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Final Report



Tripartite Elections
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Main Abbreviations

APO	Assistant Presiding Officer
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CRO	Constituency Returning Officer
CTC	Constituency Tally Centre
DPP	Democratic Progressive Party
EU EFM	EU Election Follow-up Mission
EU EOM	EU Election Observation Mission
ICCPR	International Covenant on Civil and Political Rights
LGEA	Local Government Elections Act
MACRA	Malawi Communications Regulatory Authority
MBC	Malawi Broadcasting Corporation
MCP	Malawi Congress Party
MESN	Malawi Electoral Support Network
MPLC	Multi-Party Liaison Committee
NICE	National Initiative for Civic Education
NIC	National Identification Card
NTC	National Tally Centre
PAC	Public Affairs Committee
PO	Presiding Officer
PP	People's Party
PPA	Political Parties Act
PPEA	Parliamentary and Presidential Elections Act
PVT	Parallel Vote Tabulation
PWD	Persons with Disability
RO	Returning Officer
UDF	United Democratic Front
UTM	United Transformation Movement

I. Executive Summary

The 21 May 2019 Tripartite Elections were the sixth round of general and third local elections in the country since the first multi-party elections in 1994. This was just the second time the polls have been organised as Tripartite Elections, following introduction of the system in 2014, with Malawians voting on separate ballots for a president, members of parliament and local councillors.

This was the fourth time the EU has deployed an EOM for elections in Malawi, following missions in 2004, 2009 and 2014. In addition, Election Follow-up Missions were deployed in 2013 and in 2017. The 2014 EU EOM made 27 recommendations. In total, 16 of these were addressed either wholly (13) or partially (three), which is 59 per cent of the total. Of the 27 recommendations, ten were related to necessary legal reforms; none of which were addressed. Of the remaining 17 recommendations related to operational or programmatic issues, 16 were either fully addressed (13) or partially addressed (three).

Fundamental rights and freedoms necessary for the conduct of democratic elections are largely provided for. However, electoral legislation suffers from a number of shortcomings and inconsistencies and very few of the necessary legal reforms, recommended by previous EU EOMs, have been addressed. Regulations on party and campaign financing were amended but do not ensure transparency and accountability. Further, while a prohibition on certain types of handouts in the campaign was introduced, it is quite a narrow prohibition and lacks a clear regulatory framework for enforcement, enabling widespread abuse of handouts during the campaign by all major political parties. Legislative provisions relating to the management of election-related disputes do not provide enough certainty or coherence with regard to how disputes should be handled and related timelines, adversely affecting the right to an effective legal remedy.

For these elections MEC instituted a number of positive changes to address past shortcomings, including a new approach to voter registration, a revised election calendar and the creation of constituency tally centres. These changes addressed many of the EU EOM recommendations on election management from 2014. MEC overcame a major challenge of securing an adequate number of vehicles for the delivery and retrieval of polling materials, even though funding was only made available at a very late stage. While MEC's pre-election public messaging was fairly effective, its internal communication to lower-level election officials did not always ensure a consistent or timely flow of information.

During the pre-election preparation phase, MEC's management of the process was inclusive and transparent and the institution enjoyed a high level of confidence among the public and political contestants alike. However, this contrasts sharply with its poor management of the vote count and tallying processes in many areas, and its management of complaints, which left many stakeholders critical of the process. Notable shortcomings in the vote count and tallying of results is also evidence of MEC's poor internal communication and indicative of lapses in its recruitment, training and preparation of staff at local levels.

Voter registration, utilising the new National ID card as the sole form of identification accepted for registration, enhanced the integrity of the voter register and addressed a problem which had plagued previous elections. MEC registered 6,859,570 voters for these polls, which is reportedly some 79.5 per cent of the estimated eligible electorate and the right to vote and universal suffrage were reasonably provided for. There are variances between Districts and the number of registered voters per constituency differs quite significantly and equal suffrage is therefore not provided for.

There were seven presidential, 1,327 parliamentary and 2,690 local government candidates representing 13 political parties or standing as independents, and the elections were genuinely competitive. There is a reasonably inclusive right to stand, though some of the legal provisions regarding criteria and procedures for candidacy could adversely affect this right. The campaign was highly contested, with numerous rallies and meetings across the country, and with campaign freedoms, such as freedoms of movement, assembly and speech generally respected. In addition, debates were organised at the national and local levels, further enhancing public engagement.

There were reports of some incidents and campaign materials being destroyed and despite the largely peaceful campaign there was heightened political tension, not helped by accusations of “rigging”. In addition, the campaign was marked by the misuse of handouts and the abuse of state resources and incumbency. There were concerns about the partisan behaviour of some traditional authorities, and also some candidates and public officials not respecting campaign procedures. Also, the apparent lack of police action in response to some incidents led to accusations of impunity and partisanship in favour of the ruling party. Such practices are consistent with past elections and were raised in previous EU EOM recommendations, though not addressed.

The regulatory framework for media remains largely unchanged from 2014 and requires improvement, including the need for a more independent regulatory body and impartial state media. The private media sector has expanded in recent years, leading to a greater diversity of TV and radio coverage. EU EOM monitoring of media coverage of the campaign shows overt bias in state media in favour of the ruling Democratic Progressive Party (DPP), another malpractice consistent with previous elections. Private media was more balanced overall but with some bias in coverage in favour of opposition parties.

Women are under-represented in political life in Malawi. None of the presidential aspirants was a woman and only 24 per cent of the parliamentary and 22.6 per cent of local council candidates were female. Despite some measures and programmes to facilitate the participation of women in the elections many faced hurdles in seeking candidacy, notably during primaries, and in the conduct of their campaigns, including being the targets of demeaning language. Of the 192 parliamentary seats contested on 21 May 2019, 44 were won by women, which is 22.90 per cent.

On the day of the election, EU observers reported positively on the voting process, with a fairly large turnout of some 74 per cent, and the right to vote adequately provided for. Materials were delivered in advance of polling in the vast majority of cases and polling stations opened on time or with just minor delays. Election staff worked hard to process voters, and party monitors and national observers were present in virtually all places observed, enhancing transparency. The

layout and conditions for the outdoor stations created some challenges and was not always conducive to a secret vote.

EU observers reported that the vote count was transparent but the conditions and poor lighting made the task harder. Officials were inconsistent in how they managed the count, there was a lack of adherence to procedures and numerous problems were encountered in completing results sheets, leading to alterations and corrections being administered, not in the actual result but in the accounting for ballots, which impacted on perceptions of the integrity of the process.

At the constituency level, the process was transparent, but numerous errors in results sheets meant further changes were made so that results could be transmitted. MEC made results sheets for all polling centres available to parties and promptly posted them also on its website, but its handling of related complaints and discontent over the poor administration of results, notably at polling station level, resulted in a marked decrease in confidence in the role of MEC compared to the pre-election period. The use of Tipp-Ex on a number of results sheets, largely to correct reconciliation figures, was widely criticised.

In conclusion, 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.

Priority Recommendations:

- 1. 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.**
- 2. 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.**
- 3. 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 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.**

- 4. Provision for an additional Presiding Officer in each polling station to oversee the conduct of counting and tabulation should be considered.**
- 5. 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.**

II. Introduction

The EU was invited by the Government of Malawi and the Malawi Electoral Commission to observe the Tripartite Elections and an Administrative Arrangement between the EU and both institutions was signed on 8 March 2019. This was the fourth time the EU has deployed an EOM for elections in Malawi, following missions in 2004, 2009 and 2014. In addition, Election Follow-up Missions were deployed in 2013 and in 2017. The 2019 EU EOM was led by Miroslav Poche MEP, from Czech Republic.

A core team of eight experts was present in Blantyre from 4 April. Twenty-eight long-term observers arrived in Blantyre on 14 April and were deployed on 18 April, to cover 27¹ of the 28 Districts of the country. The mission was joined by 32 short-term observers on 14 May 2019. In addition, 12 locally-recruited short-term observers from EU Member States accredited in Malawi, also joined the mission. In total, the EU EOM deployed 83 observers from all 28 EU Member States (and Norway) across the country. On election day, observers visited 342 polling stations in 120 of the 193 constituencies to observe voting and counting. The EU EOM issued its preliminary statement in Blantyre on 23 May 2019.

The EU EOM was independent in its findings and conclusions and adhered to the Declaration of Principles for International Election Observation².

III. Political Context

The 21 May 2019 Tripartite Elections in Malawi were the sixth round of general and third local elections in the country since the first multi-party elections in 1994. This was just the second time the polls have been organised as Tripartite Elections, following introduction of this system for the 2014 polls. Malawi has twice experienced a change of power through the ballot box and has a reputation for largely peaceful elections. The 2014 elections were disputed and experienced a level of tension and post-election violence, which resulted in a heightened level of tension and trepidation for these polls.

¹ The one District not covered was Likoma, which constitutes two islands on the far side of Lake Malawi.

² The Declaration of Principles was signed at the United Nations in 2005. There are currently over 50 signatory organisations, representing both governmental and non-governmental institutions conducting international observation. The Declaration reflects best practices in observation and also outlines the respective rights and responsibilities, including a code of conduct, for international observers.

Malawians have traditionally voted predominantly along regional lines, with the Central Region being the stronghold of the main opposition Malawi Congress Party (MCP) and home of its leader and presidential candidate Lazarus Chakwera and the Southern Region the stronghold of the ruling Democratic Progressive Party (DPP) and home of President Peter Mutharika. Programmatic differences between political groups are not very pronounced and political and party relationships have been characterized by a high level of fragmentation, fluidity and personalization. Regionalism dominated party campaign strategies, with all major presidential candidates choosing running mates from the strongholds of their opponents, and the issue of corruption was a constant refrain throughout, notably from opposition parties.

The formation of the United Transformation Movement (UTM) in July 2018 under the leadership of former Vice President Saulos Chilima and the increased popularity of the main opposition MCP and its presidential candidate Lazarus Chakwera,³ reconfigured the political landscape by increasing the level of competition and intensifying local dynamics in all regions. The defection of the Vice-President from the ruling party to form his own opposition movement resulted in heightened tension in the campaign. Attempts to build a coalition between the two strongest opposition parties MCP and UTM failed and the most significant inter-regional alliance in the presidential race was the one between Lazarus Chakwera of the MCP and former President Joyce Banda of the People's Party (PP), which was strong in Northern Region during previous elections.

Given the prevailing first-past-the-post electoral system and the high level of political personalization and fragmentation, the outcome of the elections - a thin margin of victory in the presidential elections and no majority in the new parliament - was widely predicted.

IV. Implementation of Previous EU EOM Recommendations

The 2014 EU EOM made 27 recommendations. In total, 16 of these were addressed either wholly (13) or partially (three), which is 59 per cent of the total. Of the 27 recommendations, ten were related to proposed legal reforms. However, none of these were addressed. Of the remaining 17 recommendations related to operational or programmatic issues, 16 were either fully addressed (13) or partially addressed (three)⁴.

A Legal Reforms

A recommendation for a legal requirement to disclose party sources of financing and to report on campaign spending to enhance transparency and accountability was not addressed. While the new Political Parties Act (2018) has some disclosure requirements, it did not go far enough, as there is no requirement to report on spending related to private funding. Also, it is not evident when or if the reporting requirements which do exist will be implemented. The recommendation

³ The increased popularity of MCP was evident in the 2017 by-elections, when MCP won four of the six (three local council and three parliamentary) seats.

⁴ Having said this, while two important recommendations related to training of polling staff and tallying/tabulation processes were partially addressed there were again major shortcomings in both aspects, reflecting that while some effort was made substantial progress is still required in the areas of results tallying.

for a clear and enforceable ban on the use of state resources for campaign purposes was also not addressed. In 2019, abuse of state resources and incumbency were again evident.

Other key legal reforms not addressed related to media and women's participation. The 2014 EU EOM recommended two measures to enhance independence of state media, namely that the director general and board of MBC and the director and board of MACRA should be appointed by the National Assembly. Neither of these were addressed and again state media was heavily biased in its coverage of the elections. The 2014 report also recommended the introduction of special measures to increase the level of women's participation. Such a proposal was considered during the 2014-2017 reform process, but ultimately was not adopted. The level of women's participation and representation remains a concern in the country.

B Operational Reforms

The completion of a timely new voter registration process, which enjoyed stakeholder confidence, was a major reform and addressed one of the 2014 recommendations. Other key reforms which directly addressed EU EOM recommendations were: the creation of a Legal Department within MEC; early planning for distribution and retrieval of polling materials; and the development of a reliable results management system for the transmission of results.

Two of the operational recommendations which relate to the counting and tallying procedures were partially addressed, though remain a key area of concern. The 2014 EU EOM recommended that there needs to be timely and effective training of polling staff, with provisions for extra tallying staff where necessary to avoid errors. MEC recruited some 200 master trainers in order to focus on this, but the evidence of the process indicates that still this effort was not adequate. Another recommendation was that tallying procedures should be designed to ensure traceability, including for those cases where arithmetic corrections are needed. MEC made some small changes to the forms and also, through UNDP, recruited auditors to support the constituency-level tallying. However, major challenges were still encountered, largely due to the errors at the outset of the process during the polling station counts.

V. Legal Framework and Electoral System

Legal framework still requires reform, notably to harmonise laws and enhance campaign finance regulations

A International Principles and Commitments

Malawi has ratified or acceded to most international legal instruments pertaining to human rights and the conduct of elections. These include the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of People with Disabilities and the UN Convention Against Corruption. It has also acceded to several regional treaties, such as the African Charter on Human and People's Rights, the African Charter on Democracy, Elections and Governance and

the African Union Convention on Preventing and Combating Corruption. Malawi is also a state party to several legal instruments of the Southern African Development Community (SADC).

