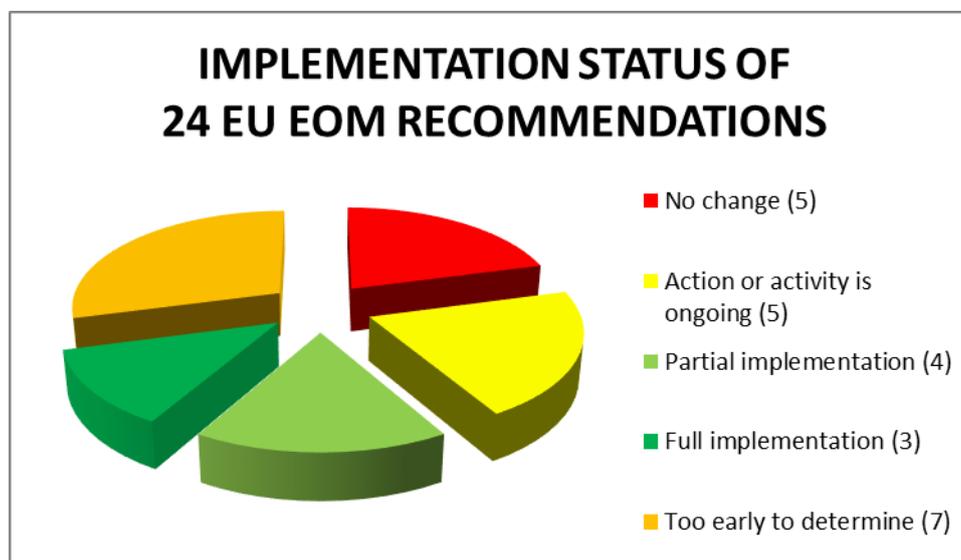
IMPLEMENTATION STATUS OF THE EOM RECOMMENDATIONS

There has been some progress made in the implementation of the 2019 EU EOM recommendations, with three recommendations being fully and another four partially implemented. Several more recommendations could be implemented if the gazetted electoral reform bills are passed by the parliament. However, there are also some recommendations related primarily to political party finance, primaries and women's representation where more political will is needed to move forward.

Out of the five priority recommendations, only one was partially implemented, and out of ten recommendations requiring change in the legal framework one was fully and one partially implemented.

Implementation status of the 24 recommendations:

- 5 No change (20.8%)
- 5 Action or activity is ongoing but implementation has not yet been confirmed (20.8%)
- 4 Partial implementation (16.7%)
- 3 Full implementation (12.5%)
- 7 Too early in electoral cycle to determine (29.2%)



The detailed overview of the implementation status of each recommendation is provided in Annex 4 – Matrix on the implementation status of EOM recommendations. This assessment reflects the status as of October 2022 and it is based on the information gathered by the EFM and the gazetted versions of the three electoral reform bills.

A. Legal Framework (Recommendations 1, 2 and 24)

Of the 24 recommendations, a total of ten require legal reform. Three of these are discussed in this section of the report (recommendations 1, 2 and 24), with activity underway on the first of these, no change on the second, and partial implementation of the third. The other seven are discussed in other sections of the report.

Recommendation 1 proposes harmonisation of the two main electoral Acts, the Parliamentary and Presidential Elections Act (PPEA) and the Local Government Elections Act (LGEA). This is so as to eliminate gaps and inconsistencies and enhance legal certainty and accessibility. The implementation of this recommendation would be achieved if one of the pending electoral reform bills, the Presidential, Parliamentary and Local Government Elections Bill, is approved by parliament and brought into force. Its drafting followed a long and consultative process. The bill has been gazetted and is currently waiting to be tabled in the November 2022 session of parliament. Recommendation 2 deals with problematic provisions allowing for returning officers to revoke candidatures right up to election day based on imprecise criteria and proposes that these provisions should be reviewed to ensure legal certainty and the right to legal redress. Allowing such late revocations could also create operational problems as ballot papers will have been printed by then. However, this recommendation is not addressed in the draft electoral reform bills and has not been the subject of discussion by interlocutors.

Recommendation 24 seeks to address the situation where a newly elected official is sworn in before the expiry of the period for resolving results petitions, as happened with the president after the 2019 elections. This undermines the right to judicial redress and could exacerbate political tensions. The recommendation urges that the minimum period for the swearing in would take account of the period provided for resolving complaints. The 2020 legislative changes partially addressed this, by providing that a newly elected president or vice president cannot be sworn in until at least seven days after the declaration of results. However, seven days is not long enough because the timeline for a results challenge is at least 27 days. The draft of the Presidential, Parliamentary and Local Government Elections Bill that the NTER presented to the Minister of Justice provided for at least 30 days, but that provision has been dropped from the gazetted version of the bill. It would be possible for an amendment to the bill to provide that the swearing in could take place after the resolution of an election petition or 30 days, whichever is sooner.

B. Constituency Delimitation (Recommendation 4)

The recommendation calls for a review of parliamentary constituency boundaries well ahead of the next elections on the basis of the 2018 census results to ensure equal suffrage. It was partially implemented in the sense that the MEC has conducted the long overdue review of parliamentary constituency boundaries (creating additional constituencies in the process). The situation in terms of equal suffrage has somewhat improved, but the problem of unequal size of constituencies persists.

The EU EOM in 2019 commented that despite the constitutional requirement for revision at intervals of not more than five years, the actual parliamentary constituency boundaries were drawn in 1999. The number of voters per constituency varied considerably, from some 28,000 to 78,000, undermining the principle of the equality of the vote and equal representation.

The MEC launched what appeared to be a consultative and inclusive process of reviewing parliamentary constituency and ward boundaries in April 2021. According to the MEC, they engaged in the process members of parliament, ward councillors, political parties, traditional authorities, civil society leaders including those representing women, young people, and persons with disabilities. While the main political parties confirmed that they were consulted, at the same time they noted that their comments and suggestions were not taken into account. The process has been concluded and the MEC final report on the review of constituency and ward boundaries is expected to be tabled in parliament during the November session. The parliament can either approve or reject the report with no possibility to amend it.

The Constitution mandates the MEC to determine and review constituency boundaries while ensuring that they contain an approximately equal number of eligible voters, subject only to consideration of population density; ease of communication; geographical features and existing administrative areas. The application of a population density criterion for initial calculation of the number of constituencies per each of 36 councils (28 district, 4 city and 4 municipal councils) was quite straightforward. The National Statistics Office 2025 population projections of eligible voters and land size data were used, with population being assigned the weight of 9, and land size the weight of 1. However, the application of the remaining non-quantifiable criteria (i.e., ease of communication, geographical features and existing administrative boundaries) lacked transparency and eventually led to the proposal which does not provide for equal suffrage.

The MEC demarcated 228 parliamentary constituencies for the 2025 elections, i.e., 35 (or 18 per cent) more than the current 193 constituencies. The number of eligible voters per constituency varies from 8,478 in Luchenza Constituency to 70,843 in the nearby Thyolo Bvumbwe Masenjere Constituency. In total, 97 out of 228 newly demarcated constituencies (43 per cent) deviate by more than 15 per cent from the national average of 47,895 eligible voters per constituency. Fifteen per cent is the maximum permissible departure from the national average established by the Code of Good Practice in Electoral Matters of the European Commission for Democracy Through Law (Venice Commission). The situation was even worse in the 2019 elections when 135 out of 193 constituencies (70 per cent) deviated by more than 15 per cent from the national average of 35,542 registered voters per constituency.

The regional breakdown of the 228 constituencies shows that there are 37 constituencies in the Northern Region, 93 in the MCP-dominated Central Region and 98 in the DPP-dominated Southern Region. Both main political parties, MCP and DPP, expressed concerns whether the country can sustain the costs associated with so many new parliamentarians, given the current economic crises. The senior DPP official also alleged that the boundary review favours the ruling MCP and therefore they will not support it in the parliament. The MCP commented that people in the large constituencies are disadvantaged since the same constituency development funds are allocated to each constituency irrespective of its population. Nevertheless, Tonse Alliance parties are likely to approve the new constituency delimitation.

C. Election Administration (Recommendations 5 to 9)

Activity is ongoing towards the implementation of recommendation 5, which encourages the MEC to increase independence by appointing its permanent district staff as District Election Coordinators (DECs), but implementation of this recommendation cannot be confirmed yet. The EU EOM noted that confidence in the neutrality of the District Commissioners (DCs), who were designated as District Elections Coordinators, was limited among election stakeholders, because they are permanent government employees and thus sometimes perceived as partisan and vulnerable to pressure.

The main reason why in the past the MEC has appointed DCs as DECAs is the fact that DCs have at their disposal the necessary administrative structure, including office, staff and transport. The MEC permanent district election clerks do not have access to such resources. One of the objectives of the new MEC strategic plan is likely to be strengthening of its permanent district structures, so that in future the permanent staff should be able to assume the role of DECAs. This is of course dependent on the availability of resources for capacity building.

Recommendation 6 – calling for review and reinforcement of the internal communication flow between the MEC headquarters, district and constituency level election officials – was partially implemented. EU observers reported that the information flow within the MEC was often weak and compartmentalised, as several constituency returning officers and DECAs lacked consistent, detailed, regular and timely information on the immediate next steps of the process.

According to the MEC, its internal communication has improved significantly after the 2020 FPE when they introduced a group email-based system using corporate email addresses. The system includes all MEC permanent staff at national, regional and district level and they are currently examining how to include in the system temporary staff at constituency and polling station level.

