



PRELIMINARY STATEMENT

Malawians succeeded to vote despite considerable organisational shortcomings

Blantyre, 22 May 2014

EXECUTIVE SUMMARY

- Notwithstanding considerable organisational shortcomings and a few isolated incidents of unrest, in particular in Blantyre, calm prevailed on election day. Lack of essential material resulted in delays in the opening of polling stations. However, the commitment of polling station staff facilitated the voting process, along with the implementation of *ad hoc* solutions, made in agreement with political party representatives, to address problems caused by the lack of material. Although these *ad hoc* solutions facilitated the conduct of the voting process, their impact on the tabulation process and the results transmission system remains to be assessed.
- Voting was generally conducted in an orderly, calm and peaceful manner. Voters patiently waited to cast their vote despite long queues. EU observers assessed the overall conduct of voting as being good or very good in 92 per cent of 404 polling stations. Political party representatives were present in the vast majority of polling streams visited. Approximately half of the polling station staff and 30 per cent of presiding officers were women.
- Despite the weaknesses in the election administration's structural capacity and the resulting organisational shortcomings, MEC has acted impartially throughout the election period. MEC sought inclusive solutions in an effort to enfranchise all voters following delays in the processing of the voter register. In the lead up to the elections, MEC initiated a communication strategy aimed at keeping the public and political parties informed about the situation.
- Civil society organisations played an important and active role throughout the electoral process. For the 2014 elections, there was an unprecedented level of cooperation between MEC and civil society organisations. Domestic observers were present in the vast majority of the polling stations visited by the EU EOM.
- The election campaign was largely calm and peaceful. Only the four main political parties – the PP, DPP, UDF and MCP – succeeded in holding large rallies and country-wide whistle-stop tours. The remaining political parties channelled the majority of their resources into small meetings and door-to-door campaign activities, due to lack of financial resources and lack of party structures at local level. The distinction between the ruling PP campaign activities and the activities inherent to the presidential office were not always clear.
- Although MEC made efforts to level the playing field for media coverage by purchasing airtime for political parties and candidates, some media provided unbalanced coverage of political activities. The PP dominated the airtime on both state-owned radio and television. Galaxy radio allocated more airtime to DPP and Joy radio provided more coverage to UDF. Times TV afforded more airtime to the MCP. *The Daily Times*, *The Nation* and radio stations Zodiak and Capital FM provided adequately balanced coverage of political actors.
- The legal framework provides a good basis for the conduct of credible elections in line with international and regional commitments. Nevertheless, a number of shortcomings remain in

the law, including absence of rules for financing of election campaigns and lack of clear and enforceable regulations to prohibit the use of state resources for campaigning. Despite the legislation providing sound mechanisms to address election related disputes, the Multiparty Liaison Committees (MPLC) were the preferred forum for seeking timely and effective remedy when resolving election related complaints during the pre-election period.

The EU EOM will remain in country to observe post-election developments and the tabulation of results and will publish a final report, containing detailed recommendations, within two months of the conclusion of the electoral process.

The European Union Election Observation Mission (EU EOM) has been present in Malawi since 12 April 2014 following an invitation from the Malawi Election Commission (MEC). The Mission is led by Chief Observer Véronique De Keyser, Member of the European Parliament. In total, the EU EOM deployed 85 observers from 28 EU Member States and Norway across the country to assess the whole electoral process in accordance with international commitments for genuine elections as well as the laws of Malawi. The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation signed at the United Nations in October 2005. The EU EOM wishes to express its appreciation to the Malawi Election Commission and other Malawian authorities, political parties and civil society as well as the people of Malawi for their cooperation and assistance in the course of the observation. The EU EOM is also grateful to the Delegation of the European Union to Malawi and the European Union member states' diplomatic missions resident in Malawi for their support throughout.

PRELIMINARY FINDINGS

BACKGROUND

On 20 May, Malawi conducted for the first time tripartite elections, thus posing significant challenges for all electoral stakeholders, including to the MEC's capacity and independence. The 2014 elections were highly competitive with the four highest profile candidates competing for the first time, including the incumbent president Joyce Banda who became the head of State upon President Bingu Mutharika's death in 2012. The most prominent parties competing for elections were the People's Party (PP) of President Joyce Banda, the Democratic Progressive Party (DPP) of Peter Mutharika (brother of former president Bingu Mutharika), the United Democratic Front (UDF) of Atupele Muluzi (son of former president Bakili Muluzi) and the Malawi Congress Party (MCP) of Lazarus McCarthy Chakwera.