B Constitutional Human Rights

The Constitution of 1994 marked the transition of Malawi from a one-party to a multi-party system, following a national referendum in 1993. It establishes the separation of the three branches of power, and guarantees the protection of human rights and fundamental freedoms. It provides for universal and equal suffrage and prohibits discrimination in any form. It grants every person the rights to freedom of association, opinion and expression, rights of assembly and peaceful demonstration, the right to form, join and participate in the activities of a political party and to campaign for a political party or cause, to participate in peaceful political activity intended to influence government policies, to freely make political choices and the right to an effective remedy by a court of law for acts violating the rights and freedoms granted by the Constitution or any other law. No restrictions or limitations may be placed in the exercise of any constitutional rights and freedoms, other than those prescribed by law, which are reasonable.

C Electoral Legislation

Tripartite elections are primarily regulated by the Constitution, the Parliamentary and Presidential Elections Act (PPEA), the Local Government Elections Act (LGEA), the Political Parties Act (PPA) and the Electoral Commission Act. While the legal framework provides an adequate basis for the conduct of democratic elections, guaranteeing fundamental rights and freedoms, a number of problems persist, partly due to the lack of harmonisation of the various laws⁵. Inconsistencies and gaps in legislation are further highlighted by the consolidation of all three types of elections in a single polling day with the Constitutional amendment of 2012, which was not however accompanied by a consolidation of the legal framework.

There exist conflicting provisions between the Constitution and the two Election Acts as well as inconsistencies between the two Acts. For example, while the Constitution establishes voter eligibility for citizens or residents who have attained the age of 18 on the day of registration, both the PPEA and LGEA establish eligibility for citizens who have attained the age of 18 on or before election day. The two Election Acts also contain conflicting provisions regarding election observation, with the PPEA regulating exclusively international observation and making no mention of national observers. In addition, different sanctions are foreseen for many identical electoral criminal offences.

Recommendation 1: The Parliamentary and Presidential Elections and Local Government Elections Acts should undergo a process of harmonization and elimination of conflicting provisions with the aim to eliminate inconsistencies and enhance legal certainty.

Electoral legislation allows for independent candidates, which is positive. Certain provisions however on nomination of candidates and revocation of candidatures do not appear to be

⁵ The 1993 PPEA precedes the 1994 Constitution and therefore is not entirely in line with it, and subsequently electoral legislation has developed in a piecemeal manner.

reasonable or fully in line with international commitments. For instance, while the Constitution does not establish an official language and ‘the proceedings of parliament shall be conducted in the English language and such other languages as the National Assembly may prescribe’, one of the criteria for nomination of candidates to the parliamentary elections is the ability to read and speak English well enough to take part in the proceedings. The same restriction also applies to candidates to the position of councilor in local government elections. As well as limiting participation rights and the right to stand, such a requirement also hinders effective participation in the parliament for some members.

Furthermore, Returning Officers can refer a parliamentary or local government candidature to the High Court, if they are of the opinion that a nomination must be rejected, even after the nomination period has ended and up to election day for a wide variety of reasons, which are not clearly defined. Such a provision⁶ undermines legal certainty and the right to legal redress. Moreover, it may potentially be used in a discriminatory manner and create operational problems with regard to the printing of ballot papers.

Recommendation 2: 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.

The Political Parties Act, of December 2018, introduced elements of party and campaign finance rules, previously absent in the legislation, as well a prohibition on ‘handouts.’ Besides public funding⁷, parties may receive private donations for their activities, including campaign activities, with no restriction regarding the source, except for state-owned corporations, or to the amount of money a single contributor may donate. Disclosure and reporting are only required for donations above a certain amount to the Political Parties Registrar and publication of the sums and donors is not foreseen. In addition, there is no requirement for reporting and disclosure of campaign expenses. Further, it is not explicitly stated whether campaign finance provisions are binding for independent candidates. As such, there are not adequate provisions to ensure transparency and accountability for campaign finance and expenditure.

Recommendation 3: 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.

With regard to handouts, the PPA definition is narrow and imprecise and the implementation of the provisions is not fully regulated by law. The Act states that the Minister of Justice in consultation with the MEC, parliamentary parties and other stakeholders will issue regulations. In spite of regulations being drafted half-way through the election campaign period, they never entered into force. In their absence, a lack of clarity on how related complaints should be handled was evident during the campaign and abuse of handouts was rife. Overall, legal provisions do not ensure transparency and accountability of party and campaign finance or help to safeguard a level playing field (See Section IX for further discussion of the issue of handouts).

⁶ Section 40 of the PPEA and Section 32 of the LGEA.

⁷ Political parties entitled to public funding are those receiving at least one tenth of votes in parliamentary elections.

D Election System and Constituency Delimitation

The President, members of the parliament as well as local councilors are elected for five-year terms on the basis of a simple majority First-Past-the-Post system. There is a limit of two consecutive terms for the President. The Vice-President is elected on the same ticket as the President. For the election to the parliament, the country is divided into 193 single-member constituencies. Members of 35 local councils are elected in 462 single-member wards.⁸

The Constitution states that MEC shall determine constituency boundaries impartially on the basis that constituencies contain approximately equal number of voters eligible to register, subject only to considerations of population density, ease of communication, and geographical features and existing administrative areas. Constituency boundaries must be reviewed at intervals of not more than five years. The determinations of MEC on constituency boundaries needs to be approved by the parliament, but parliament does not have the power to unilaterally impose changes to the boundaries.

Despite the constitutional requirement for revision every five years at most, the actual parliamentary constituency boundaries were drawn in 1999, when the number of constituencies was increased from 177 to 193. In 2008, MEC undertook a process of revision of constituency boundaries on the basis of data from the census conducted the same year, but its proposal was blocked by the parliament. Currently, the number of registered voters per constituency across the various regions varies considerably. To illustrate the point: Chitipa Wenya has 10,058 voters, Nkhatabay West 10,742 and Rumphu East 11,648 while Lilongwe City Centre has 124,510 voters, Lilongwe City West 100,589 and Mzuzu City 88,576. Thus, equal suffrage is not provided for.

Recommendation 4: A review of parliamentary constituency boundaries should be undertaken well ahead of the next elections on the basis of the 2018 census results to ensure equal suffrage.

VI. Election Administration

Following some positive operational reforms MEC managed the pre-election preparations well

A Structure and Composition of MEC

The conduct of elections is under the responsibility of MEC, a constitutionally independent body composed of a Chairperson, who should be a Judge nominated by the Judicial Service Commission, and no less than six other Commissioners, appointed for a four-year term

⁸ A change to the system for the election of the president was discussed during the 2014-2017 reform process, and a proposal for a change from a simple majority system (i.e first past the post) to an absolute majority system (i.e. whereby a candidate requires 50%+1 of the vote or the leading two candidates contest a run-off) was put forward. This was rejected by the parliament

renewable once. Current MEC comprises eight Commissioners, who took office in June 2016, while the Chairperson was appointed in November 2016.

The November 2018 amendment of the Electoral Commission Act marks an improvement with regards to the mechanism of appointment of Commissioners, as it obligates the President to appoint nominees from parties represented in the National Assembly.⁹ However, the *de facto* independence of MEC remains vulnerable due to the political ties of its members. Taking also into consideration that currently five out of the eight Commissioners are nominees of the ruling party, and that the quorum for a valid meeting is five Commissioners, while a decision may be adopted by the majority of the members present, the ruling party could potentially block some of MEC's decisions through either abstention in meetings or a negative vote.

The day-to-day management of operations is carried out by the Secretariat, headed by the Chief Elections Officer (CEO), who holds office for a five-year period and is eligible to be re-appointed for a second term. The CEO is assisted by two Deputy CEOs. MEC is further composed of eight directorates and three Regional Election Offices, situated in Lilongwe, Blantyre and Mzuzu.

The Electoral Commission Act further provides that public officers may be seconded to MEC for such periods and on such terms and conditions as agreed by the Commission and the authority concerned. Hence, District Commissioners (DCs) are designated as District Elections Coordinators for the implementation of election activities. Constituency Returning Officers (CROs) are appointed by MEC and are responsible for all activities in their constituency, while district election clerks (permanent MEC staff) are located throughout the electoral cycle in 35 district, town, municipal and city councils across the country.¹⁰ Confidence in the neutrality of the DCs was limited among election stakeholders, due to the fact that they are permanent government employees and thus sometimes perceived as partisan and also vulnerable to pressure.

Recommendation 5: In order to increase the independence of MEC, permanent election officials, such as District Election Clerks, could be appointed as District Election Coordinators.

B Administration of the Elections

Aiming to address the shortcomings of the 2014 elections and with the support of the UNDP technical assistance programme,¹¹ MEC made several administrative and organisational

⁹ Commissioners will now be appointed by the President following submission of a maximum of three nominees by each political party represented in the National Assembly having secured more than one-tenth of the national votes cast in the previous elections. The President shall appoint members of the MEC from the nominees in proportion to the nominating political party representation in the National Assembly as determined by the previous elections. Previously, the President would consult political parties but could appoint members of his own choice without being restricted by their nominees.

¹⁰ The CROs are selected among the Primary Education Advisors (the higher administrative rank above a Head Master) in a given constituency.

¹¹ The UNDP Malawi Electoral Cycle Support 2017-2019 project has a total budget of 13,041,915 USD out of which 3,816,235.39 USD is contributed by the EU through the basket fund. The remaining resources are allocated by the UNDP, DFID UK, Norway, Irish Aid and USAID.

improvements. These included: the conduct of a new biometric voter registration; a revised electoral calendar; the development of a proactive communication strategy; the holding of national coordination meetings with stakeholders; the establishment of a legal department; the shift from cascade training to master trainers; the amendment of polling station result sheets so that they would include the results in both numbers and words; and the creation of constituency tally centres for a more localised aggregation of results.

In the lead up to the polls, election preparations were mostly on-track and overall implementation deadlines were met. MEC was commended by all EOM interlocutors for the early publication of the election calendar and the smooth and inclusive conduct of voter registration and candidate nomination, as well as for its transparency, proactively communicating information on important phases of the process to stakeholders. However, the majority of EU Observers reported that the flow of information from MEC HQ to district and constituency levels was often weak and compartmentalised, as several CROs and District Election Coordinators lacked consistent, detailed, regular and timely knowledge of the immediate next steps of the process, leading to delays and a degree of confusion among stakeholders and voters.¹²

Recommendation 6: 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.

A Dubai-based company¹³ was contracted for the printing of 656 different types of ballot papers and of the results sheets.¹⁴ Representatives of DPP, MCP and UTM observed the printing and publicly expressed their satisfaction with the process during the National Elections Consultative Forum (NECOF) meeting of 3 May. As a contingency, MEC printed a three per cent surplus, making a total of 7,316,500 ballot papers for each of the three elections. Even though faced with persistent operational challenges up to a few days before polling, mainly in regards to a shortfall of vehicles for the deployment of electoral materials¹⁵ and the very late release of funds by the government, the dispatch of sensitive materials nationwide was carried out successfully.

Overall, MEC demonstrated competence in planning for the parts of the process prior to polling, namely voter registration, candidate nomination, publication of the list of polling stations and procurement and printing of electoral materials. Between 25 April and 6 May MEC deployed 230 master trainers to conduct a two-day training of the presiding officers (POs) and assistant presiding officers (APOs), while the training of the CROs and DECAs was conducted earlier. A polling station manual was produced ahead of the training. While the manual included sufficient

¹² Many EU teams reported a lack of knowledge on behalf of CROs regarding details on distribution of materials and storage, vehicles, budget for fuel, tabulation of results or the plan for external auditors, while several CROs claimed that they were not informed by MEC about the results transmission test of 2 May until the day before.

¹³ There was some criticism at the choice of this company, with some citing complaints about its performance in printing materials in other countries. However, MEC asserted it was the best quality bid overall, though not the cheapest.

¹⁴ The results sheets featured the names of candidates already printed for all three types of elections, aiming to facilitate the counting process and expedite the transmission of results. There were 14 security features on the ballot papers and five on the results sheets.

¹⁵ The total number of required vehicles for the electoral operations amounted to 2,154. Until about ten days before polling, MEC had still a shortfall of some 700 station wagons and 346 trucks.

details of polling, it was completely lacking information on the tabulation and transmission of results. Although training was conducted according to the schedule, EU observers reported that it did not sufficiently focus on the filling of forms, on reconciliation and tally of results and dealing with unexpected issues, thus leading to serious problems during results tabulation.

Priority Recommendation 7: 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 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.

Until polling day MEC organised the electoral preparations transparently and was perceived by key electoral stakeholders at both national and local level as independent and credible. Nevertheless, the appointment of primary school teachers as POs and APOs, as per MEC guidelines, is considered by the majority of EU EOM interlocutors as having a negative impact on their neutrality, being government employees and appointed in the area where they usually reside and work, thus subject to political pressure and prone to be enticed by monetary means.

The dismissal by MEC of 48 POs and APOs in a certain constituency two weeks before polling for compromising their neutrality¹⁶ and the replacement of a CRO for inviting an MCP candidate into a meeting with presiding officers, as well as its instruction to traditional authorities and faith groups to desist from candidate endorsement,¹⁷ demonstrated a proactive effort to ensure the integrity of the process. The replacement of more than half of the POs and APOs in Karonga, Mulanje and Phalombe districts just a few days before polling, due to reports that they were not teachers, was justified and necessary but resulted in a shorter training being provided to the new staff which had an impact on their performance.¹⁸

Recommendation 8: MEC should consider mechanisms to strengthen the independence and integrity of Presiding Officers by making them less vulnerable to undue influence.