Activity is ongoing regarding implementation of priority recommendation 7, urging the MEC to adopt clear and unambiguous procedural details on the key stages of the tabulation and transmission of results as well as to strengthen training of presiding officers on counting and tabulation. The EU observers reported in 2019 that the training did not sufficiently focus on the filling in of forms, on reconciliation and tallying of results and dealing with unexpected issues, thus leading to serious problems during results tabulation. These problems eventually contributed to the nullification of the 2019 elections by the High Court.

The MEC has recognised the importance of counting, results transmission and tabulation processes for the overall credibility of elections. Following the court ruling, the MEC introduced several changes to the system to be used during the 2020 FPE. The constituency tally centres which were declared illegal by the court were abolished and instead polling station results were delivered directly to the district tally centres. The polling streams, sub-divisions of polling stations with more than 800 registered voters, were also abolished and instead the MEC established more polling stations, each one responsible for its own results reporting. This eliminated the tabulation of polling stream results at polling station level, simplified the process and increased transparency and accountability.

A new polling station procedures manual was adopted for the 2020 FPE. The EU Study on post 2020 electoral and judicial developments and possible new presidential election analysed the new manual and concluded that while “*it provided the basic information expected for presiding officers*”, there was “*1) A lack of extra attention, in light of the court case, to the process for completing results sheets; 2) A lack of guidance for presiding officers on “what if ..” scenarios in order to reduce inconsistent decision-making at the local level, which bedevilled the process in 2019; and, 3) A lack of emphasis on the link between polling station layout and secrecy of the vote, which EU EOM observers had noted was a problem in 2019.*”

Domestic observers reported positively on the counting, transmission and tabulation of results during the 2020 FPE. They did not report difficulties in reconciliation of ballot papers at the polling stations and observed only very few arithmetic errors in the results forms “*that were rectified not by use of correctional fluid but by cancellation of forms with errors and completion of new forms as duplicates*

and forwarding both the duplicate and cancelled original forms to the next stage of vote tallying. This practice preserved the integrity of the numbers and the value of the votes.”⁵

The procedures for the counting, transmission and tabulation of results in the upcoming 2025 elections will have to reflect the provisions of the new harmonised Presidential, Parliamentary and Local Government Elections Bill which is expected to be tabled in parliament during the November session. The MEC is currently developing a new polling staff training strategy which should be put in place for the 2025 elections.

Recommendation 8, proposing that the MEC should consider mechanisms to strengthen the independence and integrity of presiding officers, was fully implemented. The appointment of teachers as presiding officers, as per MEC guidelines, was considered by most EU EOM interlocutors as having a negative impact on their neutrality, since teachers are government employees, thus subject to political pressure and vulnerable to being enticed by monetary means.

For the 2020 FPE the MEC opened up recruitment for the position of presiding officer to all interested Malawians meeting the newly introduced minimum qualification requirement – a diploma. This was a positive departure from the previous practice of appointing head teachers or officers in charge of various government institutions without assessing their competencies.⁶

It is too early in the electoral cycle to determine the implementation status of recommendation 9, encouraging the MEC to undertake extensive voter education activities in order to sensitise citizens to the fact that possession of the National ID card does not lead to automatic inclusion in the voter register. However, these activities will need to start with a good lead time before the next elections, especially if the proposed electoral reform bills are adopted in parliament and therefore will entail some changes to the electoral process. Civic and voter education activities in 2019 were perceived by several EU EOM interlocutors as insufficient, especially during the voter registration period.

The MEC acknowledges the importance of civic and voter education activities with specific focus on youth, women and persons with disabilities. After the 2020 FPE, the MEC conducted only small-scale local voter education campaigns before by-elections in the parliamentary constituencies and wards concerned. The new MEC strategic plan should outline the strategy for civic and voter education ahead of the 2025 elections, but its extent will largely depend on the availability of human and financial resources.

D. Voter Registration (Recommendation 10)

The recommendation suggesting harmonising the Constitution and electoral laws with regards to the date on which a voter reaches eighteen years of age in order to be eligible to be registered was fully implemented. Previously the Constitution required a voter to be eighteen on the day of registration, while electoral laws set the date on or before election day. The MEC in the 2019 tripartite elections decided to adhere to the more restrictive constitutional requirement, thus disenfranchising all young people who turned eighteen during more than six months between the closing day for registration and election day. The constitutional amendment, passed by parliament and assented to by the president in October 2020, harmonised the conflicting provisions by stipulating that a person shall be qualified as a voter if he or she has attained the age of eighteen years on or before the polling day.

It should be noted that the recommendation could have been implemented in two ways, the other one being to amend the electoral laws so that they are in line with the Constitution. Commendably,

⁵ Preliminary Observations and Recommendations on the Electoral Process for the Fresh Presidential Election (FPE) by the consortium comprising of the National Initiative for Civic Education (NICE) Public Trust, the Catholic Commission for Justice and Peace (CCJP), the Public Affairs Committee (PAC) and the Mhub.

⁶ MEC Report on Fresh Presidential Elections, June 2020.

parliament chose the more difficult way of amending the constitution, thus making the future elections more inclusive.

E. Political Party Financing (Recommendations 3 and 14), Political Party Primary Elections (Recommendation 11) and Campaign (Recommendations 12 and 13)

There has been no progress on Recommendation 3, which urges amendment of the Political Parties Act 2018 (PPA) to require public disclosure of campaign funding and expenditures. The considerable difficulties in implementing the existing party finance provisions of the PPA (discussed below) suggest that the needed political will to pass further legislation on campaign finance is lacking. The PPA currently only includes limited provisions for the reporting of party finances (reporting donations above 1 million Kwacha from an individual or 2 million Kwacha from an organization to the Registrar for Political Parties). Donations may be received from any individual or organization, within or outside Malawi, other than from a state-owned corporation, and there are no restrictions on the amounts that may be donated. There are no legal requirements for party or independent candidates to report any information about their sources of campaign finance or their campaign spending. It is common in Malawi for party candidates to fund a substantial amount of their campaign expenses themselves, with the parties only providing limited financial support. Therefore, the gap in the law leaves campaign finance almost entirely unregulated.

The regulation of campaign finance should be the top priority of future electoral reforms.

Transparency in campaign finance is an important issue for several reasons. It can help to expose undue influence of donors, who may be foreign or Malawian corporations or individuals, and who may seek to obtain favourable contracts or licences once the candidate is elected. Transparency over the sources of campaign finance can also help to expose

Political campaigns in Malawi are estimated to be very costly, with a 2019 study finding that average spending by parliamentary candidates was 14.8 million Kwacha (approx. 14,800 EUR). This included all candidates, even those with little or no chance of being elected. The average sum spent by those who won more than 20 per cent of the vote was 27 million Kwacha (approx. 27,000 EUR), equivalent to 140 per cent of an MP's annual salary. *M Wahman, [The Cost of Politics in Malawi, 2019](#)*

cronyism and corruption in politics (in the recent *Afrobarometer* survey, corruption featured as the fourth most pressing problem facing the country⁷). One interlocutor told the EFM that going into politics is the principal means of becoming wealthy in the country, and a politician told the EFM that going into politics is an investment. It is also important to have a public record of the amounts of money received and spent during a campaign to ascertain whether there is a level playing field or not, and whether there has been misuse of state resources and abuse of incumbency. The high cost of campaigning is cited as one of the key obstacles that restricts the political participation of women, young people, PWDs and others with fewer economic resources.

There appears to be no appetite from the largest political parties to implement this recommendation. However, some smaller parties and civil society activists are advocating for greater transparency in campaign finance, keenly aware of the potential links to corruption in the current unregulated arrangements.

Priority recommendation 14 urges the office of the Registrar for Political Parties to enforce the PPA, including the introduction of clear and enforceable regulations on the ban of handouts. Some activities

⁷https://www.afrobarometer.org/wp-content/uploads/2022/08/MLW_R9_Summary-of-results_Afrobarometer-29Aug22-.pdf, question 45. A majority of survey respondents believe that corruption has increased over the past year (question 39A) and that government is doing badly in fighting corruption (question 46J).

in this regard are ongoing but implementation of this recommendation cannot be confirmed yet. The EU observers reported the extensive use of handouts in 2019, and domestic observers in 2020 concluded that *“handouts have pretty much been a characteristic feature of the FPE especially because the COVID 19 provided a rationale for social protection and livelihood support.”*

Nearly five years have passed since the PPA entered into force on 2 February 2018, but the Registrar for Political Parties is yet to be appointed and the office of the Registrar is yet to be established. Currently there are no indications that this may happen anytime soon. The duties of the Registrar for Political Parties are still performed in an acting capacity by the office of the Registrar General which is only able to allocate very limited human and financial resources for this purpose.

The PPA gave all political parties registered under the previous Political Parties (Registration and Regulation) Act one year to comply with the new registration requirements. These include submission of the new application for registration, together with a list of particulars of at least 100 registered party members/registered voters in each district certified by the District Commissioner, declaration of the party’s assets and donations above a certain amount. The initial compliance deadline was extended several times, in part due to movement restrictions during the covid-19 pandemic, and the final deadline was 30 June 2021.

By the deadline only 13 out of some 60 previously registered political parties submitted the required paperwork, including all parties represented in the current parliament. The remaining parties reportedly found the new requirements too onerous to comply with. After scrutinising the submissions, in January 2022 the acting Registrar gazetted a list of 13 conditionally registered political parties. The registration was only conditional since the paperwork submitted by the parties was not in full conformity with the PPA, and they were given until July 2022 to re-submit the documents. These are currently being examined by the office of the acting Registrar to determine the final registration status of each party concerned.