The operation of Multi-Party Liaison Committees (MPLCs) as an alternative dispute mechanism at District level was applauded by stakeholders, who overall expressed satisfaction with their role in addressing localised concerns, minimising risks of violence and resolving disputes. Nevertheless, their operation was not consistent across the country. Some met on a regular basis while others only convened when a complaint was filed.¹⁹ EU Observers also reported that a

¹⁶ Following investigations, MEC established that a DPP candidate for Chiradzulu East Constituency was distributing DPP branded bicycles to MEC polling staff, so that they would act favourably towards him.

¹⁷ In a letter addressed to the Local Government and Rural Development Ministry in March over the conduct of traditional authorities who were endorsing candidates, MEC emphasised to the traditional leaders that this was a violation of the Chiefs' Code of Conduct. (see Section V)

¹⁸ According to EU observers, DEC clerks of both Mulanje and Phalombe districts tried to select transparent and experienced senior grade civil servants for the positions of POs/APOs, who did not originate from the area where they were posted, for reasons of impartiality as well.

¹⁹ For instance, the MPLC in Nkhata Bay held only one meeting over the last three months before polling, in the first week of May, due to the lack of resources. The MPLC in Mchinji did not have a session since the start of the

lack of funding limited the role of MPLCs in some areas, such as Machinga, Karonga, Chitipa, Thyolo, Mangochi, Mulanje, Kasungu and Phalombe (see also Section V).

C Voter Education

MEC developed a new Civic and Voter Education (CVE) strategy implemented under the Malawi Electoral Cycle Support programme 2017-2019 and carried out a comprehensive CVE campaign. It accredited 187 service providers, such as road show promoters, drama and dance groups, local musicians and community cinemas to implement its activities, which were monitored by one Community Civic Voter Educator Assistant (CCVEA) per constituency. Activities were decentralized to community level engaging traditional leaders, religious groups, non-governmental organisations, teachers and also making use of town hall meetings and public spaces such as markets. MEC broadcast its public service announcements in Chichewa and also used sign language for its programming on national television and, to a lesser extent, during its activities in the field.

MEC also accredited 121 civil society organisations as implementing partners of CVE activities. Most activities were conducted by the National Initiative for Civic and Voter Education (NICE), funded by the European Union, which with a strong presence in the field with some 8,000 volunteers, was in a position to organise public debates with parliamentary and LGE candidates, training of traditional authorities and religious leaders on election issues and door to door information campaigns.²⁰ The Catholic Commission for Justice and Peace (CCJP) was also active. Nevertheless, as there was not a system in place for direct funding of these organisations by MEC or through the UNDP basket fund, and with limited financial support from other sources, very few other CSOs were able to conduct substantial programmes, and then mostly in urban areas.

Civic and voter education activities were perceived by several interlocutors as insufficient, especially during the voter registration period, which led to a number of voters believing they would be able to vote using the National ID only. Also, there was a relatively poor understanding of polling procedures among many voters, as reported by EU observers.

Recommendation 9: 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.

campaign, and the MPLC in Chikwawa held its first meeting only in the second week of May. Some though, like the MPLC in Zomba, were very active.

²⁰ Other organisations observed by EU observers were the Karonga Debate Club (KADEC), involved in an anti-violence campaign promoting the youth manifesto, and the Nchalo-based Youth Coalition for Consolidation of Democracy (YCD) which focused on Women Leadership & Empowerment and Female Candidates. The Catholic Commission for Justice and Peace (CCJP) was involved in civic education activities supporting women's participation in politics, as part of the 50:50 campaign.

VII. Voter Registration

The new process for voter registration has resulted in enhanced integrity of the voter register

A *The Right to Vote*

Eligibility requirements for the right to vote are overall consistent with the principle of universal suffrage. Pursuant to section 77 of the Constitution, persons eligible to vote are citizens of Malawi who have attained the age of 18 at the time of application for registration, or resident for seven years, and who are born or ordinarily residing in the constituency where they are claiming registration or are employed or carrying on a business there. Disqualifications apply for persons who have been sentenced to death by a court, or convicted of violation of any law relating to election. The latter criterion is imposed only for the elections in question and not for subsequent ones. There is an additional disqualification for persons declared mentally incompetent.²¹

B *Voter Registration*

Following the introduction of a mandatory national identification system for all citizens over 16 years of age in 2017 and the issuing of a free-of-charge biometric National Identity card, a new voter registration exercise was carried out by MEC between 26 June and 9 November 2018, with an obligatory 14-day period per phase.²² A public inspection process, during which transfers were also allowed, was conducted in four phases between 10 December 2018 to 9 January 2019, with a period of 5 days for each phase.²³ Registration turnout was high, with the final number of registered voters amounting to 6,859,570 or 79.5 per cent of the estimated eligible electorate.²⁴

While the Constitution establishes voter eligibility for citizens or residents who have attained the age of 18 on the day of registration, both the PPEA and LGEA establish eligibility for citizens who have attained the age of 18 on or before election day. MEC decided to follow the constitutional requirement, which resulted in a number of persons who turned 18 after the closing date for registration of 9 November 2018 but before the day of the election on 21 May 2019, not being able to register to vote.

Recommendation 10: 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.

²¹ This is not in line with international standards. See Article 2 of the Convention on the Rights of Persons with Disabilities and article 25 ICCPR; CRPD Committee, Concluding observations Spain (2011); CRPD Committee, Communication 4/2011, Zsold Bujdosó and others v. Hungary (2013).

²² Registration was also conducted in penitentiary institutions in all constituencies, with approximately 8,000 inmates registered to vote.

²³ MEC introduced voter verification using a USSD code on mobile phone networks by dialling*2019# which made things easier, time efficient and cost-effective. The possibility of transfer however, was too early in the process, five months before elections. As evidenced on polling day by the EU observers, this led to disenfranchisement of voters.

²⁴ Out of this, 3,813,578 are female voters and 3,045,992 are male.

The PPEA stipulates that a passport, driving licence, tax or marriage certificate, an employment identity card or a birth certificate may be accepted as proof for registration. However, in order to ensure the integrity of the register, MEC adopted a rigorous approach by accepting only the new NID cards as proof of eligibility. This was a major shift from previous voter registration exercises and it significantly contributed to the credibility of the new register, praised by all EU EOM interlocutors. In an effort to avoid disenfranchisement of applicants who did not possess an NID card at the time of registration, a National Registration Bureau was installed in every voter registration centre, so that prospective voters could complete the two processes simultaneously.

Voter registration data shows significant variances in the capture rate between Districts. For instance, while the national capture rate is 79.5 per cent, the registration rate (using census data from 2018) in some Districts is significantly lower, such as Ntcheu at 70 per cent, while in others the registration rate is significantly higher, such as Chikwawa at 94 per cent and Nkhotakota at 95 per cent. Numerous interlocutors raised concerns²⁵ that people in rural areas did not comprehend, due to insufficient or late voter education, that registration was necessary in order to be able to vote, even if they had an NID.²⁶ In an inclusive effort, MEC also registered some 8,000 inmates from penitentiary institutions in all Districts.

VIII. Nomination and Registration of Candidates

Problematic primaries, lacking basic rules and procedures, resulted in a record number of Independent candidates.

Nomination of candidates for the presidential, parliamentary and Local Government elections took place from 4 to 8 February 2019. There were very few issues and only a few prospective candidates were disqualified and these were for not meeting the requirements, such as missed deadlines.

However, the nomination of candidates followed problematic primaries, which took place from September 2018 to January 2019 and were reported to have had many shortcomings and were heavily criticised by stakeholders and local observer groups due to inadequate procedures, manipulation, intimidation and violence. Disgruntled candidates often chose to run as independents, instead of looking for legal redress or joining other parties. This resulted in the highest number of independents since the return to multi-party democracy in 2014. Civil society groups stressed the negative impact of the controversial primaries on the campaign environment and specifically on the participation of women and disadvantaged groups in the elections and highlighted the need for enhanced internal party democracy.²⁷

²⁵ This was reported to EU Observers in Karonga, Nkhata Bay, Kasungu, Salima, Lilongwe, Dedza, Mangochi, Zomba, Blantyre, Thyolo and Mulanje.

²⁶ During 2017-2018 four countrywide activities requiring registration were conducted, i.e. the Population and Housing Census, the SIM card registration, the NID registration and the voter registration. In addition, the introduction of the NID card that removed the need to use a voter's certificate as an identity document, also removed the incentive to register as voters.

²⁷ NICE Preliminary Statement on the Electoral Process

Recommendation 11: Political parties should reform their candidate selection procedures to guarantee integrity, inclusiveness and transparency in party primaries.

There were seven presidential candidates contesting the polls, but none was female and none of them had a female running mate.²⁸ A total of 1,327 candidates competed for the 193 parliamentary seats. Of these parliamentary candidates, 501 (38%) were independents, while the rest were nominated from among 13 political parties.²⁹ Of the 309 female candidates, 117 contested as an Independent. Out of the 193 constituencies, 44 had no female contestant. There were 2,064 candidates contesting the 462 local council seats. Of these, 645 (31.25 per cent) were female.

IX. Election Campaign

The elections were competitive with campaign freedoms largely respected, but marked by a degree of tension and misuse of state resources and handouts

All three electoral contests were highly competitive, with freedoms of movement, assembly and expression broadly respected. The presidential campaign dominated, with the three strongest political parties, the ruling DPP and the opposition MCP and UTM, conducting presidential campaign tours across the country and holding rallies and whistle-stops in the opponents' strongholds. Parliamentary and local government candidates campaigned primarily through small meetings and door-to-door canvassing and sought visibility by joining the presidential rallies. EU observers reported limited presence of opposition campaign materials and activities in some constituencies of Southern Region, the most populated area and the stronghold of the ruling party, partly due to suppression of their activities.³⁰ Tensions were also evident in strongholds of the DPP and MCP due to the competition posed by their disaffected members standing as Independents.

The official 60-day campaign period started on 19 March and ended 48 hours before E-day. In reality, however, campaign activities were ongoing since the end of 2018, with presidential campaigning partly overlapping the primaries.

The four major parties (DPP, MCP, UTM and UDF) launched their manifestos at big events in the Central Region during the first week of April.³¹ A series of presidential debates started on 29 March. President Mutharika did not participate in the debates and his party issued a statement

²⁸ Former president, Joyce Banda (PP), had initially indicated her intention to stand but renounced her candidacy in March 2019. One candidate was removed from the list by court order.

²⁹ The five biggest parties have 777 (58.4 per cent) candidates, while the remaining eight parties, including the historically significant AFORD, make up just four per cent of the total candidates.

³⁰ The suppression of opponents' campaign activities, such as the removal of party flags or the obstruction of some meetings, provoked violence in some instances, such as in Nsanje Central on 15 May and Chikwawa Nkombezi on 16 May. Opposition parties complained that party flags were removed, also in Blantyre, Mzuzu and Karonga.

³¹ All the major parties had similar campaign programmes, focusing mainly on corruption, food, security, education, health, infrastructure and development.

complaining about partisan elements in the organisation of the event.³² Similarly, a significant number of DPP candidates did not attend the public debates at constituency and ward levels.³³ Peter Mutharika was also the only presidential candidate not to sign the Peace Declaration on 4 May in Lilongwe, which was organised by the Public Affairs Committee (PAC). During the campaign it was also evident that civil society actors and some religious leaders were increasingly critical of the government.³⁴

The campaign was often dominated by personal attacks and mutual accusations between the contestants, particularly between President Mutharika and Vice President Chilima. Tensions significantly increased in the wake of “*rigging*” claims, notably by President Mutharika, though these were countered by stakeholders, including MEC³⁵. Other allegations were also raised by MCP and UTM. On different occasions, Lazarus Chakwera indicated that he would not accept a defeat unless the process was credible.³⁶ All this created an atmosphere of heightened political tension and uncertainty.

Cases of physical violence reportedly declined after the primaries, but increased again in the lead-up to polling.³⁷ The vandalism of campaign material by DPP, MCP, and UTM supporters persisted throughout the campaign period, resulting in some violent clashes.³⁸ EU observers confirmed that procedures for securing venues were not consistently followed by candidates as well as some public and civil officials in charge of approving campaign venues, leading to clashes between supporters of the opposition and the ruling party.³⁹ Further, the police were accused of partisan behavior and it was apparent that they intervened in incidents against the

³² The debates were well received, though commentators questioned their impact due to the limited media audience.

³³ The DPP did not participate in more than 60 per cent of the local debates observed by the EU EOM.

³⁴ For instance, on 28 April, the Nkhoma Synod of the Church of Central Africa Presbyterian, one of the largest churches in Malawi, issued a Pastoral Letter, read to congregations in over 200 churches, commenting on the upcoming elections by pointing at “*endemic corruption*,” “*politically motivated*” murders, and other forms of intimidation and violence under the current Government. The letter was seen by some stakeholders as a veiled endorsement of Lazarus Chakwera of the MCP.

³⁵ The claim was also refuted by the two cellphone service providers, as it was mentioned that the communication networks could be shutdown or hacked.

³⁶ On 27 April, at the MCP rally in Nsanje, Lazarus Chakwera stated “*Malawians of 2019 are not the same as those of 2014, who would end up carelessly allowing their precious vote to get stolen by the so-called rigging experts.*” On 4 May, while speaking at a rally in Lilongwe west, Chakwera said “*MCP will not accept another fraudulent announcement by the MEC favouring Mutharika and neither will you, the people. This time, the MCP will protect your vote*”. Similar statements were reiterated by different representatives of the MCP leadership.

³⁷ Reports by IFES and MESN.

³⁸ For instance, on 29 April in Karonga, UTM billboards were vandalised by DPP youth and UTM supporters subsequently destroyed DPP billboards, which escalated into a violent clash on 2 May, when UTM supporters attacked and damaged a DPP vehicle, leaving the driver unconscious. Similar cases were reported in Mzuzu, Nsanje and Chitipa.

³⁹ Reported to the EU EOM by Malawi Human Rights Commission observer teams. EU Observers in Thyolo reported on UTM complaints that the police blocked at least five of their meetings, falsely claiming that the venue was reserved for other parties. EU Observers reported also about cases of Traditional Authorities being in charge of approving venues instead of District Commissioners and the police. A positive example for tolerant and inclusive campaign has been Zomba city, where campaign activities and venues have been arranged between political parties, police and the District Commissioner at the MPLC regular meetings.

opposition but by-and-large not against the ruling party. As such, there was a widespread sense of impunity during the campaign.⁴⁰

The Code of Conduct for Political Parties and Candidates prohibits a broad range of activities, for instance the use of inflammatory or discriminative language, different forms of intimidation practices, the abuse of public resources by an incumbent for campaign purposes, the destruction of campaign materials and the blocking of campaign venues. It also guarantees equal treatment to all parties in the campaign, for instance through the procedures of notification of campaign activities. However, MEC did not fully use its authority to enforce compliance and impose sanctions and violations of the Code remained largely unaddressed. MEC was criticised by observer groups and opposition parties, for what they claimed was an inadequate response to violations of the campaign regulations.⁴¹

Recommendation 12: 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 sanctions so as to mitigate violations of campaign regulations.

Concerns were raised as to the role of traditional leaders in the campaign. Traditional leaders, including paramount chiefs, who are appointed by the government, were reported to play a partisan role. In November 2018, Traditional Authorities signed MEC's Code of Conduct for Chiefs, which requires them to stay neutral. The requirements however were formulated in an ambiguous way.⁴² MEC, to its credit, repeatedly spoke out on the negative impact of the involvement of Chiefs in the campaign, traditional leaders openly canvassed for parties and independents throughout the whole campaign period. Of 124 rallies and campaign events attended by EU observers, traditional leaders were reported as behaving in a partisan manner in 47 cases (38 per cent).

Recommendation 13: Effective measures should be introduced for monitoring and sanctioning of partisan behavior by Traditional Authorities, to help ensure the impartiality of public entities in the elections.

Abuse of incumbency during elections is a recurring problem in Malawi. There have been extensive reports indicating an unlevel playing field in the campaign, with the ruling party unduly benefiting from misuse of state resources, biased coverage in state media and the use of humanitarian aid, for instance distribution of maize, for campaign purposes. At the local level, incumbency was misused by many political parties and Independents in places where they held

⁴⁰ For instance, the police reacted to DPP reports about the presidential convoy being stoned in Lilongwe on 23 April 2019 with five arrests made swiftly by the next day. This contrasts with complaints from opposition parties against DPP supporters, where it is claimed police were less inclined to respond. The police have also been accused of overreacting by dispersing MCP demonstrators on 10 May in Lilongwe, including causing a serious injury to an MCP supporter.

⁴¹ NICE Preliminary Statement on the Electoral Process

⁴² For example, the Code requires Chiefs to agree to "refrain from (...) all forms of bribery and corruption" and "refrain from promoting violence."

office. Shortly before the elections, the Government paid approximately K830 million (c. EUR 1.1m) in honoraria and arrears to 42,000 Chiefs.

The Government also directed parastatals to enhance services in politically crucial areas.⁴³ Four weeks before the elections, the Government also promoted 20,210 primary and secondary school teachers and 8,602 police officers. The Civil Servants Trade Union accused the Government of unfair promotion, benefiting groups directly involved in the elections. Billboard spaces were reportedly reserved for the President in some cities and there were various billboards across the country linking government programmes and the president's campaign. Some internationally funded development projects were launched shortly before the elections and presented as governmental achievements.⁴⁴

The 2018 PPA, which prohibited the distribution of handouts and introduced regulations on party financing, for example the ban on donations from state-owned corporations,⁴⁵ remained unenforced. The Minister of Justice did not introduce the needed procedures to appoint the Registrar for Political Parties (see also Section V) and the office of the Registrar General, responsible for the implementation of the PPA during the campaign, reported to the EU EOM to not have the capacity and the resources to enforce the new campaign regulations, despite having received verbal complaints on handouts.

The office of the Registrar General also reported the lack of clear definitions and complaint procedures on handouts. Further, senior party officials as well as government representatives expressed scepticism about the enforcement of the Act, referring to “*handouts as an essential part of the Malawian culture and tradition.*”⁴⁶ EU observers reported the extensive use of handouts, such as the distribution of cash and in-kind payments in the campaign, and saw government vehicles used at several DPP and UTM rallies. Some candidates reported to the EU EOM that handouts accounted for almost half of their campaign expenditures.

Priority Recommendation 14: 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.

⁴³ For instance, the electricity connections to a Paramount Chief in Chikwawa (Southern Region) who hailed the government for the service. Also, in Kalonga, Salima an impromptu solar energy electricity programme, which has displaced some families, was launched in Kazembe village attempting to enhance support.

⁴⁴ For instance, the K2 billion agricultural project funded by the Japanese Social Development Fund through the World Bank was launched by government officials on 13 May in Ntchisi.

⁴⁵ On 16 April, Vice President Chilima of UTM publicly accused state bodies, particularly the Malawi Revenue Authority and Malawi Communications Regulatory Authority (MACRA) of diverting money as “*special operations*” to fund the DPP campaign. The Government denied the use of parastatal corporations and refuted accusations about the use of disaster relief items, including distribution of food aid, for campaign purposes.

⁴⁶ As stated by the Minister of Homeland Security in a meeting with the EU EOM.

X. Media

Key media institutions – MACRA and MBC – require reform to increase independence of state media and enhance overall regulation of media

A Media Environment

Malawi's media landscape has increased in diversity since the last elections. Following the expansion of the Zodiak Broadcasting Station, to include TV as well as radio, and the Times Group, to include radio as well as TV and newspapers, and the emergence of broadcasters such as Mibawa TV and Rainbow TV, the scope of national private news providers has increased in recent years, diversifying the media environment in Malawi. According to the Malawi Communications Regulatory Authority (MACRA), the country has nearly 80 licensed broadcasters at the moment.

The state-controlled Malawi Broadcasting Corporation (MBC) encompasses radio and TV and has the furthest reach. With an estimated 93 per cent coverage across the country it has an advantage over other broadcasters in terms of equipment, production, signal and expertise, something which was acknowledged by the organisers of the presidential debates which were broadcast by both state⁴⁷ and private media this year, albeit with the absence of the incumbent president.

Radio remains the most important news provider in the country. Newspapers (notably *The Nation* and *The Daily Times*) are costly in the local context and, contrary to broadcasters, are in English mainly. Reportedly, their circulation is in decline. Almost all broadcasters exclusively use English and Chichewa during primetime hours. MBC does offer news bulletins in minority languages, but not during evening peak times.⁴⁸ According to the Integrated Household Survey 2016-2017, published by the National Statistical Office (NSO) in November 2017, only 72.8 per cent of Malawians above 15 years is literate⁴⁹. This might indicate that a substantial part of the population possibly does not have sufficient access to the content of national media and emphasises the importance of community radio stations in the country.

The application of value-added tax impacts on media outlets, especially newspapers. Media houses have been advocating for tax reductions and exemptions. The financial situation of media houses in Malawi contribute to a well-embedded culture of journalists requesting and receiving money, for instance for transportation to attend political rallies. Interlocutors believe that this has the potential of compromising the work of professional and independent media.

Despite the limited penetration of internet and mobile phones in the country and low level of digital literacy overall, there is a growing number of predominantly urban youth using social

⁴⁷ This was the second time such debates have been held, but is the first time they have been broadcast by state media.

⁴⁸ Some campaign advertisements in Chitumbuka and Chiyao were noted by the EU EOM.

⁴⁹ NSO defines literacy as being able to read or write a letter in English or Chichewa.

media, such as Facebook and WhatsApp. Both traditional media and political contestants in the run-up to the elections made use of social media, which was unique since campaigning for the 2014 elections predominantly took place on radio. For example, for these polls broadcasters such as Times and Zodiak provided livestreams of the presidential debates on Facebook and YouTube.

EU EOM monitoring indicated that some of the larger online media outlets have a tendency of showing more bias, produce sensationalist stories and use more extreme language in their reporting compared to traditional media. Interlocutors also mentioned an increase in and widespread amount of unverified or fake stories circulating online, especially via WhatsApp groups, in the run-up to elections and afterwards. MACRA believes that it is necessary to come up with regulatory methods – which are fraught with operational and legal challenges - to survey such platforms and news providers, which are often run from abroad, but no proposals have been forthcoming as of yet in this regard. MACRA communicated that it is in contact with various stakeholders, such as Facebook, to assess how to counter the spread of fake news and target fake accounts in the future.

MEC urged media to be cautious with the publication of opinion polls, which, it claims, could undermine the credibility of elections. The EU EOM noted some apparently fake opinion polls online but experts say that such polls did not affect voting patterns in the country due to low internet access rates.

No problems were reported on the accreditation of media professionals covering the elections. In the run-up to the elections, MEC deployed stringers to the various districts to produce content on the electoral process, to be used free of charge by all interested media houses. This proved particularly interesting to community radio stations which covered elections at the local level but which operate with financial and logistical constraints.

B Legal Framework for the Media

The Constitution provides for freedoms of opinion, expression and the press as well as access to information. Despite the prevailing constitutional provisions and a wide variety of local and national media, and the fact that stakeholders expressed that they do not feel hampered or pressured in doing their work, a series of laws such as the Protected Flag, Emblems and Names Act (section 4), Censorship and Control of Entertainment Act (section 23) and provisions in the Penal Code (section 182), can be used to limit these freedoms. Further, defamation is still part of the Penal Code and, in line with international standards, should be decriminalised.

Recommendation 15: 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.

The Access to Information Act has been assented to by the president but is yet to become operational. It remains politically contentious, not least because some fear it could be used to increase transparency relating to political party financing and the misuse of state resources, among other things. There is currently no clear framework or deadline for the implementation of

laws which are assented to, meaning they can remain dormant and not actually implemented if there is not the requisite political will to do so.

Recommendation 16: The Government should ensure that the already assented to Access to Information Act enters into force.

The Electronic Transactions and Cyber Security Act (2016) includes provisions on the posting of offensive content, which can result in imprisonment. Article 24 allows for restrictions on online communications to “protect public order and national security”. The same article would also “facilitate technical restriction to conditional access to online communication”. Interlocutors say that the law, and its possible implications, have not been really tested until now.⁵⁰

The role of the media in elections is clearly elaborated in a number of laws and the MEC Code of Conduct for media during elections. Obligations on the provision of balanced or equitable coverage of the elections are set out in the Communications Act which obliges all licensed broadcasters to provide balanced or equitable coverage of elections. Private broadcasters aired paid-for campaign advertisements from political parties which could afford them, which had an impact on the degree of media presence each party enjoyed.

For the 2019 tripartite elections, MEC and MACRA set up an Election Broadcasting, Monitoring and Complaints Committee to handle electoral-related complaints against the licensed broadcasters (TV and radio). The Committee also included representatives of the Malawi Law Society, Media Institute of Southern Africa (MISA) - Malawi, Centre for Multiparty Democracy and Media Council of Malawi. The committee invited electoral stakeholders to lodge their complaints regarding alleged misconduct of broadcasters in the campaign period. The committee received just two complaints, one of which was filed by MCP regarding a UTM jingle aired on Zodiak Radio. The committee ruled that the content of the jingle was misleading and all broadcasters were instructed to stop airing it. The second complaint was on unfair coverage by a community radio station in the north of Malawi.

There is a persistent lack of trust in the impartiality of MBC⁵¹ and opposition parties increasingly rely on private broadcasters for the dissemination of their messages. The obligation for MBC to provide balanced coverage of the elections is set out in the PPEA and further elaborated in the Communications Act. The PPEA states also that MEC has the duty to ensure MBC is neutral in its reporting on the election campaign, though MEC did not assume this oversight role.

Recommendation 17: 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.

⁵⁰ In the campaign period, a man arrested for insulting the modesty of a woman also faced charges based on the Electronic Transactions and Cyber Security Act and related to cyber harassment and offensive communication, following the uploading of a picture of the president’s wife and a cartoon character on social media, insinuating resemblance of the two. The 31 May 2019 court case in Blantyre was been adjourned.

⁵¹ MCP has taken MBC and MACRA to court for what it claims is inequitable coverage. However, for the initial hearing in the High Court in Lilongwe on 23 May, none of the involved were present and the hearing was adjourned until further notice.

MEC facilitated the provision of airtime for all political parties, but pre-recorded campaign messages for transmission via MBC were only submitted by a few parties. MBC contends it has difficulties in providing balanced coverage when parties boycott the broadcaster. MACRA monitoring results confirmed the MBC bias in its coverage.