The legal status of the remaining parties that did not apply for new registration by the given deadline is unclear. They were supposed to be officially deregistered by the Registrar, but this did not happen. However, they were not able to participate in the recent by-elections, since the MEC only accepted nominations from the 13 parties that were conditionally registered.

The drafting of regulations on the ban of handouts is only in the very initial phase of the zero draft. There appears to be little genuine interest among political parties to reach a consensus on how to actually enforce the ban on handouts, which are deeply entrenched in the political culture of Malawi.

It is too early to say whether recommendation 11 will be implemented. It calls on political parties to reform their candidate selection procedures – or party primaries – to guarantee their integrity, inclusiveness and transparency. The EU EOM 2019 characterised the primaries as problematic, noting that stakeholders and domestic observers were heavily critical of them for inadequate procedures, manipulation and violence. Most parties do not have clear and transparent procedures for holding their primaries, but instead the practice is for crowds of supporters to line up behind each candidate, which can turn rowdy and violent. In some cases, candidates were simply hand-picked based on their allegiance to senior party officials,⁸ or party leaders appointed candidates amidst accusations of nepotism and favouritism. Given their ad hoc nature, the primaries can become corrupt, with money going to party leaders.

Many disgruntled aspirants who lost in the primaries contested the elections as independents, 501 of a total of 1,327 parliamentary candidates, the highest number of independents since 1994. As well as dividing their party’s votes, these kind of intra-party disputes fracture and weaken the parties as

⁸ NICE Trust’s Preliminary Election Observation Report, 7 October 2019.

institutions. Domestic observers emphasized how the intimidating nature of the primaries and the lack of clear procedures worked to the disadvantage of women, persons with disabilities and marginalized groups. The 50:50 campaign, a CSO, reported systematic efforts towards barring women from actively participating⁹, for example, being told to go to the wrong venue.

Several civil society interlocutors are urging parties to introduce clear and transparent procedures for party primaries, and some cite the example of countries such as Kenya, where legislation regulates the conduct of primaries. The legislative route does not seem feasible before the 2025 elections. A more viable route could be working with parties to convince them of the benefits of holding transparent and fairer primaries, as a way of reducing the risks of intra-party rifts and violence and strengthening party unity. A few parties say they are working to improve their primary procedures, for example, by introducing secret voting to try to avoid the pressure and manipulation that can accompany public voting.

Recommendation 12 urges the MEC to enforce compliance with the Code of Conduct for Political Parties and Candidates, while recommendation 13 calls for the introduction of effective measures for monitoring and sanctioning of partisan behaviour by traditional authorities. For both recommendations it is too early in the electoral cycle to determine their implementation status. The EU EOM in 2019 observed that the MEC did not fully use its authority to enforce compliance and impose sanctions, and the violations of the Codes remained largely unaddressed, resulting in campaign tensions and conflicts. Traditional leaders openly canvassed for political parties and independents throughout the whole campaign period. Similar observations were made by domestic observers during the 2020 FPE.

For the 2025 tripartite elections, the MEC intends the Code of Conduct for Political Parties and Candidates as well as the Code of Conduct for Chiefs to be legally binding, whether through being issued as regulations by the Ministry of Justice or through provisions in the electoral reform bills, rather than being non-legally binding as in the past. The MEC believes that this may improve compliance with the Codes by parties, candidates and chiefs, although the MEC will need to establish mechanisms and procedures for enforcement.

F. Media (Recommendations 15 to 18)

The implementation status of the EU EOM's four media-related recommendations is a mixed picture. The recommendation that certain legal provisions used to curb freedom of speech should be repealed is only partially underway, in that two reform bills have been gazetted that would repeal the offence of sedition, but no action has been taken to decriminalise defamation or speech that could give offence. One recommendation has been fully implemented by the coming into force and operationalisation of the Access to Information Act. Finally, there has been no progress on the two recommendations relating to the independence of the public broadcaster and the broadcast media authority.

All of these recommendations remain relevant because although the media landscape is diverse, there are concerns about legal harassment and cyber-bullying of journalists and others who speak out on politically sensitive issues. Malawi has recently been declining in the World Press Freedom Index, whose report draws attention to political influence over the media.¹⁰ All the EOM's media recommendations relate not only to electoral periods but also to the wider political culture, and they are important not only to media outlets and journalists, but also to political actors and civil society, who all need a diverse, pluralistic and open media environment. This enables full enjoyment of the

⁹ 50:50 Campaign: Preliminary Observation Report of the 2018 Primary Elections in Malawi.

¹⁰ Malawi slipped from 62 out of 180 countries in 2021 to 80 out of 180 countries in 2022, World Press Freedom Index 2022, <https://rsf.org/en/country/Malawi> | RSF (Reporters without Borders).

Constitutionally protected freedoms of opinion, expression, freedom of the press and the right to information. In relation to the regulation of online campaigning, there needs to be a focus on how to enforce the legal prohibitions on disinformation and hate speech, ensuring that enforcement is impartial and does not unduly infringe freedom of expression.

In relation to recommendation 15 to repeal laws that can be used to restrict freedom of speech, there are some steps underway but not all the problematic laws are being addressed. There have been recent occasions when such laws are used against journalists reporting politically sensitive issues. For example, a journalist reporting on a government corruption scandal was arrested in April 2022, ordered to disclose his sources, and had his computers and phones confiscated.¹¹ Media organizations protested, and he was released shortly afterwards. The Minister of Information said he was disturbed by the arrest and that it would be investigated by the Malawi Human Rights Commission (MHRC). The case may have helped provide impetus to repeal the sedition provisions in the Protected Flag, Emblems and Names Act and the Penal Code, as recommended by the EU EOM. The repeal bills were gazetted in July 2022, but it remains to be seen if they will be introduced into the November session of parliament.

In relation to the offence of defamation, there is no proposal to decriminalise it and retain it as a civil matter only, as the EU EOM recommended. A social media commentator is currently subject to criminal defamation proceedings for a social media post he made in January 2022 alleging that an army General and Commander of the Armed Forces had been involved in corruption.¹² The case has generated criticism, as commentators point out that a civil defamation claim would be more appropriate than criminal proceedings. Nor is there any proposal to repeal the provisions in the Censorship and Control of Information Act that prohibit speech likely to give offence to religious convictions or to bring any member of the public into contempt. And finally, the 2016 Cybersecurity Law makes it an imprisonable offence to post “offensive” content online – this was not included in the EU EOM recommendations but is also a concern.¹³

Regarding recommendation 16, the Access to Information Act was passed in 2016 and assented to by the President in February 2017, but not brought into force until September 2020. The Act applies to public entities and private entities that carry out public functions. The EU EOM Final Report 2019 noted that the delay in implementation may have been due to fears the Act could be used to increase transparency relating to political party financing and the misuse of state resources. The Malawi Human Rights Commission (MHRC) is legally responsible for oversight of implementation of the Act. This includes training the Information Officers to whom requests are made and raising public awareness about how to make a request. There is concern that the MHRC lacks resources to do this effectively and implementation is not yet fully functional, with MHRC’s recent compliance report flagging the need for greater awareness-raising efforts needed among information holders and members of the public.¹⁴ The Malawi Law Society is bringing a legal challenge on the grounds that the photocopying charge of 20,000 Kwacha (approx. 20 EUR) for making a request of the Acting

¹¹ [Govt to investigate arrest and detention of journalist Gregory Gondwe - Malawi Nyasa Times](#), 6 April 2022. Similar incidents were reported in 2021 too: [https://ipi.media/Recent detentions of journalists overshadow positive press freedom image - International Press Institute](https://ipi.media/Recent%20detentions%20of%20journalists%20overshadow%20positive%20press%20freedom%20image), 12 April 2021.

¹² [Law professor accuses Army General of abusing his power in social media activist arrest - Malawi Nyasa Times](#), 14 January 2022.

¹³ [Organizations concerned over crackdown on freedom of expression under Chakwera – https://Malawi24.com - Malawi news](#), 3 May 2022.

¹⁴ MHRC, Report on Monitoring Access to Information Act Compliance by Information Holders, May 2022. [MISA Malawi deploras slow progress in the implementation of Malawi ATI law | Media Institute for Southern Africa https://malawi.misa.org](#), 28 September 2022.

Registrar for Political Parties is too high and defeats the purpose of the statute. The charges were established by the Minister of Information in Regulations.¹⁵

The two recommendations 17 and 18 relating to the appointment process for the Boards of the Malawi Broadcasting Corporation (MBC) and Malawi Communications Regulatory Authority (MACRA) are important for media pluralism and independence, but no progress has been made on either of these. The recommendations propose that presidential powers are removed in the appointment of the Boards, to enhance their independence. Currently the president appoints all members of the Boards, subject only to confirmation by the Public Appointments Committee of the parliament. The removal of presidential powers would be in line with the Declaration of Principles on Freedom of Expression in Africa which sets out the need for any public authority in broadcast regulation to be independent and adequately protected from political interference. Article VII goes on to provide that “*the appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.*”

As to MBC (the most widely watched TV channel), the results of the EU EOM media monitoring in 2019 found that MBC’s election coverage was overtly biased in favour of the ruling party (87.6 per cent of MBC TV’s primetime political content was dedicated to DPP compared to 6.6 per cent to MCP), although it has a legal duty to provide balanced coverage. Interlocutors report that since the 2020 FPE, MBC has improved in terms of coverage of politically diverse views and space for the opposition to present critical views. Notwithstanding the current improvement, the principle of an independently appointed Board is not yet achieved. This remains crucial to achieve political neutrality and ensure public trust.