On Friday 7 June 2019, MACRA issued a statement in response to the post-election protests, suspending all phone-in programmes with immediate effect until further notice. In the statement MACRA asserted that it would not hesitate to “invoke regulatory sanctions to any broadcaster that deliberately breaches ... the law”. This stance, which is very much at odds with MACRA’s failure to ensure adherence to laws relating to MBC coverage of the election, was criticised by MISA Malawi for being unwarranted and a violation of media freedoms.

In 2014, the EU EOM to Malawi recommended to have the boards and directors general MBC and MACRA appointed by the National Assembly, in order to enhance their independence. In the Communications Act of 2016, the appointment process was altered, but only in a minor way and such that the removal of political influence on the appointment process cannot be fully guaranteed. Board members are, following presidential appointment, confirmed by the Public Appointment Committee of the parliament. The president assigns the chairpersons. Therefore, the role of MACRA as an independent authority controlling the performance of broadcasters such as MBC is potentially compromised. Independence and impartiality of both MBC and MACRA could be increased by the removal of presidential powers all-together and consequently public trust in both organisations may be enhanced. In parliament there seems to be a lack of will to make such changes as influence on both organisations is attractive to whichever party is in power.

Recommendation 18: Revise the 2016 Communications Act and remove presidential powers in the appointment of Malawi Communications Regulatory Authority board members in order to enhance the independence of the media regulatory authority.

C Media Monitoring Findings

The EU EOM monitored MBC TV and Radio 1, Zodiak TV and Radio, Times TV and Radio, Capital Radio, Galaxy Radio and *The Daily Times* and *The Nation* newspapers.⁵²

Media dedicated the majority of its coverage to the presidential and parliamentary elections rather than the local elections, and focused predominantly on DPP, MCP, UTM and to a lesser extent UDF. Collectively, monitored broadcasters dedicated 72.4 per cent of their election-related content and monitored newspapers 74.8 per cent of their election-related space to the presidential elections.

EU EOM media monitoring shows that MBC TV and MBC Radio 1 were overtly biased in favour of the ruling party in their primetime election-related coverage. For example, MBC TV dedicated 87.6 per cent of its primetime political party content to DPP and just 6.6 per cent to MCP. On MBC Radio 1, the time allocated to DPP was 86.8 per cent compared to 6.2 per cent for MCP, while other parties and candidates received an insignificant amount of airtime. Bias in

⁵² TV and radio were monitored on a daily basis during primetime hours, 17:00 to 21:00, from 17 April to 18 May 2019. Daily newspapers were monitored from 18 April until 18 May 2019.

MBC's talk shows, and a lack of a critical and pluralistic approach generally, were evident. EU EOM monitoring results show that of all instances of positive tone (advertisements excluded) registered on the broadcasters, a vast majority occurred on MBC TV and Radio 1 and was almost exclusively linked to content on DPP (66 times and 54 times respectively).

Zodiak TV gave more space to MCP (33 per cent) and UTM (31.5 per cent) over DPP (15.5 per cent). However, a substantial amount of this content was generated via advertisements by MCP and UTM. The advert-free content on this channel was distributed between MCP, UTM, DPP and UDF. Zodiak Radio attributed most space to MCP (41.7 per cent), UTM (36.8 per cent) - and with over 90 per cent of political advertisements in primetime hours coming from these two parties - and to a lesser extent DPP (11.4 per cent). Smaller parties received negligible coverage.

Times TV and Radio attributed most time to MCP (41.1 and 42.2 per cent respectively) but also gave time to UTM (22 and 17.5 per cent), DPP (14.7 and 2.9 per cent) and UDF (7.5 and 8.7 per cent). Smaller parties, such as UP and MMD, also received airtime on Times channels. Advertisements on both Times TV and Radio came almost entirely from MCP and UTM.

Capital Radio provided reasonable amounts of airtime to a variety of parties, including UTM (22.5 per cent), UDF (12.7 per cent), DPP (10.7 per cent), TPM (9.2 per cent) and DEPECO (4.6 per cent) but attributed 37.4 per cent of airtime overall to MCP. The amount of space allocated to advertisements was negligible. Galaxy Radio showed bias towards DPP (67.2 per cent) in its election-related coverage and mainly focused on the four main political parties, with some space also given to AFORD. All political party advertisements on this broadcaster came from DPP.

The Nation and *The Daily Times* newspapers gave more space to the ruling party (54.7 per cent and 42.9 per cent respectively), but attributed space to a wide variety of parties in general. However, the vast majority of content in both newspapers was generated by articles on DPP, MCP, UTM and UDF. It was noted that newspapers on occasion used sensationalist and even provocative front-page headlines. Political advertisement in both newspapers was limited and reportedly of less significance compared to earlier elections. This could be linked to both the increase in electronic and digital media and the general declining influence of the print media in Malawi.

Female parliamentary candidates received a reasonable amount of media coverage. Monitoring showed that 16.9 per cent of election-related coverage on radio and television and 35.4 per cent in newspapers was dedicated to female candidates.

XI. Participation of Women

Despite an increase in the number of women elected to parliament their participation in political life remains relatively low and women faced obstacles during party primaries and the campaign

The Constitution provides for gender equality through full participation of women in all spheres of society on the basis of equal opportunities and non-discrimination. However, there are no enabling mechanisms established to increase women's representation in parliament, local

councils or in the electoral process. For instance, the 2018 PPA only stipulates that political parties should comply with the principle of gender equality in appointments “*in so far as it is practicable*” and to “*endeavour to achieve fair gender representation*” in candidate nominations. The Gender Equality Act (2013), adopted to strengthen the implementation of CEDAW through domestic legislation, sets quotas in appointments to Public Service under certain conditions, but, given the lack of any enabling mechanisms, the aspiration of women’s representation remains unfulfilled.

Despite the introduction of a 50:50 campaign in 2009, the number of women elected to parliament declined.⁵³ In the 2014 Parliament and Local Councils, women comprised 16 and 11 per cent respectively. Given this negative trend, a number of measures to increase women’s participation were introduced prior the 2019 elections. For instance, MEC halved the nomination fees for women and the 50:50 Campaign set a new ambitious programme to financially and legally support women aspirants. However, despite the fact that women comprise 56 per cent of the registered electorate, there were no female presidential aspirants and women constituted 24.52 per cent of the parliamentary candidates and 31.25 per cent of the candidates for local government elections. Thus, despite improved numbers of women elected in 2019 compared to 2014, Malawi is still well behind its commitments to equal opportunities.

The gap between the participation of women and men in Malawi’s political life can be attributed to traditional, patriarchal, cultural and socio-economic barriers, among other things. An additional factor impeding women’s political participation are undemocratic procedures during primaries.⁵⁴ The 50:50 campaign’s findings on the primaries concluded that there were “*systematic efforts towards barring women from actively participating in leadership positions.*”⁵⁵ EU observers reported on the lack of financial resources as an obstacle to women’s participation⁵⁶.

Positively, during the campaign political parties and candidates addressed female voters “*as a key constituency*” and a “*most influential voting bloc.*”⁵⁷ The public reaction to an incident in Mangochi in January 2019, when a female supporter of UTM was stripped by DPP cadets, brought the topic of election violence against women high on the agenda and the subsequent

⁵³ There were 43 women elected to parliament in 2009 and only 32 in 2014. The 50-50 campaign, which targeted “*improved participation and representation of women in leadership*” was implemented by the NGO Gender Coalition Network in liaison with the Ministry of Gender, Children, Disability and Social Welfare.

⁵⁴ For instance, EU Observers noted that female candidates were more successful in primaries in areas where they do not have a good prospect to win. The Districts with the lowest numbers of female contestants (and highest numbers of constituencies without any female candidates) are Mangochi, Machinga, Mzimba, Ntcheu and Chiradzulu, where primaries were reportedly marred by interference from party leadership to impose preferred candidates. Out of 28 Districts, only in Nsanje, Neno, Mwanza, Ntchisi and Likoma did women contest in all parliamentary constituencies.

⁵⁵ 50:50 Campaign: Preliminary Statement of the Joint Domestic Gender Delegation Team on May 2019 Elections. See also 50:50 Campaign: Preliminary Observation Report of the 2018 Primary Elections in Malawi.

⁵⁶ Some interlocutors cite a lack of financial resources for the fact that only two of the 30 complaints reported to the 50:50 Campaign by female aspirants during the primaries reached the court.

⁵⁷ For instance, in speeches of MCP presidential candidate Lazarus Chakwera and PP’s President Joyce Banda. Also, religious leaders appealed to women to “*believe in their own right and vote accordingly.*” For instance, Bishop Mtumbuka, Karonga Diocese, at Mass on 16 April, directly called on women to understand their marginalisation in society and to vote for people who will help free them from the trap of poverty in which they live.

“women’s marches” against such violence were cited to have contributed to a decline in electoral violence generally.⁵⁸ A MESN report on Violence against Women, though, still identified cases of psychological intimidation and defamatory language against female aspirants.⁵⁹

There are 44 women elected in the new parliament, 12 more than in 2014.⁶⁰ However, eight of the 28 districts are without a single female MP.⁶¹ The distribution of elected female MPs shows that women were most successful in the big cities and less successful in some party strongholds, such as Thyolo, Ntcheu and Dowa, reflecting the obstacles women faced during party primaries.

Priority Recommendation 19: 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.

XII. Participation of Persons with Disability and Other Vulnerable Groups

Efforts were made to enhance participation for persons with disability as voters and candidates

Malawi ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2009. According to the 2008 Population and Housing Census Report, the rate of persons with disabilities (PWD) in the country is just 3.9 per cent, or some 498,000, which may be an underestimation given that the global disability figure is 15 per cent per country. Several factors are hindering the participation of PWD as voters or candidates, such as lack of resources for transportation to polling centres, discrimination when running as candidates, lack of funds for campaigning and the inaccessibility of public spaces. Under Section 17 of the Disability Act (2012), the government is obliged to create a conducive environment for PWD to effectively exercise their political rights, by ensuring that voting procedures, facilities and materials are appropriate and easy-to-use. In accordance with the CRPD, the Parliamentary and Presidential Elections Act foresees that a voter with a disability may be “accompanied by another registered voter of his (sic) own choice”, or by a polling station officer who shall assist him/her to vote.

Although there are no provisions in the electoral law mandating MEC to put in place special measures to promote the participation of PWD, and MEC did not keep any statistical data regarding PWDs during voter registration, it still demonstrated a proactive and inclusive approach by lowering the candidate nomination fees for PWD, developing voter education activities and materials to address their needs, providing tactile ballots in polling stations and underlining during the training of polling staff, the priority for people with disabilities in the queue on Election Day.

⁵⁸ Women’s marches took place in Blantyre and Lilongwe, ending in petitions to the Government in both towns.

⁵⁹ 2019 Tripartite Elections: Pre-Election Observation Report IV 24 March to 7 April 2019.

⁶⁰ The recovery from the drop in 2014 can be attributed to a great extent to the 50:50 Campaign. Despite criticism in some areas, the Campaign significantly increased the awareness of women’s participation.

⁶¹ Four in the North, two in Central and two in Southern Region.

Disability organisations have expressed their satisfaction with MEC, as being receptive to their requests and developing voter education activities and materials to address their needs.

Recommendation 20: 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.

Persons with Albinism in Malawi face grave security concerns and have been victims of a number of targeted killings. Only a few persons with Albinism contested the elections and some of these alleged discrimination during the party primaries. One was elected as councilor in Thyolo West. Following requests from associations of persons with Albinism, MEC issued instructions that they be given priority in the voting queue on election day in order to accommodate vulnerabilities and to alleviate security concerns.

Internally displaced persons (IDPs) in the Districts where the electoral infrastructure was damaged due to flooding⁶² were able to exercise their right to vote even if they had lost their voter registration certificates, as long as their name was included in the Voter Register. Nevertheless, information to the lower level MEC officials on how the IDP voting was to be organised was poorly communicated. Satellite polling stations were created where required, mainly in the largest IDP camp in Chikwawa district, with some 2,400 registered voters, though the EOM was informed that many IDPs apparently returned home for voting.

XIII. Civil Society and International Observation

The deployment of thousands of citizen observers enhanced transparency and accountability

The elections were observed by numerous national organisations, including the Malawi Electoral Support Network (MESN) and the National Initiative for Civic Education (NICE), which both undertook large-scale election observation activities. MESN, observed voter registration and also conducted a parallel vote tabulation (PVT) exercise of presidential election results, while NICE deployed 462 roving observers and 5,002 short-term observers. NICE also deployed two observers per constituency during tabulation at the Constituency Tally Centers. EU Observers reported domestic observers were present in over 80 per cent of polling stations visited.

Criticism was voiced by some groups over MEC's request for them to disclose their deployment plans when submitting their requests for accreditation, which could have potentially compromised the PVT methodology. In addition, the decision of MEC to classify accredited CSOs as observers rather than monitors, which had been the practice during previous elections, led to NICE and other civil society organisations challenging the decision as diminishing their role and being, in their view, contrary to the law. Unfortunately the PPEA and LGEA are rather vague and inconsistent on this matter.

⁶² These are the southern Districts of Thyolo, Chikwawa and Nsanje; about 215,000 people have been affected.

XIV. Polling, Counting and Tabulation of Results

An overall well-organised election day, but management of results tallying was poor and affected confidence in the process

A Overview of Opening and Voting

For the purpose of the elections 5,002 polling stations were created across the country, an increase of 557 compared to 2014. Polling stations with more than 800 registered voters were sub-divided into polling streams, and there were a total of 11,095 streams for these elections.

Although key operational challenges remained until a few days before polling, in the end the opening and voting process did not face major problems. Most polling stations opened on time or with a relatively short delay, as EU observers reported. The presence of party and candidate monitors was noted in 99 per cent of polling stations visited and citizen observers in 81 per cent. In 14 per cent of polling stations visited, voters were turned away because their names were not on the voter register, and in many such cases the prospective voters believed that their NID card was sufficient to cast their ballots. MEC's decision taken on the eve of the polling for observers and monitors on duty and for students on polling day, to allow them to transfer their right to vote, was very late in the process. The decision put pressure on the lower levels of election administration, as it was not properly communicated at polling station/stream level leading to the procedures for transfer not being applied in a consistent manner throughout the country.

Voting proceeded throughout the day in a calm and orderly manner. Procedural problems were noted in 4 per cent of polling stations visited, such as not properly checking for ink, party monitors not given a copy of the voter register and serial numbers of seals not registered due to alleged non-delivered record logbooks,⁶³ but these did not adversely affect the overall integrity of the polling. The secrecy of voting was compromised in 12 per cent of polling stations visited, mainly due to poor layout. EU observers reported that polling stations were accessible for PWD in 94 per cent of places observed and that in most cases PWD and others requiring assistance were provided appropriate support, including queue priority. Tactile ballot papers were present in most polling stations. EU EOM observers assessed the overall environment for polling as very good or good in 98 per cent of polling stations visited.

B The Vote Count

The vote count was transparent, with party monitors present in all polling stations observed, while citizen observers were present in 25 out of 32 polling stations. Nevertheless, it was assessed as bad to very bad in 12 out of 32 polling stations observed during counting, mostly due to inconsistency in following procedures and problems with reconciliation and completing the results sheets. Counting continued across the country throughout most of the night, in difficult conditions such as poor light and inadequate premises. Problems with ballot reconciliation and in completing the results forms were noted in 19 and 16 polling stations, respectively, out of the 32

⁶³ The pre-printed Record Logbooks had been packed together with the ballot papers. As explained by MEC, some POs/APOs did not properly search all packs with ballot papers in order to find the Record Logbooks.

observed. The proper procedures were not followed in 15 out of 32 polling stations where EU EOM teams observed, which also includes inconsistent and random decisions about null and void votes.

C Tabulation of Results

Data entry of the polling station result sheets and transmission to the National Tally Centre was done at the 197 Constituency Tally Centres (CTCs) established throughout the country,⁶⁴ while at district level only manual aggregation of the presidential election results of the district was taking place. In each CTC, the result sheets were first scanned and then electronically captured through a double-blind data entry process. Automatic triggers established in the data system detected aggregation errors and would not allow submission in the system until correction. Furthermore, some 200 external auditors were recruited by UNDP to verify the data, one in each CTC, while an international team of six was positioned in the National Tally Centre.

EOM teams observed tallying in 71 CTCs. Although the majority of tabulation teams attempted to carry out their duties in a professional manner, major shortcomings affected their functioning, obstructed the prompt delivery of results to the National Tally Centre, damaged MEC's reputation and led to many questioning the integrity of the process.

First, the counting of ballots was marred by a grave procedural omission in most polling stations - the non-reconciliation before opening the ballot boxes - which directly impacted the tabulation. In all CTCs observed, the vast majority of result forms contained numerical discrepancies in the figures given for the total number of ballot papers received, cast, unused, valid, cancelled and spoilt as well as null and void. Consequently, the results could not be entered into the database, which was programmed with zero tolerance for arithmetic errors.

Secondly, the unpreparedness of presiding officers to accurately complete forms with balanced figures and their poor understanding of the procedures, and an inability to perform simple arithmetic operations, significantly slowed down the process and opened it up to substantial error and accusation. Thirdly, the use of the correcting fluid Tipp-Ex – which MEC asserted had not been provided to polling staff - over many result sheets to the point they became indecipherable fueled allegations of rigging. Finally, the extent of the faulty reconciliation figures in connection to the strictness of the software, led MEC to loosen its own procedure by instructing, on the second day of tabulation, the CROs to alter the reconciliation figures of the statistical section of result sheets without changing the result of the count, in order for them to be admitted into the system.

Nevertheless, EOM observers overwhelmingly reported that it was the reconciliation figures which were altered while the numbers of votes per candidate were not tampered with.⁶⁵ Within

⁶⁴ The reason for the set-up of 197 CTCs against the 193 constituencies is the overlap of some wards within a constituency in another local council (in Lilongwe City North, Blantyre City and Mangochi Town constituencies and one at Luchenza Municipality ward).

⁶⁵ Only the EOM team in Thyolo mentioned that in Thyolo East constituency the Polling Equipment Operators and the external auditor were purposely falsifying the results obtained, not by favouring any party but by ensuring that the numbers were adding up, sometimes at the expense of candidates who lost some votes.

this chaotic tallying process, the external auditors played a major role at constituency level in balancing the result sheets, and their presence was positively evaluated by all stakeholders. On the contrary, the limited understanding of the reconciliation problems and the tally process in general by party and candidate monitors, prevented them from efficiently performing their role and led to disturbances, delays and unnecessary rigging accusations. During or upon completion of the tabulation process, several complaints were filed by parties and candidates against the process itself or the results announced.⁶⁶

With the exception of the tally centres in Rumphi West and North constituencies, where the presence of armed security forces inside was assessed as intimidating (by blocking the doors, forbidding mobile phone usage, and restraining monitors from raising questions or demanding access to original result sheets), the general atmosphere was calm and cooperative, although poor lighting and layout were often not conducive to the transparency of the process.

The EU EOM considers that the major shortcomings which affected the tabulation process were a direct consequence of fatigue, poor working conditions, a lack of capacity, poor judgement, inadequate training⁶⁷ and pressure of time.

Priority Recommendation 21: Provisions for an additional Presiding Officer in each polling station to oversee the conduct of counting and tabulation should be considered.

D The National Tallying of Results

Based on the flow of information from constituencies to the national tally centre, the new electronic results transmission system worked well. The Parliamentary and Presidential Elections Act provides for the publication by MEC of the national result of the elections within eight days from the day of polling. In the afternoon of 27 May, the MEC Chairperson announced the presidential results. The next day, MEC began gradually uploading to its website presidential, parliamentary and local government results with a breakdown by district, constituency, ward and polling station, and also included the scanned original MEC POLL066a, b and c result sheets. By 3 June, all results had been published by polling station for all election types.⁶⁸

MEC gave frequent press conferences at the National Tally Centre to progressively announce the results as well as to explain the problems encountered and an overview of the complaints filed. Results were shown on big screens, though only indicated from which districts results had been received. MEC shared scanned copies of the polling station result sheets with all political parties present at the National Tally Centre, to enable them to compare against the ones their monitors

⁶⁶ EU observers reported that complaints related to counting and tabulation process were lodged in Nkhata Bay, Lilongwe, Dedza, Mangochi and Machinga districts and in Ntcheu North East and Chiradzulu constituencies.

⁶⁷ In a few districts, namely in Karonga, Mulanje and Phalombe, the last-minute replacement of the presiding/assistant presiding officers and a shorter training provided to the new ones also had an impact on their performance.

⁶⁸ Until 13 June MEC had not released results pending investigation for the Local Government elections in two wards, in Ngokwe Ward in Machinga South East Constituency and Mkumbiza Ward in Mulanje Bale Constituency.

obtained at the polling stations, and lodge a complaint in case of disparities.⁶⁹ However, the organisation and the layout of the premises at the National Tally Centre was not conducive for party monitors and observers to closely follow the process.

E Analysis of the Published Results Sheets

With a turnout of 74.44 per cent, the null and void ballots represent 1.5 per cent, with variations from 0.4 per cent to 4.0 per cent in Lilongwe Msinja South, 4.6 per cent in Lilongwe South, 4.5 per cent in Mangochi East and 5.1 per cent in Mulanje North constituencies.⁷⁰ However, there were polling stations in rural areas with zero null and void ballots, which is unusual as the number of illiterate voters is higher.⁷¹

The EU EOM checked all of the 5,002 scanned result sheets of the Presidential election published on MEC's website. It was noted that Tipp-Ex was fairly widely used, appearing on results sheets from polling stations across 25⁷² of the 28 Districts, largely in tidying up the reconciliation part of the result sheets.

A total of 466 Presidential election result sheets contained Tipp-Ex on the reconciliation part, with the Southern Region having the highest number with 232 result sheets, followed by Central Region with 182 and the Northern Region with 52. A total of 41 result sheets were marked with Tipp-Ex on the candidates' votes part⁷³ while 135 contained Tipp-Ex on both reconciliation and candidates' votes parts.⁷⁴ This means that, for the presidential election, Tipp-Ex was only used on the actual results part of the sheet in 176 of the 5,002 polling stations, which is 3.5 per cent.

XV. Electoral Disputes

Legislative provisions and deadline for election disputes need to provide more certainty and coherence

A Pre-Election Disputes

Complaints on all aspects of the electoral process can be filed with MEC, except for complaints on voter registration and on polling which can be filed with the registration officer or polling staff respectively. Any MEC decision on complaints can be challenged to the High Court, which

⁶⁹ At the National Tally Centre, the EU EOM observed that MCP monitors were actively comparing their own copies of the polling station return sheets against those provided by MEC.

⁷⁰ These percentages of null and void ballots are excessively high for the simple FPTP electoral system.

⁷¹ For instance in Salima South constituency, where in the polling stations Ngodzi School, Thuguly School and Chimbwira School with a total of 7,407 ballots cast for both presidential and parliamentary elections, there is not a single null and void ballot. Yet in Chimsolo School at the same constituency, there are zero null and void ballots for the Presidential election and a win for the DPP candidate, whereas for the Parliamentary election results there were 35 null and void ballots and again a win for DPP with 534 votes and a loss for MCP candidate with 503 votes..

⁷² Tipp-Ex was not used at all at Presidential election result sheets at Likoma Islands in the Northern Region and Mwanza and Neno Districts in the Southern Region.

⁷³ Out of which, 4 results sheets are from Northern Region, 13 from Central and 24 from Southern Region.

⁷⁴ Out of which, 18 results sheets are from Northern Region, 59 from Central and 58 from Southern Region.

can also conduct judicial review of MEC's exercise of its powers and functions with regard to compliance with the law⁷⁵.

The law does not establish any deadline for filing and adjudicating election related disputes or for appealing MEC decisions to the Court, with the sole exception of challenging MEC decisions on results at the High Court within seven days⁷⁶. The absence of deadlines undermines both legal certainty and the right to a timely and effective legal redress.

In the pre-election period, MEC referred all complaints to the Multi-Party Liaison Committees (MPLCs) at District level⁷⁷. Their operation as an alternative dispute resolution mechanism was supported by stakeholders, who expressed satisfaction with their role in addressing localised concerns, minimising risks of violence and resolving disputes. Nevertheless, their operation was not consistent across the country. Some met on a regular basis while others only convened when a complaint was filed. EU Observers reported that a lack of funding limited the role of MPLCs in some areas, such as Machinga, Karonga, Chitipa, Thyolo, Mangochi, Mulanje, Kasungu and Phalombe. Moreover, as MPLCs remain an informal mechanism, it is questionable whether procedural safeguards ensuring due process are in place and whether a timely resolution of complaints was achieved in all instances.

Recommendation 22: 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..

B Post-Election Disputes

Both the PPEA and the LGEA state that at the beginning of determination of results, MEC shall take a decision on any matter that has been a subject of complaint. Written records of results must include the complaints filed, responses and relevant decisions. The results announced by MEC can then be challenged to the High Court within seven calendar days from the announcement.

MEC announced on 24 May that it had received a total of 147 complaints for all three elections. It later transpired that this number was only an estimation. MEC displayed a lack of organisation with regard to reception and categorizing of complaints, in spite of an increase in the number of Legal Department personnel. MEC has continued the classification of complaints for weeks after the announcement of results. Two of these complaints pertained to presidential elections. The EU EOM is aware of some 180 complaints on parliamentary elections, although the actual number is higher. Irregularities invoked include breaches of campaign silence on election day, distribution

⁷⁵ Judicial review is conducted upon application of an interested party within 90 days of a MEC decision. As such, it is a procedure not suited to an election process.

⁷⁶ Regulations on complaints handling by MEC establishing certain deadlines for adjudication were drafted, but they were not published in the Official Gazette and therefore did not enter into force.

⁷⁷ MPLCs consist, among others, of political party representatives, a District Commissioner, police, civil society and traditional leaders. MPLCs have been part of the electoral architecture since 2000 and function as an informal forum for conflict prevention and resolution and for the planning of campaign activities.

of handouts, altered tally sheets, refusal to provide party monitors with results and alleged discrepancies in tally sheets.

Some plaintiffs alleged that they did not receive responses to their complaints from MEC. It later transpired that MEC issued decisions in writing, but it is unclear whether plaintiffs were notified in a timely or consistent manner; though it also has to be acknowledged that several complaints were too vague or not sufficiently corroborated. MEC's communication shortcomings on complaints, and how they were dealt with, reduced to some extent stakeholder confidence and gave an impression that the results had been announced without complaints being fully resolved, contrary to the categorical assurances of the MEC Chair that this would not be the case.

Twenty petitions on parliamentary elections were filed with the High Courts in Blantyre, Lilongwe and Mzuzu. These were submitted by candidates of UTM, MCP, DPP, AFORD, PETRA and some independents, contesting the outcome in their respective constituencies.