The political independence of MACRA’s Board is currently subject to question because it has embarked upon a programme of revoking broadcast licences for non-payment of licence fees.¹⁶ At least nine TV or radio outlets have had their licences revoked, some of which are high profile and openly critical of the government.¹⁷ At least 20 others face revocation if they do not pay soon. On the one hand, MACRA argues that there was a large backlog of arrears amounting to 10 billion Kwacha (approx. 1 million EUR), and that it is applying the law even-handedly, as the outlets that are subject to revocation range across the political spectrum. On the other hand, interlocutors fear that the revocations could be a tool to silence outlets critical of the government, such as Rainbow TV and Capital FM, and this could have a chilling effect on all journalists. Several stakeholders commented that a more gradual approach to enforcement would be preferable, with a longer period allowed for arrears to be paid off. Interlocutors emphasize that the licence fees are too high, especially given the current economic crisis and drop in advertising revenue. However, MACRA is proposing to increase the license fees, with a substantial jump from approx. 100 EUR per year to 1,000 EUR for local community radio stations that operate on a commercial basis.

The EU EOM noted that parliament had little appetite to make changes to the appointment process for the MBC and MACRA Boards, as whichever party is in power can benefit from the influence it would hold over the organisations. The current government initially promised a reduction of presidential powers, and although it can rightfully say it is facing many other priorities, it is important to continue trying to make progress on this issue.

¹⁵ The Access to Information Regulations, 2021 provide for a “standard reproduction fee” of 5,000 Kwacha (approx. 5 EUR), which can be increased for “reproduction over and above” (the Regulations do not provide further detail).

¹⁶ <https://misa.org/blog/Concern-over-the-revocation-of-broadcasting-licences-in-Malawi-Media-Institute-for-Southern-Africa-MISA-Letter-to-President-Chakwera-1-September-2022>.

¹⁷ The outlets that have had their licences revoked include Rainbow TV, Capital FM, Galaxy Radio, Joy Radio, Ufulu TV and FM, Sapitwa FM and Angaliba TV and radio.

G. Participation of Women (Recommendation 19)

There has been no real progress made on priority recommendation 19, which urges political parties to comply with the principles of gender equality and achieve fair representation of women within party structures and as candidates. Despite rhetoric from party leaders and presidents over recent years in favour of gender equality, in practice there does not appear to be sufficient political will within the parties to achieve meaningful change. This recommendation remains relevant, as the obstacles that women face when trying to go into politics are long-standing and entrenched. These include socio-cultural norms and gender stereotypes that do not see women as leaders or public figures - making parties believe that they can only win with a male candidate; lack of access to financial resources; and violence, ranging from cyber bullying and hate speech to sexual harassment, including from within their party.

Of the 295 women parliamentary candidates in the 2019 elections, 118 – or 40 per cent – stood as independents, often because they had failed to obtain a nomination in their party primaries.¹⁸ There were 44 women elected to parliament in 2019 (22.9 per cent of the 193 members, a few percentage points below the sub-Saharan African average of 26.4 per cent).¹⁹ The SADC target is to have 30 per cent women in parliament. In local councils, women have lower levels of representation, reaching 24 per cent of candidates but only 14 per cent of those elected in 2019. There were no women candidates for president or vice-president in the 2019 elections or the 2020 FPE.

There is a relatively favourable legal context for gender equality in Malawi, provided for in the Constitution, and more specifically in the Gender Equality Act 2013 which sets quotas of at least 40 per cent for either sex in recruitment or appointments to public service. However, there are no quotas or other enabling mechanisms for women’s political participation. Although the PPA includes gender equality as one of its general principles, the principle is weakened in the text of the Act. It requires political parties to comply with the gender equality principle only “in so far as it is practicable” when appointing members of party organs and committees. The principle is further watered down by the proviso that, “due regard shall be given to the need to accord a political party the right to regulate its own affairs and procedures”. In practice, the law leaves it to the parties how they appoint their leadership and conduct their primaries.

It is clear there is cultural resistance to quotas for women’s political participation, as evidenced by the repeated failure of attempts to introduce women’s reserved seats in parliament. This failed in 2017, and again during the 2021 electoral reform discussions. The proposal for 28 women’s reserved seats (one per district) was dropped from the electoral reform bills on the grounds it was too controversial. It was not supported by political parties nor by the Parliamentary Women’s Caucus. The proposal seems to have been widely misconstrued as creating a category of “superwomen” MPs who would overlap and compete with the regular constituency MPs.²⁰

There are no proposals under discussion for any legal reforms to introduce women’s quotas within party leadership structures. Alternative options mentioned by interlocutors include parties adopting non-legislative voluntary targets as to the number of women in leadership positions, or a zebra policy with party positions alternating between a woman and a man within party structures (eg president, vice-president), or publicly-funded incentives such as greater state funding or media airtime for the parties with a larger proportion of women in the leadership. Two political parties have women secretary generals (DPP and UTM) and two have women deputy secretary generals (MCP and

¹⁸ Figures from MEC Report on the 2019 Tripartite Elections.

¹⁹ [Regional and global averages of women in parliament](https://data.ipu.org/women-averages), as of 1 September 2022, <https://data.ipu.org/women-averages>.

²⁰ The characterisation of the reserved seat MPs as “superwomen” seems to have stemmed from a misplaced concern that they would have an enhanced status over the constituency MPs within their district and also that their role could jeopardise the allocation of constituency development funds to the constituency MPs.

AFORD). There are also one or two women in the executive committees of various parties. However, women's rights interlocutors consider these to be isolated or symbolic appointments, noting that the party leadership still outweighs individual women leaders. The previous election support project tried to encourage political parties to implement gender equality policies within their internal structures, party constitutions, and party conventions, but this was largely unsuccessful.

The increase in women parliamentarians in 2019 over 2014 (44 compared to 32) is more likely due to extensive and wide-ranging support provided to women candidates and to the concept of women's political participation by CSOs and the previous electoral support project, rather than the limited efforts by political parties to promote gender equality. The UDF made efforts to promote and train women candidates and reduced its primary nomination fees for women, DPP also reduced its primary nomination fee, and MCP made a manifesto commitment to increase women's role to 50 per cent of within government within five years. However, these efforts were vastly outweighed by the difficulties faced by women aspirants across all parties, including intra-party sexual harassment and reputational insult, cyber-bullying and hate speech, threats of violence, and lack of resources.

On the positive side, several women have been appointed to high profile Cabinet positions, including the Minister of Foreign Affairs and Defence Minister, and for the first time the Speaker of Parliament is a woman. There are also several women heading parastatals, such as the Anti-Corruption Bureau. However, the statistics on women parliamentarians show that the numbers are erratic, with a highpoint of 44 women elected in 2019 and a low point of 10 (out of 177) in 1994, fluctuating in between. Even with extensive sensitisation and support, progress towards 30 per cent women's representation is likely to be slow without some enabling mechanisms, such as incentives or voluntary quotas and policies within parties. CSOs and donors are stepping into the gap left by political parties, with ongoing and future projects including capacity building and skills training for current women representatives, awareness raising and empowerment of women and young people, gender sensitisation training for the police on violence against women in elections, as well as continued engagement with political parties. Aside from women who compete within party structures, there also needs to be continuing support for the substantial number of women who compete as independents.

H. Participation of Persons with Disabilities (Recommendation 20)

The recommendation suggests that the MEC should gather statistical data on the voter registration of persons with disabilities (PWDs) to facilitate targeted voter education, including by disability organisations. At this stage it is too early in the electoral cycle to determine the implementation status of this recommendation.

All stakeholders concerned, i.e., the MEC, the NRB and the Federation of Disability Organisation in Malawi (FEDOMA), agreed that it would be useful to gather such information. They are planning to meet to discuss details on how to proceed in this regard. If targeted voter education is to be implemented ahead of the 2025 elections, then it is critical to collect the data on PWDs as soon as possible. Unless there is a fresh voter registration drive, the most feasible option at the moment appears to be to collect the data during the MEC voter registration update. This, however, needs to be preceded by the sensitisation campaign encouraging PWDs to visit the registration centres and update their personal information, as well as explaining why it is important for the MEC to gather such information.

I. Polling, Counting and Tabulation of Results (Recommendation 21)

The priority recommendation proposing an additional presiding officer in each polling station to oversee the counting and tabulation process was partially implemented. The EU EOM in 2019 observed that the major shortcomings affecting the tabulation process were a direct consequence of

fatigue, poor working conditions, lack of capacity, poor judgment, inadequate training, and time pressure.

The MEC's approach to this issue ahead of the 2020 FPE was twofold. Firstly, to increase the quality of presiding officers they hired only applicants with at least a diploma or its equivalent. Secondly, they abandoned the concept of dividing polling stations with more than 800 registered voters into polling streams managed by assistant presiding officers. Under that system, polling streams counted the votes, but their results had to be tabulated at polling station level by presiding officers, since the polling station was the lowest results-reporting unit.

This change meant that in the 2019 tripartite elections there were 5,002 polling stations with 11,095 polling streams, but for the 2020 FPE the MEC established 9,291 polling stations with a maximum of 1,000 registered voters per station. Each polling station was responsible for reporting its results to the district level. This not only increased the number of polling station presiding officers, but more importantly eliminated the lowest level of results tabulation, which may have been the source of a large part of the errors in polling station results forms in the 2019 elections.

J. Electoral Disputes (Recommendations 22 and 23)

The first of these two recommendations deals with alternative dispute resolution carried out by the Multi-Party Liaison Committees (MPLCs), and the second deals with conventional dispute resolution carried out by the MEC and the courts. For both recommendations, it is too early to say whether they will be implemented, but there are plans to do so.