C High Court-Petitions on the Presidential Election

MCP and UTM filed complaints with MEC on the presidential election results. MCP requested that the announcement of results be suspended until alleged irregularities in seven districts were resolved. Invoked irregularities ranged from results recorded in unofficial or duplicate tally sheets, altered sheets and incorrect entries to denial of copies of results to party monitors and arrests of a CRO and a PO for allegedly tampering with results. MEC's response concluded that after investigations only one of the irregularities was confirmed, which was the submission of incorrect results for one polling station in Mulanje.

On 25 May, the same day MEC issued a response dismissing the complaint as unfounded, MCP filed a petition for judicial review with the High Court in Lilongwe on the same arguments, asking also for an injunction to stop the announcement of results, which the Court granted. The Court also directed MEC to conduct recounts in ten districts before announcing results.

As previously stated, legislation allows for judicial review of MEC's exercise of its powers and functions to ensure that its actions are in compliance with the Constitution and relevant laws. However, the general provisions in the High Court Civil Procedure Rules on judicial review are conflicting with the specific ones on election petitions contained in the very same Rules, both with regard to deadlines as well as procedural aspects. The current architecture of judicial review of MEC decisions co-existing with specific provisions on election petitions appears to allow for a parallel jurisdiction, which may lead to inconsistent rulings or derail the post-election process.

The injunction was challenged before the High Court by MEC, both on procedural and substantive grounds. MEC claimed that since there was no decision yet on the results, the MCP application was premature and could only be filed after the announcement. It also claimed that the petition and the order for recounts were in conflict with the legal deadline of eight days. On 27 May, the Court lifted the injunction in order to allow MEC to comply with the PPEA deadline. It mentioned, however, in its ruling that the case was still subject to judicial review on its merits, and it accepted that the Court had the competence to review decisions and actions of MEC even at that stage before the announcement of results.

Following the announcement of results, both UTM and MCP filed petitions with the High Court in Lilongwe requesting the annulment of the presidential election. The two petitions were consolidated to a joint hearing. According to the Civil Procedure Rules of the High Court⁷⁸, the date of the hearing must be set within 13 days at most from notification of the respondent and a decision must be delivered within 14 days following the hearing. These deadlines present two problems: if all deadlines, including the PPEA deadline for filing with the Court, were to be exhausted, the conclusion of an election petition could take 34 days, which conflicts with the constitutional provision of swearing-in of the President within 30 days. Furthermore, since the High Court deadlines are only triggered upon the issuance of summons by the Court for which there is no deadline, in practice the adjudication of election petitions could take an indefinite period of time.

***Priority Recommendation 23:** Legislation regulating resolution of election disputes should be amended to establish coherent, clear and distinct stages with regard to competent bodies, their respective jurisdiction and to deadlines.*

The President was sworn-in on 29 May, just two days after the announcement of results by MEC (see Section XV) and before the deadline for disputing the results to the High Court had expired. This was in compliance with the constitutional provision on taking-up office, which foresees the swearing-in anytime within 30 days of the announcement of results, but regrettably undermined the right to an effective judicial redress and also exacerbated political tension (see Section XV). The court case on the outcome of the presidential election, brought by two opposition parties, was scheduled to be held on 29 July 2019⁷⁹.

***Recommendation 24:** 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.*

XVI. Results and Post-Election Environment

Disputed presidential results followed by deterioration of political environment and protests

On 27 May, the Chair of MEC released the final presidential results declaring the incumbent, Peter Mutharika of DPP, President-elect with 38.57 per cent of the total votes cast (1,940,709). The main opposition candidate Lazarus Chakwera of MCP received 35.41 per cent of the vote (1,781,740), while former Vice President Saulos Chilima of UTM finished third with 20.24 per

⁷⁸ Amendment introduced in 2017 with the aim to set deadlines for the adjudication of electoral matters before the High Court.

⁷⁹ The EU EOM Final Report was completed prior to the court hearing on the substance of the complaint at the end of July 2019.

cent (1,018,369).⁸⁰ Thus, despite the improved performance of MCP in all three races, President Mutharika won with a margin of 158,969 votes.⁸¹

In the new parliament, DPP won 62 seats, MCP 55, Independents 55, UDF ten, PP five, UTM four and AFORD one. 132 incumbent MPs were voted out. Parliamentary results confirmed the traditional patterns of regional voting, with DPP retaining its power in the South,⁸² MCP in Central,⁸³ and no party prevailing in the North.⁸⁴ Local Government results largely mirrored the balance of power between DPP and MCP in the presidential and parliamentary races.⁸⁵

Hours before MEC's first announcement of partial presidential results on 22 May,⁸⁶ Chakwera gave a statement claiming that MCP was leading across the country, but there were plans by the ruling party to manipulate the results. He added he was ready to shed his blood to protect the Constitution of Malawi. The statement found a broad resonance among MCP supporters, generating some isolated protests and celebrations, but was criticised by other political parties and stakeholders for putting "*undue pressure on the electoral body*" and precipitating violence.⁸⁷

Tension and uncertainty increased after the second announcement of partial presidential results on 23 May,⁸⁸ which showed a lead of five per cent for President Mutharika. Reports of irregularities during the counting and tabulation process were used by the opposition to question the credibility of the results, with MCP seeking a court injunction to prevent MEC from declaring results before a recount in ten districts was undertaken and UTM issuing a statement demanding the nullification of the aggregated results and the resolution of the complaints filed to MEC.

MECs application for the lifting of the injunction was seen by political and civil society actors to be in contradiction with the statements of the MEC Chair, who had previously repeatedly assured that "*The Commission will only release the results that have no queries or complaints lodged against them.*"⁸⁹ PAC appealed to MEC "*to exhaust all outstanding issues*" before releasing the results and reminded political parties of their commitment to the *Lilongwe Peace Declaration* signed on 4 May. While the country stayed generally calm, there were protests in some parts of

⁸⁰ Saulos Chilima performed best in the Northern region, where he secured 46.56 per cent of the votes.

⁸¹ The MESN Parallel Vote Tabulation (PVT) report confirmed that MEC's official presidential results are consistent with its PVT projections.

⁸² In the South, DPP secured 48 seats in the 87 constituencies in the region, MCP won only two seats, UTM – one, UDF – nine and PP – two. There will be 25 Independents representing the South in the new parliament.

⁸³ In the Central Region, MCP won 45 out of the 72 seats, DPP won five seats, UTM – one, UDF – one, and Independents won 20 seats.

⁸⁴ Out of the 33 constituencies in the Northern region, DPP won nine seats, MCP eight, UTM two, PP three, AFORD one, and Independents ten seats.

⁸⁵ From the total 460 local council seats, DPP received 161 seats, MCP 160, UTM 39, UDF 20, PP four, AFORD two, and Independents 74 seats.

⁸⁶ The first announcement of presidential results by MEC represented the results from 35.67 per cent of the total number of polling stations, and gave Chakwera a slim 0.5 per cent lead.

⁸⁷ *Statement by the Vice President/UTM Party President Dr. Saulos Chilima on the Current Election Process*, issued on 22 May, Lilongwe.

⁸⁸ The second announcement of presidential results was based on the results received from 75.81 per cent of the total number of polling stations.

⁸⁹ A number of CSOs, including the Human Rights Defenders Coalition, were critical of this haste, as were some church groups.

Central Region, such as Dowa district and Lilongwe. There were also reports of harassment against settlers (mainly traders) from the Southern region in some MCP strongholds. Police arrested over 50 people in connection to the above cases.

MEC declared the final presidential results minutes after the lifting of the injunction⁹⁰. On the following day, President Peter Mutharika was sworn in at a ceremonial event in Blantyre. The only presidential candidate to personally congratulate President Mutharika was Atupele Muluzi of UDF, who was also the only representative of the main political parties to attend the inauguration ceremony at the Kamuzu stadium in Blantyre on 31 May.⁹¹ The same day, following a demonstration by MCP protestors, security forces invaded the MCP Headquarters in Lilongwe and fired teargas. Criticism by some CSOs⁹² and the opposition continued in subsequent days, and there were some more incidents, including actions by the police around the MCP HQ.

In his inauguration speech on 31 May, President Mutharika urged the nation to unite, but critics responded that his inauguration ceremony, attended predominately by DPP functionaries and supporters did not resemble an inclusive national event but more of a party event. As the country awaited the court case on the petition against the outcome of the presidential elections, there were calls by opposition and some CSOs for the resignation of MEC Chair, Justice Jane Ansah, and questioning of the legitimacy of Peter Mutharika's second term based on his narrow margin of victory and criticisms of the state of governance in the country. As such, the state of political polarisation over the conduct of the elections continued and the chances of a rapprochement between government and opposition remained remote.

The newly-elected parliament opened on 21 June, and President Peter Mutharika conducted the state opening by delivering a State of the Nation Address.

⁹⁰ Some CSOs and parties were critical of this haste.

⁹¹ Lazarus Chakwera of MCP claimed he had not been invited.

⁹² On 30 May, PAC, the initiator of the Lilongwe Peace Declaration and a respected dialogue mediator, called the *“electoral process seen from result management point of view (...) a flop.*

XVII. Recommendations

No.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL/REGIONAL PRINCIPLE / COMMITMENT
LEGAL FRAMEWORK (Incl. Constituency Delimitation)					
1	There exist conflicting provisions between the Constitution and the two Election Acts as well as inconsistencies between the two Acts. (p.7)	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.	The Parliamentary and Presidential Elections Act and the Local Government Elections Act	Parliament	Legal certainty-Respect for Rule of Law Resolution 19/36 Human Rights Council, para. 16.c: ‘Calls upon States to make continuous efforts to strengthen the rule of law and promote democracy by: ensuring that a sufficient degree of legal certainty and predictability is provided in the application of the law, in order to avoid any arbitrariness
2	Certain provisions on revocation of candidatures do not appear to be reasonable or fully in line with international commitments. Revocation of candidatures by the Returning Officer up to election day upon imprecise criteria undermines legal certainty and the right to an effective remedy. (p.8)	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.	Sec. 40 PPEA and 32 LGEA	Parliament	Right to stand ICCPR, art. 25 and General Comment no 25, par.15 and 16: ‘... Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. States parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective office... Conditions relating to nomination dates, fees or deposits should be reasonable and not discriminatory.’

No.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL/REGIONAL PRINCIPLE / COMMITMENT
3	Disclosure and reporting of party private funding are only required for donations above a certain amount to the Political Parties Registrar and publication of the sums and donors is not foreseen. There is no requirement for reporting and disclosure of campaign expenses. It is not explicitly stated whether campaign finance provisions are binding for independent candidates. (p.8)	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.	Political Parties Act	Parliament	<p>Transparency in political finance</p> <p>UN Convention Against Corruption, Art. 7.3: ‘Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.’</p> <p>African Union Convention on Preventing and Combatting Corruption, Art. 10: ‘Each State Party shall adopt legislative and other measures to a. proscribe the use of funds acquired through illegal and corrupt practices to finance political parties and b. incorporate the principle of transparency into funding of political parties’.</p>
4	Despite the constitutional requirement for revision every five years at most, the actual parliamentary constituency boundaries were drawn in 1999. Currently, the number of registered voters per constituency across the various regions varies considerably, from c. 28,000 to 78,000, a situation which undermines the principle of the equality of the vote and equal representation. (p.9)	A review of parliamentary constituency boundaries should be undertaken well ahead of the next elections on the basis of the 2018 census results to ensure equal suffrage.	None	MEC, Parliament	<p>Equality of the vote</p> <p>ICCPR, art. 25 and General Comment no 25, par.21: ‘The principle of one person, one vote, must apply, and within the framework of each State’s electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.’</p> <p>Malawi Constitution art. 76.2b ‘Duties and functions of the Electoral Commission shall include...to review existing constituency boundaries at intervals of not more than five years’.</p>

No.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL/REGIONAL PRINCIPLE / COMMITMENT
ELECTORAL ADMINISTRATION (Including Voter Education)					
5	Confidence in the neutrality of the District Commissioners was limited among election stakeholders, due to the fact that they are permanent government employees and thus sometimes perceived as partisan and also vulnerable to pressure. (p.10)	In order to increase the independence of MEC, permanent election officials such as the District Election Clerks, could be appointed as District Election Coordinators.	No legal change required	Malawi Electoral Commission	<p>Genuine elections that guarantee the free expression of the will of the electors</p> <p>“An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.” - ICCPR GC 25, paragraph 20.</p> <p>“Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections.” - African Charter on Democracy, Elections and Governance (ACDEG), article 17.</p> <p>“Establish impartial, professional, independent, all inclusive, competent, and accountable EMBs, staffed by eminent, non-partisan and capable commissioners, and efficient and professional personnel;”^[1] The Southern African Development Community (SADC), Principles and Guidelines Governing Democratic Election,^[2]Article 5.1.4</p> <p>“Democratic elections should be conducted [...] by impartial, all inclusive competent and accountable electoral institutions staffed by well trained personnel and equipped with adequate logistics.” - African Union Declaration on the Principles Governing Democratic Elections in Africa, 2002, Section 2, Art. 4 (e)</p>

No.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL/REGIONAL PRINCIPLE / COMMITMENT
6	EU Observers reported that the flow of information from MEC HQ to district and constituency levels was often weak and compartmentalised, as several CROs and District Election Coordinators lacked consistent, detailed, regular and timely knowledge of the immediate next steps of the process, leading to delays and a degree of confusion among stakeholders and voters. (p.11)	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.	No legal change required	Malawi Electoral Commission	Genuine elections that guarantee the free expression of the will of the electors "An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant." - ICCPR GC 25, paragraph 20. "Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections." - African Charter on Democracy, Elections and Governance (ACDEG), article 17.
7	Although training was conducted according to the schedule, EU observers reported that it did not sufficiently focus on the filling of forms, on reconciliation and tally of results and dealing with unexpected issues, thus leading to serious problems during results tabulation. The unpreparedness of presiding officers to accurately complete forms with balanced figures and to perform simple arithmetic operations, significantly slowed down the process. (p.11)	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 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.	No legal change required	Malawi Electoral Commission	Genuine elections that guarantee the free expression of the will of the electors "An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant." - ICCPR GC 25, paragraph 20.