The MPLCs were created by the MEC in 2000 and have worked to resolve pre-election disputes in all general elections since then, using mediation, dialogue, conflict prevention and consensus building skills. The MEC refers disputes to the MPLCs, primarily inter-party campaign issues, for example, about venues for rallies or where campaign materials are displayed. The MPLCs operate at district level and are made up of representatives of political parties and independent candidates, civil society, police, and traditional leaders, and are chaired by the district commissioner. Stakeholders and the MEC expressed satisfaction with their role in mitigating and resolving local disputes. However, the EU EOM found that their operation was not consistent across the country, that procedural safeguards were needed, and that some MPLCs suffered from lack of funding. Recommendation 22 urges that funding is secured well ahead of the campaign period and procedures put in place to ensure consistent functioning.

In terms of procedures, the MEC has produced Guidelines and a Manual for the MPLCs, although these would benefit from being simplified and more tailored. Although the MPLCs are intended to be informal bodies with a degree of flexibility in how they operate, and although they do not have a formal adjudication role or make legally binding determinations, they need to be put on a legal footing. The MPLCs' basic mandate, composition, timelines, and procedures need to be set out in a MEC regulation in the interests of transparency and legal certainty. The regulation should also make clear that legal avenues of redress remain in place regardless of what happens at the MPLC. According to the Guidelines, there is a degree of flexibility as to when MPLCs are constituted and how often they meet, depending on the degree of conflict in the district. It would be helpful to explain this in advance to stakeholders in each district, so they have a clear understanding of what to expect. It is also important to ensure that all MPLCs receive sufficient funding to be fully operational. It would help transparency and lessons learned if all MPLCs could provide brief reports about the disputes they addressed. The project document of the basket fund 2022-2025 and other donors are planning capacity building support to the MPLCs. For the MPLCs' funding to be in place well before the campaign begins, the MEC budget and the donors will need to make funds available in time.

As to conventional dispute resolution, priority recommendation 23 urges amendment of the legislation regulating election disputes to ensure clarity as to the various possible jurisdictions and to provide deadlines. The MEC has initial jurisdiction over all election complaints (except on voter registration and polling which go to the registration officer or polling staff, respectively), with an appeal possible to the High Court. In addition, a judicial review challenge can be brought in the High Court against MEC decisions, for which there is a standard 90-day deadline from the date of the decision. In the case of a results challenge, an election petition can be filed directly in the High Court. A High Court decision can be appealed to the Supreme Court. The EU EOM pointed out the need for deadlines to be specified for all categories of complaint, for both filing and adjudicating a complaint or an appeal. Currently the electoral laws do not specify any deadlines, except for petitions to the High Court against MEC results decisions, which must be filed within seven days. For the courts, there are some timelines set out in the Courts (High Court) Civil Procedure Rules 2017 (CPR).

The MEC's complaint handling role is outlined in the Constitution, electoral laws and a MEC regulation.²¹ During the 2019 elections, at least 129 complaints were made to the MEC, the majority against the results process, and all were dismissed.²² The law requires all complaints to have been dealt with before the results can be announced, which must happen within eight days of election day (the Presidential, Parliamentary and Local Government Elections Bill extends this deadline for parliamentary and local council elections, a positive step if the bills are approved). This has proved a challenging timeline for the MEC to meet if proper consideration is to be given to every complaint. The previous basket fund supported the drafting of MEC's Complaint Handling Procedures for the 2019 elections, but the regulation was gazetted less than one month before election day, too late for stakeholder dissemination and awareness raising. For the 2025 elections, the regulations need to be updated in line with any changes to the law if the electoral reform bills pass. The regulations also need to be expanded to provide more detail about the procedures at each stage of MEC consideration, including when to hold a hearing, and the available remedies. The role of the MPLCs could be included in the regulations. The Minister of Justice should gazette the regulations well before the election process, to allow sufficient time for a familiarisation campaign and training of stakeholders and election officials.

In addition, the MEC legal department needs to be expanded to be able to deal with complaints in a timely and effective manner, including registering, processing, and legal analysis of complaints received, and reporting on the complaints for transparency purposes. This is particularly important, given that the number of complaints is tending to increase in each election, and the courts' 2020 results judgments stated that it is not appropriate for the MEC to use lawyers from the Ministry of Justice or Attorney General's office to help with these cases. The project document of the basket fund 2022-2025 plans to support the MEC in its complaint handling work, which would contribute to implementation of this recommendation.

As for the courts' role in election disputes, this came to prominence after the 2019 elections, when the high-profile challenge to the presidential results was successful in the High Court (sitting as a Constitutional Court) and the Supreme Court.²³ The judgments nullified the presidential election results and ordered a fresh presidential election, which the opposition candidate won, the first time

²¹ Relevant provisions include s.76(2)c of the Constitution, s. 97 and s.113 of the PPEA, and the Parliamentary and Presidential Elections (Elections Complaints and Petitions Handling Procedures) Regulations, made by the Minister of Justice, gazetted 26 April 2019.

²² MEC Report on the 2019 Tripartite Elections, although earlier information from the MEC reported by the EU EOM was of 147 complaints.

²³ *Saulos Chilima and Lazarus Chakwera v Peter Mutharika and Electoral Commission* (Constitutional Ref No 1 of 2019, High Court), judgment of 3 February 2020, upheld by the Supreme Court of Appeal in *Peter Mutharika and Electoral Commission v Saulos Chilima and Lazarus Chakwera* (Constitutional Appeal No 1 of 2020), judgment of 8 May 2020.

this happened in Africa.²⁴ However, the case concluded 11 months after the elections. This exceeded the very short timeline of 27 days for the court to hold a hearing and decide on an election petition, as specified in the CPR. By the time the new president was sworn in, the previous president had been in office for just over a year. While the judgments were pending, there was political uncertainty, tensions and polarization in society, and many protests. There was a similar timing issue with the parliamentary results: 27 election petitions were lodged against the parliamentary results, five of which were upheld, and by-elections ordered. In three cases the judgments were not issued until February 2021, by which time the previous members of parliament had been in office for 18 months, and one case is still pending.

These cases post-dated the EU EOM's report and recommendations and have brought greater attention to the issue of election disputes and highlighted the need for the courts to have more realistic timelines and expedited procedures. EFM interlocutors believe that 11 months was too long to resolve a presidential results challenge and emphasize how unrealistic the CPR timeline of 14 days is. It is difficult to reconcile the need for timeliness with the need for judicial scrutiny and due process. Interlocutors have a range of ideas about how to ensure that future court challenges would be timelier, and about the appropriate timeline for such cases, for example, 30 to 90 days. Some have argued the timelines should be in statute rather than court rules. Expedited procedures suggested by interlocutors include limiting oral argument to one hour, limiting written arguments to a certain number of pages, drastically limiting the number of witnesses or limiting oral evidence to exceptional circumstances, and restricting adjournments and interlocutory matters.²⁵ Although judges have a general discretion under CPR Order 3(5) to expedite matters, it is less contentious if specific ways to expedite proceedings are set out in advance in election rules.²⁶ Some are advocating for election petitions to bypass the High Court and go straight to the Supreme Court, as happens in Kenya, which would require an amendment to the PPEA and LGA in the electoral reform bills. It would also be helpful for the CPR to provide more detail about remedies, such as when it is appropriate for the court to order a recount, scrutiny or annulment, as well as pre-election remedies. One suggested way forward is to take the election petition rules out of the CPR and make them standalone rules, so that they can be amended and updated more easily and swiftly.

The judicial Rules Committee are keen to review the whole CPR, of which Order 19 for election petitions is only a small part, although they need funds to carry out this project, including to hold the necessary consultations with stakeholders. It is not yet clear if donors are planning to provide support to the judiciary on court rules for election disputes. As this is a technical legal area, there are relatively few interlocutors advocating on these issues. However, having a timely and effective system of election dispute resolution is vital to ensuring trust and credibility of the electoral process, and reducing the risk of tension and violence, particularly for post-election disputes. This remains a priority issue, and work needs to commence on it as soon as possible.

ANALYSIS OF ELECTION-RELATED REFORMS

Several amendments have been made to the election legal framework since the 2019 elections, and there is a substantial reform package pending introduction to parliament for the November 2022 session which would introduce needed improvements and clarifications. In order to implement the

²⁴ The Supreme Court in Kenya nullified the presidential election results in 2017 and ordered fresh presidential election, however, the opposition candidate boycotted those elections and the incumbent won them.

²⁵ The number of witnesses in the Chakwera v MEC case was brought down to around 50 from an initial 700.

²⁶ The need for speedier procedures is discussed in [The Nullification of the 2019 Presidential Elections in Malawi – A judicial coup d'état?](#) by Mwiza Jo Nkhata et al, chapter 15 of *Democracy Tested – The Case of Malawi's 2019 Tripartite Elections*, ed. By Nandini Patel and Fidelis Edge Kanyongolo, published by National Initiative for Civic Education, 2021, <https://www.eisa.org/pdf/jae20.2nkhata.pdf>.

court judgments that nullified the 2019 presidential election and ordered the FPE, amendments were made to the Constitution, the PPEA and the LGEA in November 2020. The principal change was to specify that the majority required for electing the president is an absolute majority, or more than 50 per cent of the votes. If no candidate obtains that, a second round is to be held between the first two candidates. The amendments made clear that a simple majority or plurality is sufficient for parliamentary and local council elections. Another significant change was to extend the terms of parliament, the president and the local councils until 2025 (given that the president was elected a year late in 2020, and all elections are to be held together), and to specify that elections are to be held on Tuesday of the third week in September (later than previously, in order to benefit from the dry season).