No.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL/REGIONAL PRINCIPLE / COMMITMENT
8	The appointment of primary school teachers as presiding and assistant presiding officers, as per MEC guidelines, is considered by the majority of EU EOM interlocutors as having a negative impact on their neutrality, being government employees and appointed in the area where they usually reside and work, thus subject to political pressure and prone to be enticed by monetary means. (p.12)	MEC should consider mechanisms to strengthen the independence and integrity of Presiding Officers by making them less vulnerable to undue influence.	No legal change required	Malawi Electoral Commission	Genuine elections that guarantee the free expression of the will of the electors "An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant." ICCPR GC 25, paragraph 20.
9	Civic and voter education activities were perceived by several interlocutors as insufficient, especially during the voter registration period, which led to a number of voters believing they would be able to vote using the National ID only. (p.13)	Extensive voter education activities should be undertaken in order to sensitise citizens to the fact that possession of the National ID Card card does not lead to automatic inclusion in the voter register.	No legal change required	Malawi Electoral Commission	Right to Information "States must [...] ensure that all persons entitled to vote are able to exercise that right. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community." - ICCPR CG 25, para 11. "Integrate civic education in their educational curriculae and develop appropriate programmes and activities." - African Charter on Democracy, Elections and Governance (ACDEG), article 12. "Ensure that voter education capacitates and empowers all eligible citizens;" SADC, Principles and Guidelines Governing Democratic Elections, Principles for Conducting Democratic Elections, Article 4.1.10

No.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL/REGIONAL PRINCIPLE / COMMITMENT
VOTER REGISTRATION					
10	While the Constitution establishes voter eligibility for citizens or residents who have attained the age of 18 on the day of registration, both the PPEA and LGEA establish eligibility for citizens who have attained the age of 18 on or before election day. MEC decided to follow the constitutional requirement, which resulted in a number of persons who turned 18 after the closing date for registration of 9 November 2018 but before the day of the election on 21 May 2019, not being able to register to vote. (p.14)	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.	Section 15 PPEA, Section 6 LGEA	National Assembly; Malawi Electoral Commission	<p>Universal suffrage and Right to vote</p> <p>“To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors” ICCPR Article 25 and GC 25(b)</p> <p>“Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed”. ICCPR CG 25, para 11.</p>
POLITICAL PARTIES AND CAMPAIGN ENVIRONMENT					
11	Observers and stakeholders criticised party primaries for inadequate procedures, manipulation, intimidation and violence, which also impact on the participation of marginalised groups. (p.15)	Political parties should reform their candidate selection procedures to guarantee integrity, inclusiveness and transparency in party primaries.	No legal change required	Political Parties	<p>Internal party democracy</p> <p>“Political parties and membership in parties play a significant role in the conduct of public affairs and the election process. States should ensure that, in their internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights thereunder.” ICCPR General Comment (GC) 25, paragraph 26.</p>

No.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL/REGIONAL PRINCIPLE / COMMITMENT
12	The Code of Conduct for Political Parties and Candidates prohibits a broad range of activities and guarantees equal treatment to all parties in the campaign, for instance through the procedures of notification of campaign activities. MEC did not fully use its authority to enforce compliance and impose sanctions and the violations of the Code remained largely unaddressed, resulting in campaign tensions and conflicts. (p.18)	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 sanctions so as to mitigate violations of campaign regulations.	No legal change required	Malawi Electoral Commission	<p>Level Playing Field, Equality “Every public officer and public entity or authority shall give and be seen to give equal treatment to all political parties to enable each political party to conduct its campaign freely.” PPEA, Section 58.</p> <p>Level Playing Field, Equality “Persons entitled to vote must be free to vote for any candidate for election... and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.” ICCPR GC 25, paragraph 19.</p>
13	Despite the signing of a MEC Code of Conduct in November 2018, Traditional leaders, especially paramount chiefs, are known to play a partisan role in Malawi’s elections. Though MEC repeatedly spoke out on the negative impact of the involvement of Chiefs in the campaign, traditional leaders openly canvassed for parties and independents throughout the whole campaign period. (p.18)	Effective measures should be introduced for monitoring and sanctioning of partisan behavior by Traditional Authorities, to help ensure the impartiality of public entities in the elections.	Amend PPEA and Code of Conduct for Chiefs	Parliament, Malawi Electoral Commission	<p>Level Playing Field, Equality “Every public officer and public entity or authority shall give and be seen to give equal treatment to all political parties to enable each political party to conduct its campaign freely.” PPEA, Section 58.</p> <p>Level Playing Field, Equality “Persons entitled to vote must be free to vote for any candidate for election... and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.” ICCPR GC 25, paragraph 19.</p>

No.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL/REGIONAL PRINCIPLE / COMMITMENT
14	The 2018 Political Parties Act, which prohibited the distribution of handouts and introduced regulations on party financing, for example the ban on donations from state-owned corporations, remained unenforced. The Minister of Justice did not introduce the needed appointment procedures to establish the Registrar for Political Parties. (p.19)	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.	No legal change required	Ministry of Justice, office of the Registrar for Political Parties	Level Playing Field, Equality “Persons entitled to vote must be free to vote for any candidate for election... and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.” ICCPR GC 25, paragraph 19.
MEDIA					
15	Despite the prevailing constitutional provisions, a series of legal provisions can be used to limit these freedoms. Defamation is still part of the Penal Code and, in line with international standards, should be decriminalised. (p.21)	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.	Amend the Protected Flag, Emblems and Names Act (section 4), Censorship and Control of Entertainment Act (section 23) and provisions in the Penal Code (sections 182 and 200 and onwards on defamation).	National Assembly	Freedom of expression, Freedom of the media, Right to access to information Section 19.2, ICCPR: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” Section 2.b. of the ‘Joint declaration on freedom of expression and “fake news”, disinformation and propaganda’ (United Nations, African Union, African Commission on Human and Peoples’ Rights and others): “criminal defamation laws are unduly restrictive and should be abolished”.

No.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL/REGIONAL PRINCIPLE / COMMITMENT
16	The Access to Information Act has been assented to by the president but is yet to become operational. (p.21)	The Government should ensure that the already assented to Access to Information Act enters into force.	None	Government	Right of access to information ICCPR, GC 34, Article 19: “ To give effect to the right to information, States parties should proactively put in the public domain Government information of public interest. “ African Charter on Human and Peoples Rights, (ACHPR) Article 9.1: “Every individual shall have the right to receive information”.
17	Board members of MBC are, following presidential appointment, confirmed by the Public Appointment Committee of the parliament. The president assigns the chairpersons. (p.22)	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.	Amendment of section 112 of the Communications Act.	National Assembly	Freedom of the media, Independence and impartiality of the state-owned media. Article 17(3) of the African Charter on Democracy, Elections and Governance. 2017 <i>Joint Declaration on freedom of expression and “fake news”, disinformation and propaganda</i> ’ (UN, African Union, African Commission on Human and Peoples’ Rights and others), section 3.c: “states should ensure the presence of strong, independent and adequately resourced public service media, which operate under a clear mandate to serve the overall public interest and to set and maintain high standards of journalism”.
18	Board members of MACRA are, following presidential appointment, confirmed by the Public Appointment Committee of the parliament. The president assigns the chairpersons. (p.22)	Revise the 2016 Communications Act and remove presidential powers in the appointment of Malawi Communications Regulatory Authority board members in order to enhance the independence of the media regulatory authority.	Amendment of sections 8 and 10 of the Communications Act.	National Assembly	Freedom of the media, Independence and impartiality of the state-owned media. 2017 <i>Joint declaration on freedom of expression and “fake news”, disinformation and propaganda</i> ’ (United Nations, African Union, African Commission on Human and Peoples’ Rights and others), section 3.b: “media should be overseen by a body which is protected against political and commercial interference”.

No.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL/REGIONAL PRINCIPLE / COMMITMENT
PARTICIPATION OF WOMEN					
19	<p>Women are under-represented in political life in Malawi. The Constitution provides for gender equality. However, there are no enabling mechanisms to increase women's representation in parliament, local councils or in the electoral process. The PPA stipulates that political parties should comply with the principle of gender equality in appointments "<i>in so far as it is practicable</i>" and to "<i>endeavour to achieve fair gender representation</i>" in candidate nominations, but there is no obligation. (p.25)</p>	<p>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.</p>	None	Political Parties	<p>Women's participation in political life "States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures (...) States Parties shall ensure increased and effective representation and participation of women at all levels of decision-making." Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 9</p> <p>Women's participation in political life "Political parties have an obligation to demonstrate their commitment to the principle of gender equality in their constitutions, in the application of those rules on their executive boards so that these bodies may benefit from the full and equal participation... by both sexes." CEDAW GR 23, paragraph 34. "Political parties must endeavour to balance the number of male and female candidates". CEDAW GR 23, paragraph 22. "Political parties have a responsibility to ensure that women are... nominated in areas where they have a likelihood of electoral success." CEDAW GR 23, para 28.</p>

No.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL/REGIONAL PRINCIPLE / COMMITMENT
PARTICIPATION OF PERSONS WITH DISABILITY & OTHER VULNERABLE GROUPS					
20	MEC did not keep any statistical data regarding PWDs during voter registration. (p.26)	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	No legal change required	Malawi Electoral Commission	<p>Participation in political and public life “States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake: To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected (...)” CRPD article 29 (a)</p> <p>“Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty or impediments to freedom of movements which prevent persons entitled to vote from exercising their rights effectively.” ICCPR, Article 25, HRC GC 25, para. 12</p> <p>Statistics and data collection ”States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention.” CRPD article 31.1</p>

No.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL/REGIONAL PRINCIPLE / COMMITMENT
POLLING, COUNTING & TABULATION OF RESULTS					
21	The major shortcomings which affected the tabulation process were a direct consequence of fatigue, poor working conditions, a lack of capacity, poor judgement, inadequate training and pressure of time. (p.29)	Priority Recommendation : Provision for an additional Presiding Officer in each polling station to oversee the conduct of counting and tabulation should be considered.	No legal change required	Malawi Electoral Commission	<p>Security of the ballot and the counting of the votes "An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant." ICCPR GC 25, paragraph 20.</p> <p>Promotion of transparency “ The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process ... so that electors have confidence in the security of the ballot and the counting of votes” - United Nations Convention against Corruption (UNCAC) Public Sector, Article 7.4 “Establish the necessary conditions to foster transparency and accountability in the management of public affairs.”</p> <p>African Union Convention on Preventing and Combating Corruption, Article 2.5</p>

No.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL/REGIONAL PRINCIPLE / COMMITMENT
ELECTORAL DISPUTES					
22	MEC referred all complaints to Multi-Party Liaison Committees (MPLCs) at District level. Their operation was not consistent across the country and some suffered from lack of funding. Furthermore, it is questionable whether procedural safeguards ensuring due process were in place and whether a timely resolution of complaints was achieved in all instances. (p.31)	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	MEC regulations	MEC, Ministry of Justice	<p>Right to effective legal redress</p> <p>ICCPR 2.3 ‘Each State Party to the present Covenant undertakes:(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy...; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.</p> <p>AU African Charter on Democracy, Elections and Governance, art. 17: ‘State Parties shall: Establish and strengthen national mechanisms that redress election related disputes in a timely manner.</p>

No.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL/REGIONAL PRINCIPLE / COMMITMENT
23	<p>General provisions in the High Court Civil Procedure Rules on judicial review conflict with the specific ones on election petitions contained in the same Rules, with regard to deadlines and procedural aspects. The current architecture of judicial review of MEC decisions co-existing with specific provisions on election petitions appears to allow for a parallel jurisdiction, which may lead to inconsistent rulings or derail the post-election process. Also, High Court deadlines are only triggered upon the issuance of summons by the Court for which there is no deadline. (p.33)</p>	<p>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.</p>	<p>Courts (High Court) Civil Procedure Rules, Order 19 para. 13-17 and 20-25</p>	<p>Parliament, Judiciary</p>	<p>Right to effective legal redress ICCPR 2.3 ‘Each State Party to the present Covenant undertakes:(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy...; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted. AU African Charter on Democracy, Elections and Governance, art. 17: ‘State Parties shall: Establish and strengthen national mechanisms that redress election related disputes in a timely manner.</p>

No.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL/REGIONAL PRINCIPLE / COMMITMENT
24	<p>The President was sworn-in on the day after the announcement of results by MEC and before the deadline for disputing the results to the High Court had expired. This was in compliance with the constitutional provision on taking-up office, which foresees the swearing-in anytime within 30 days of the announcement of results, but regrettably undermined the right to an effective judicial redress and also exacerbated political tension. (p.33)</p>	<p>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.</p>	<p>Amendment of Constitution, art.81.3</p>	<p>Parliament</p>	<p>Right to effective legal redress-Legal certainty ICCPR 2.3 ‘Each State Party to the present Covenant undertakes:(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy...; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.</p> <p>AU African Charter on Democracy, Elections and Governance, art. 17: ‘State Parties shall: Establish and strengthen national mechanisms that redress election related disputes in a timely manner.</p>