Aside from the changes required by the courts, discussions have been ongoing since several years before the 2019 elections about the need for a range of electoral reforms. The Law Commission drafted electoral reform bills that were rejected by the previous parliament in 2017 (which included the change to an absolute majority for presidential election). Informed commentators believe that some of the problems that occurred in the 2014 and 2019 elections could have been avoided if the reforms had been passed, emphasizing the need for the current reforms to be approved.²⁷ Newly elected President Chakwera promised to pursue electoral reform in a speech to parliament in September 2020, and key electoral stakeholders have been focused on the reforms since then. The NTER, co-chaired by the MEC and the Centre for Multiparty Democracy (CMD) on behalf of political parties and civil society groups, produced three draft electoral reform Bills following a highly consultative process. They were presented to the Minister of Justice in October 2021, revised and re-presented in early 2022, and subsequently approved by the Cabinet, which made some changes to them. The contents of the bills only became publicly available after they were gazetted on 7 October 2022, although the gazetted bills are not available online, which restricts the dissemination of the bills. Before gazetting, there was uncertainty and speculation as to what provisions remained and what might have changed in the bills. Interlocutors hope the bills will be presented to the November 2022 parliamentary session, and that the parliamentary business committee and the government (through the Leader of the House) will prioritize them so that they make swift progress through parliament.

Interlocutors' opinions vary widely as to how long the parliamentary process might take. Optimistic predictions, especially from government, say the bills could complete the parliamentary approval process during the November 2022 session. Others are apprehensive that the process could take several parliamentary sessions. There is a broad consensus that the sooner the bills are debated and approved, the better. Experience in Malawi and elsewhere shows that the closer to an election an electoral bill is debated, the lower its chances of success. The closer to an election, the more politicised and contentious the issues become, the greater the suspicion that the bill favours the incumbent party. Interlocutors wish to see the reforms in place as soon as possible to allow sufficient time for all stakeholders to become familiar with the reforms, train their personnel and adapt their strategies, and for wider civic and voter education campaigns to take place to build support for and understanding of the reforms. For this to happen, there needs to be a strong political will from government and political parties to push through the current reforms. This is needed even more so for controversial reforms, like campaign finance, independence of the media regulator, and women's representation, in good time before the elections. This is currently lacking.

As to the contents of the bills, the NTER initially planned a wider set of reforms than the issues covered by the three draft bills. This included quotas (reserved seats) for women, but it was dropped

²⁷ Tinkering with the rules of the game? Electoral law reform in Malawi by Mwiza Jo Nkhata, chapter 2 of *Democracy Tested – The Case of Malawi's 2019 Tripartite Elections*, ed. By Nandini Patel and Fidelis Edge Kanyongolo, published by National Initiative for Civic Education, 2021, <https://www.eisa.org/pdf/jae20.2nkhata.pdf>.

by the NTER as too contentious. The draft bill on presidential transition arrangements (as to the transfer of power and official assets) was submitted by the NTER but the Minister of Justice did not put it forward. The Cabinet removed some issues, including the establishment of constituency tally centres, which stakeholders believed would have made an operational improvement. Some in civil society are disappointed about the issues that were left out of the bills, but others make a strong pragmatic counterargument that the window for electoral reform is closing, and so a non-controversial package stands a better chance of success. The bills seek to remedy some of the shortcomings and gaps highlighted by the EU EOM and other stakeholders, including harmonizing the electoral laws, improving MEC's operational efficiency, and strengthening the integrity of the electoral process.

Key issues that are covered by the three electoral reform bills, as well as significant issues that were not in the end included, are as follows:

Constitution (Amendment) Bill	
(requires a two-thirds majority in parliament, 129 votes out of 193 members)	
Issue	Comment
Included in the Bill	
Specifies minimum (4) and maximum (6) MEC members plus the Chairperson	This is a positive change to ensure certainty as to the number of MEC members, and to clarify how the Chairperson is appointed (nominated by Judicial Service Commission, appointed by President)
Amends the period for review of constituency boundaries	Extended from 5 years to 10 years (although period has not been complied with recently)
Extends maximum period within which presidential run-off must be held to 60 days	Previously 30 days, this change allows for dispute resolution and operational preparations
Not Included in the Bill	
Extension of term of office for MEC members from 4 years to 5 years (or until 2027 for current members)	MEC had advocated for this to ensure continuity of members over the five-year electoral cycle, but Cabinet rejected this
Extension of period to 30 days after results declared before new president can be sworn in	NTER advocated for this to allow time for disputes to be resolved before swearing in, but Cabinet rejected it
Regulation making power for MEC, rather than regulations being made by the Minister of Justice	MEC and others had advocated for this, as befits a constitutionally independent body, but it was not included in the NTER draft as too difficult to achieve
Electoral Commission (Amendment) Bill	
Included in the Bill	
Minimum educational qualification for MEC members – bachelor's degree from higher education institution	Civil society had wanted to go further and make the recruitment of MEC members more open, with a more inclusive nomination process
MEC may establish other means of voting, voting materials and voter registration materials	This gives flexibility to MEC and allows for the use of new voting technologies, such as electronic voting

Presidential, Parliamentary and Local Government Elections Bill	
Included in the Bill	
Harmonization of the two electoral laws	The bill combines the PPEA and LGEA into one consolidated statute, removes inconsistencies and gaps
National ID card or civil registration certificate are the only valid proofs of ID for voter registration	Important for the integrity of the voter register, but this change could disenfranchise people if NRB is unable to process requests for new and replacement cards in time
Removal of voters' ability to make a complaint about voter register	Only party/candidate representatives will be able to make complaints about voter registration, an undue restriction on the right to redress
Period of voter registration is 7 to 14 days finishing at least 60 days before election day (previously 21 days)	MEC had wanted a longer or continuous period, but CSOs wanted a limited period so as to be able to observe it
Details of presidential run-off, including replacement of candidates	Details were not previously provided
Maximum of two party/candidate representatives per polling station	Currently no limit on numbers
Campaign Code of Conduct to become legally enforceable and MEC empowered to issue fines or disqualify violators	The Code of Conduct is currently a political commitment – this change aims to make it legally enforceable, although in practice that requires more adjudication resources at MEC
Prohibition of use of state resources in campaigns and ban on any donations from the State to any party or candidate	Currently almost no restriction on abuse of state resources
Removes immunity from prosecution for inflammatory or hate speech, and incitement to violence during campaign	Currently immunity from prosecution for anything said or written during the campaign period
Provides details on determining vote validity	Currently there is little guidance in the law; but the Bill's provision could be improved by stating that voter's intention is paramount
Extends time allowed for MEC to declare national results to 8 days (presidential), 14 days (parliamentary) and 21 days (local)	Currently 8 days from election day for all results, which is operationally difficult, given that MEC must resolve all complaints before declaring results
Custodian of election materials post-election is to be MEC Chief Elections Officer, to retain until all election disputes determined	Currently clerk of parliament who retains for 12 months
Not Included in the Bill	
Legal basis for constituency tally centres	Used in 2019 elections as operationally helpful, but criticised by the courts for lack of legal foundation; this change was removed from the bill by the Cabinet
Changes to campaign period	Some argued for the period to be unlimited because it is difficult to enforce, others argued for it to be shortened, but

	the bill makes no change, so it remains 60 days with a 48-hour silence period
28 reserved seats for women (one per district)	Considered too controversial, this proposal was dropped by NTER

THE STAKEHOLDER ROUNDTABLE

The EFM convened a stakeholder roundtable on 5 October with 55 participants from 34 entities, including the MEC, political parties, public bodies, civil society and domestic observer organisations, and donor partners. The goal was to discuss progress in the implementation of the EU EOM’s recommendations and electoral reform initiatives more generally.

The discussion was divided into six thematic areas, with the first focused on legal reforms, in particular recommendation 1 and the harmonization of electoral laws. Stakeholders described the consultative process that led to the electoral reform bills. There was widespread agreement on the need for swift gazetting of the bills (which happened on 7 October) and for expeditious presentation of the bills to parliament so there could be an informed debate among parliamentarians and public engagement on the content of the bills.

Political finance was the second subject of discussion, focused on recommendations 3 and 14. Participants noted that progress in implementing the PPA is hindered by the lack of a fully functioning Registrar for Political Parties. A government official assured participants that the process of establishing and recruiting the Registrar is underway. As to implementing the ban on handouts and reform of the PPA to require disclosure of campaign finance, participants emphasized the importance of these issues. However, the issues are difficult, and participants stressed the need for broader conversations about party finance before amending the law.

Improving the transparency and inclusiveness of political party primaries and the need for parties to increase women’s representation within party structures and candidate nomination were the third subject, generating a lively discussion (recommendations 11 and 19). Participants recognised the need for improvements to party primaries to avoid intra-party disputes and violence and felt that work needs to be done with the parties on this, so that they grow institutionally. The possibility of seeking the MEC’s help in running primaries was raised. Speakers stressed that the move for social inclusion within parties should focus not only on gender but also PWDs. Many felt that mandatory quotas for women or other under-represented groups are not the best way forward in a first past the post system like Malawi’s. Participants urged working with parties on social inclusion within the parties’ internal legal documents and policies, continued support to women candidates to be able to compete effectively with men, and learning from comparative experiences within the region.

Improving the MEC’s procedures for results counting and tabulation (recommendation 7) was the fourth discussion subject. Speakers noted that some improvements have already been made, for example, recruiting more broadly and requiring a diploma as a minimum qualification for presiding officers. Participants flagged the need for more and earlier voter education (for example, on what constitutes a valid vote), and for party monitor and observer training and familiarization with the procedures. In this regard, the MEC noted that the sooner the electoral bills pass through parliament, the sooner the MEC can prepare training materials and plans.

Election dispute resolution, including alternative dispute resolution by the MPLCs, was the fifth subject of discussion (recommendations 12, 22 and 23). Participants raised concerns about the emergence of party vigilantes, often formed from party youth wings and used to intimidate candidates and voters and threaten violence. The MEC noted that it cannot deal with election violence and criminal offences, as this is a matter for police and law enforcement. The police noted they need

continued capacity building and support. Participants emphasized the responsibility of political parties to show tolerance, accept election results and avoid violence. Participants also said that traditional chiefs need to act impartially, and district commissioners in their work on the MPLCs.

The final subjects of discussion included voter registration and voter education (recommendations 9 and 20). Participants emphasized the need for a comprehensive approach to inclusion of PWDs in the electoral process, including the format of voter education, and an evaluation after each election of PWDs' engagement with the process. The MEC said it is working to ensure that data on inclusion of PWDs and women is captured. The NRB said it hopes to be able to print the backlog of ID cards. Participants urged that voter education begins much earlier in the process.

CONCLUSIONS

The EU EFM noted progress made in the implementation of some of the 2019 EU EOM recommendations, as well as the areas where more political will is very much needed to move forward. Positively, the three electoral reform bills were gazetted on 7 October, allowing good time for stakeholders to study them before they are tabled and discussed in parliament, which it is hoped will happen during the November session. The bills are the result of an inclusive and consultative process and there appears to be a broad consensus that they should be approved as soon as possible. The government needs to ensure that the bills are prioritized for the November session of parliament, and all stakeholders need to maintain their advocacy in support of the bills.

No other election-related legal reform initiative is currently underway, although there is still enough time available ahead of the September 2025 elections to address some of the recurring problems of the electoral process in Malawi. There are also many recommendations that could be implemented through administrative and procedural changes, not requiring legislative change.

For the successful conduct of the 2025 elections, it is imperative that the Government of Malawi allocates sufficient financial resources to the MEC as well as to the NRB in a timely manner so that the MEC can proceed with electoral preparations and the NRB with the issuance of identity cards allowing for registration. Further donor support is needed as well to develop the capacity of the MEC, the NRB and CSOs involved in civic and voter education and advocacy for the electoral rights of women, youth and persons with disabilities. The NRB in particular is currently facing serious operational problems, which if unresolved could undermine the credibility of the 2025 elections.

ANNEXES

ANNEX 1: PRESS RELEASE

PRESS RELEASE

European Union Election Follow-Up Mission Urges Continued Progress in Electoral Reforms

6 October 2022, Lilongwe, Malawi

As part of the European Union's (EU) ongoing support for democracy in Malawi, the EU deployed an Election Follow-Up Mission to Malawi on 20 September 2022. The Mission is led by Chief of Mission Mr Miroslav Poche, who was Chief Observer of the EU Election Observation Mission (EOM) to Malawi 2019 and Member of the European Parliament.

The purpose of the Follow-up Mission is to assess and report on the degree to which the 24 recommendations that the EU EOM made have been implemented and other electoral reform initiatives undertaken. The implementation of the recommendations would enhance the credibility, inclusiveness and transparency of Malawi's 2025 elections. The Mission has been meeting with electoral stakeholders, including the Electoral Commission (MEC), the Parliament, relevant state institutions, judiciary, political parties, citizen observers and other civil society organisations and donor partners. The Mission organised a roundtable on 5 October with electoral stakeholders to encourage an open discussion on the progress made so far in implementing the EU EOM's recommendations, stakeholders' current priorities and suggestions about how to overcome obstacles and make further progress.

In a press conference held today, Mr Poche said, *“One important conclusion of the roundtable is the need to keep up momentum on the progress of the draft electoral reform Bills through Parliament. In that regard, the Mission welcomes the gazetting of the Bills yesterday, which allows for the process of parliamentary consideration to begin. The Bills came about as a result of an inclusive and consultative process and there is a broad consensus that the sooner the reforms are approved and in place the better. Experience shows that the closer to election day we get, the more contentious the reforms become.”*

The Chief of Mission emphasized that legal reforms alone are not the full picture – there is also a need for procedural and other changes. For example, one of the EU EOM's priority recommendations is for the MEC to make improvements to the processes for counting, tabulation and transmission of results, which is recognised by the MEC as a key concern, particularly in the light of the Constitutional Court judgment, and the MEC are working on it. Mr Poche said, *“There is still time for this and for other administrative and procedural changes.”*

The Chief of Mission further said, *“I am pleased to note that some recommendations have been implemented, for example, improving the independence of polling station presiding officers, entry*

into force of the Access to Information Act, and clarifying that anyone who is aged 18 by election day may vote. Several others are underway, including the review of constituency boundaries and the harmonization of the electoral laws. There remain some recommendations where political will is needed to move the process forward, such as increasing transparency in party finances, and making party primaries more transparent and inclusive of women.

This follow up mission is not the end of the EU's engagement with Malawi's electoral reform process. The EU and Member States will continue to support the implementation of the electoral reforms."

In addition to the Chief of Mission, the Mission comprises two election experts and a member of the European External Action Service. The Chief of Mission is in Malawi during the first week of October, and the experts will remain in Malawi until mid-October. The Mission's final report will be published in November.

The full archive of EU election mission reports can be found at <http://database.eueom.eu>

ANNEX 2: ROUNDTABLE AGENDA

Roundtable on the EU EOM Recommendations and Electoral Reform Process

Wednesday 5 October 2022, Lilongwe, Malawi

Umodzi Park International Convention Centre, Pelican and Sparrowhawk Room

PROGRAMME

09:00 – 09:30	Arrival and registration of participants
09:30 – 09:40	Welcome Remarks <ul style="list-style-type: none">• Chief of Mission, Mr Miroslav Poche• EU Ambassador to Malawi, H.E. Rune Skinnebach
09:40 – 09:45	Introduction to the EU EFM and Roundtable Programme EU EFM Experts
09:45 – 10:40	Part 1 – Law Reforms and Political Parties <ul style="list-style-type: none">• Block 1 – Legal Reforms• Block 2 – Political Finance• Block 3 – Party Primaries, Women’s Political Participation
10:40 – 10:55	Coffee Break and Group Photograph on the steps
10:55 – 11:50	Part 2 – Election Administration <ul style="list-style-type: none">• Block 4 – Results Process• Block 5 – Election Dispute Resolution/Alternative Dispute Resolution• Block 6 – Miscellaneous
11:50 – 12:00	Closing remarks <ul style="list-style-type: none">• Chief of Mission, Mr Miroslav Poche• EU Ambassador to Malawi, H.E. Rune Skinnebach
12:00 – 13:00	Buffet Lunch

ANNEX 3: ROUNDTABLE PARTICIPANTS

No.	Organisation
1.	Malawi Electoral Commission (MEC)
2.	National Registration Bureau (NRB)
3.	Malawi Judiciary
4.	Ministry of Justice / Solicitor General
5.	Office of President and Cabinet (OPC)
6.	Malawi Communications Regulatory Authority (MACRA)
7.	Malawi Congress Party (MCP)
8.	Democratic Progressive Party (DPP)
9.	United Democratic Front (UDF)
10.	United Transformation Movement (UTM)
11.	People's Party (PP)
12.	Representative of the Leader of the Opposition
13.	Malawi Police Service
14.	Malawi Defence Force
15.	Centre for Multiparty Democracy (CMD)
16.	National Initiative for Civic Education (NICE)
17.	Catholic Commission for Justice and Peace (CCJP)
18.	Federation of Disability Organisation in Malawi (FEDOMA)
19.	Public Affairs Committee (PAC)
20.	50:50 Campaign
21.	Gender Coordination Network (GCN)
22.	PACENET / Malawi Electoral Support Network (MESN)
23.	Democracy Works Foundation (DWF)
24.	Malawi Human Rights Resource Centre (MHRRC)
25.	Center for Civil Society Strengthening (CCSS)
26.	Tony Blair Institute (TBI)
27.	EU Delegation
28.	UN Resident Coordinator's Office (RCO)
29.	United Nations Development Programme (UNDP)
30.	Royal Norwegian Embassy (RNE)
31.	Foreign Commonwealth & Development Office (FCDO)
32.	USAID
33.	Irish Aid
34.	Czech Embassy

ANNEX 4: MATRIX ON THE IMPLEMENTATION STATUS OF THE 2019 EU EOM RECOMMENDATIONS

Category	Description	Guidance
1	No change.	No action has been taken to implement this recommendation.
2	Action or activity is ongoing but implementation of the recommendation has not yet been confirmed.	Examples may include the formation of a working group to review legislation, or the preparation of a legislative bill of reform, but the change has not yet been confirmed by legislative change.
3	Partial implementation of recommendation.	The recommendation has been addressed/implemented in part, but other elements of the recommendation have not been addressed.
4	Full implementation of recommendation.	The recommendation has been implemented in full e.g. electoral legislation has been amended and all aspects of the recommendation have been addressed.
5	Too early in electoral cycle to determine.	Some recommendations may relate to administrative action/practice which can only be assessed at a later stage i.e. strengthening of civic/voter information.
6	Recommendation is no longer relevant.	For example, a change in the electoral system may make redundant a recommendation on candidate registration under the old electoral system.

No.	Year	Recommendation	Electoral Theme	Status (1-6)	Comments and Additional information
1.	2019	The Parliamentary and Presidential Elections and Local Government Elections Acts should undergo a process of harmonisation and elimination of conflicting provisions with the aim to eliminate inconsistencies and enhance legal certainty.	Legal framework	2 Action or activity is ongoing	One of the recently gazetted electoral reform bills that is pending introduction to the November session of parliament is the harmonised Presidential, Parliamentary and Local Government Elections Bill.
2.	2019	Provisions on revocation of candidatures should be reviewed in order to be brought in line with international commitments to ensure legal certainty and the right to a timely legal redress.	Legal framework	1 No change	This is not addressed in the draft bills and has not been mentioned by stakeholders.

3.	2019	The Political Parties Act should be revised to include provisions on public disclosure of campaign funding and expenditures of electoral contestants within reasonable time, and with a coherent enforcement mechanism, in order to allow for transparency and accountability towards the electorate and eliminate undue influence.	Legal framework	1 No change	There is no initiative or enthusiasm from political parties to revise the Political Parties Act (PPA) in this regard. Even the implementation of the existing PPA provisions is proving to be problematic. Making the linkage to countering corruption could help garner support for this issue.
4.	2019	A review of parliamentary constituency boundaries should be undertaken well ahead of the next elections based on the 2018 census results to ensure equal suffrage.	Legal framework	3 Partial implementation	The MEC has conducted the long overdue review of parliamentary constituency boundaries. The situation in terms of equal suffrage has somewhat improved but the problem of unequal size of constituencies persists. The report on the boundary review with 35 proposed new constituencies is expected to be tabled in the November session of parliament.
5.	2019	In order to increase the independence of MEC, permanent election officials such as the District Election Clerks, could be appointed as District Election Coordinators.	Election administration	2 Action or activity is ongoing	One of the objectives of the new MEC strategic plan is likely to be strengthening its permanent district structures, so that in future the permanent staff should be able to assume the role of district election coordinators. This is of course dependent on the availability of resources for capacity building.
6.	2019	The internal communication flow between MEC headquarters, district and constituency level election officials needs to be reviewed and reinforced, in order to ensure that consistent and regular instructions and information are disseminated in a timely manner to all levels.	Election administration	3 Partial implementation	According to MEC, its internal communication has improved significantly since the 2020 FPE when a group email-based system was introduced. The system includes all MEC permanent staff at national, regional and district level and they are currently examining the possibilities of how to include temporary staff at constituency and polling station level.
7.	2019	Priority Recommendation: Clear and unambiguous procedural details on the key stages of the tabulation and transmission of results should be adopted. Training of presiding and assistant presiding officers on counting and tabulation, filling of results	Election administration	2 Action or activity is ongoing	The MEC recognised the importance of counting, results transmission and tabulation processes for the overall credibility of elections, and following the court ruling, MEC introduced several changes. Domestic observers reported positively on these processes during the 2020 FPE. The MEC is currently developing a new polling staff

		forms must be strengthened, conducted well in advance and more effectively. A rigorous assessment of their aptitude for the role through written exams could be considered.			training strategy which should be put in place for the 2025 elections.
8.	2019	MEC should consider mechanisms to strengthen the independence and integrity of Presiding Officers by making them less vulnerable to undue influence.	Election administration	4 Full implementation	For the 2020 FPE the MEC opened up recruitment for the position of presiding officer to anyone meeting the newly introduced minimum qualification requirement – a diploma. This was a departure from the previous practice of appointing head teachers or officers in charge of various government institutions without assessing their competencies.
9.	2019	Extensive voter education activities should be undertaken in order to sensitise citizens to the fact that possession of the National ID Card does not lead to automatic inclusion in the voter register.	Election administration	5 Too early to determine	After the 2020 FPE, the MEC conducted only small-scale local voter education campaigns before by-elections. The new MEC strategic plan should outline the strategy for civic and voter education ahead of the 2025 elections, but its extent will largely depend on the availability of human and financial resources.
10.	2019	The Constitution and electoral laws should be harmonised with regards to the date on which a voter has to be 18 in order to be eligible to be registered. If the constitutional provision of 18 at the time of registration is maintained, future registration exercises should provide the possibility for a cut-off date for registration of citizens turning 18 closer to the election.	Voter registration	4 Full implementation	The constitutional amendment, passed by parliament and assented to by the president in October 2020, harmonised conflicting provisions by stipulating that a person shall be qualified as a voter if he or she has attained the age of eighteen years on or before polling day.
11.	2019	Political parties should reform their candidate selection procedures to guarantee integrity, inclusiveness and transparency in party primaries.	Nomination and registration of candidates	5 Too early to determine	As of yet, there are almost no meaningful initiatives in place within political parties interviewed by the EFM.
12.	2019	MEC should enforce compliance with the Code of Conduct for Political Parties and Candidates by ensuring it has effective monitoring mechanisms and is able to enforce existing	Election campaign	5 Too early to determine	For the 2025 elections the MEC intends the Code of Conduct for Political Parties and Candidates to be legally binding, rather than non-legally binding as in the past. The MEC believes that this may improve compliance with the

		sanctions so as to mitigate violations of campaign regulations.			Codes by parties and candidates. This would require mechanisms and procedures for enforcement.
13.	2019	Effective measures should be introduced for monitoring and sanctioning of partisan behaviour by Traditional Authorities, to help ensure the impartiality of public entities in the elections.	Election campaign	5 Too early to determine	For the 2025 elections the MEC intends to have the Code of Conduct for Chiefs to be legally binding, rather than non-legally binding as in the past. The MEC believes that this may improve compliance with the Code by traditional chiefs. This would require mechanisms and procedures for enforcement.
14.	2019	Priority Recommendation: The office of the Registrar for Political Parties must fulfil its role to enforce the Political Parties Act, including the introduction of clear and enforceable regulations on the ban of handouts to ensure a more level playing field in the campaign.	Election campaign	2 Action or activity is ongoing	The Registrar for Political Parties is yet to be appointed and the office is yet to be established. The Acting Registrar from the Office of the Registrar General is performing their duties with very limited resources. To date, 13 political parties have been conditionally registered. The drafting of regulations on the ban of handouts is only in its very initial phase.
15.	2019	Remove provisions in the Protected Flag, Emblems and Names Act and in the Censorship and Control of Entertainment Act which can be used to limit freedom of speech, and amend the Penal Code to decriminalise defamation.	Media	2 Action or activity is ongoing	A draft bill was gazetted to repeal the sedition provisions and is pending introduction to parliament, but the prohibition of speech likely to give offence and the criminalisation of defamation are not being addressed.
16.	2019	The Government should ensure that the already assented to Access to Information Act enters into force.	Media	4 Full implementation	The Act was brought into force and administratively operationalised, although some improvements could be made to implementation in practice.
17.	2019	Revise the 2016 Communications Act and remove presidential powers in the appointment of Malawi Broadcasting Corporation board members to increase the independence of the state broadcaster.	Media	1 No change	There is no initiative to revise the Communications Act in this regard.
18.	2019	Revise the 2016 Communications Act and remove presidential powers in the appointment of Malawi Communications	Media	1 No change	There is no initiative to revise the Communications Act in this regard. The issue has become more pertinent due to the recent revocation of broadcast licences by MACRA for

		Regulatory Authority board members in order to enhance the independence of the media regulatory authority.			non-payment of fees, which some see as an attempt to silence critics of the government, although MACRA's position is that they are even-handed in this regard.
19.	2019	Priority Recommendation: Political parties should comply with the principle of gender equality and achieve fair gender representation in the nomination of women in party positions and as candidates in order to help increase the level of women's participation in political life in Malawi.	Participation of women	1 No change	The parties have not made meaningful progress in this area. The next UNDP basket fund will try to address this issue.
20.	2019	The Malawi Electoral Commission should gather statistical data on the voter registration of persons with disabilities to facilitate targeted voter education, including by disability organisations.	Participation of persons with disabilities	5 Too early to determine	All stakeholders concerned, i.e., the MEC, the NRB and FEDOMA, agreed that it would be useful to gather such information and they are planning to meet to discuss how to proceed in this regard.
21.	2019	Priority Recommendation: Provision for an additional Presiding Officer in each polling station to oversee the conduct of counting and tabulation should be considered.	Polling, counting and tabulation of results	3 Partial implementation	The MEC approach to this issue ahead of the 2020 FPE was twofold. Firstly, to increase the quality of presiding officers they hired only applicants with at least a diploma. Secondly, they abandoned the concept of dividing polling stations into polling streams and instead increased the number of polling stations, each of which is fully responsible for reporting its results. This not only increased the number of presiding officers but more importantly eliminated the problematic lowest level of tabulation.
22.	2019	If Multi-Party Liaison Committees continue to be used as an alternative dispute resolution forum, funding must be secured well ahead of the campaign period and procedures should be put in place in order to ensure consistent function and due process during the resolution of complaints.	Electoral disputes	5 Too early to determine	The MEC plans to further develop the Guidelines and Manual for MPLCs. The availability of funding in good time will depend on donors.

23.	2019	Priority Recommendation: Legislation regulating resolution of election disputes should be amended to establish coherent, clear and distinct stages with regard to competent bodies and their respective jurisdiction, and to deadlines.	Electoral disputes	5 Too early to determine	The MEC, with donor support, plans to update its complaint-handing regulations, in the hope that the Minister of Justice will gazette them promptly so they can be promulgated well before the next elections. The Judicial Rules Committee plans to amend the Rules of Court but needs donor support to do this.
24.	2019	The minimum period for the swearing-in of elected officials, and notably the president, should take account of the period provided for the resolution of petitions and complaints.	Electoral disputes	3 Partial implementation	The 2020 legal amendments specified a minimum period of seven days after declaration of results, but this is not enough if a challenge has been made. A proposal to extend it to 30 days has been dropped from the gazetted version of the draft Constitution (Amendment) Bill.