Candidates for the simple majority presidential elections were nominated by 12 political parties. Two presidential candidates were female, the incumbent President and Helen Singh of the United Independence Party (UIP), as well as two running mates. A total of 18 political parties and 419 independent candidates, many of whom lost the primaries in their respective parties, competed for 193-seat parliamentary elections, amounting to 1,293 candidates, of which 261 were women. For the 462 elected seats of Local Councils, candidates from 18 political parties plus 576 independent candidates had their nominations accepted, resulting in 2,412 candidates, of which 419 were women.

LEGAL FRAMEWORK

The legal framework provides a good basis for the conduct of credible elections in line with international and regional commitments. Political rights and fundamental freedoms essential to elections are guaranteed by the Constitution. Nevertheless, a number of shortcomings and inconsistencies in the law remain unaddressed since the previous elections. These include absence of rules for funding of political parties and financing of election campaigns resulting in lack of transparency and public accountability, and lack of clear and enforceable regulations to prohibit the use of state resources for campaigning. There are also inconsistencies in the constitutional timeframes and statutory legislation for the different parts of the electoral process, including the dissolution of parliament and the campaign period. The amendments to the Constitution and other acts introduced in 2012, aimed at harmonising the electoral legislation for conducting of the tripartite elections, made no substantial improvements to the previous legal framework.

ELECTION ADMINISTRATION

Despite the weaknesses in the election administration structure and the resulting organisational shortcomings, MEC has acted impartially throughout the election period and made considerable efforts, in a challenging environment, to enfranchise all voters for the 20 May elections. Key stakeholders expressed a reasonable level of confidence in the integrity of the Commission. Whilst some allegations were raised by political parties throughout the pre-election period regarding attempted rigging, the MEC did not receive, until election day, any official complaint substantiating these allegations.

MEC did not succeed to complete organisational and logistical preparations on time for election day and showed a lack of structural capacity in conducting some key operations of the electoral process, in particular the distribution of election material to polling station level. Furthermore, tight deadlines, together with insufficient internal communication and exchange of information, geographical dispersion of the MEC commissioners, frequent deployment of commissioners and senior election staff to the field, and inexistent election administration physical structures at the district and constituency levels, posed considerable organisational and logistical challenges for conducting the tripartite elections.

The repeated postponement and late conduct of the voter register verification exercise negatively affected the election calendar with respect to printing of the final voter register. The final voter register was finalised only on 18 May 2014 and shared electronically with the political parties one day before elections. In an attempt to fully enfranchise registered voters, MEC introduced some *ad hoc* measures, such as the use of the permanent record of voter registration (Part A) in addition to the voter register being distributed to polling stations on election day.

Although MEC organised regular stakeholders' meetings to provide updates on electoral preparations through the National Elections Consultative Forum (NECOF), it failed to clarify concerns raised by political parties and civil society organisations regarding the accuracy of the voter register. Nevertheless, during the week before elections, public confidence building measures to increase transparency and ensure the integrity of the electoral process were implemented. MEC conducted regular press briefings providing updates on the state of the preparedness for the 20 May elections up to election day.

The National Initiative for Civic Education (NICE) and religious organisations, such as the Catholic Commission for Justice and Peace (CCJP) and the Public Affairs Committee (PAC), have, together with MEC, played a crucial role in conducting civic and voter education activities since June 2013. Nevertheless, the impact of their activities was hampered by insufficient financial resources and lack of adequate means to cover remote rural areas. Notwithstanding the fact that 107 civil society organisations were accredited by the MEC to conduct civic and voter education, only 12 successfully

obtained funding. Even though voter education activities were assessed by EU observers as being of good quality, in particular those activities conducted by NICE, their extent was still found to be limited at village level. The main messages disseminated to the public were information on voting procedures and the role and importance of Local Councils, thus providing the opportunity for voters to make a more informed choice.

VOTER REGISTRATION

For the 2014 elections, a new voter register was compiled from July to December 2013, as there was a lack of confidence in the quality of the 2009 voter register. Weaknesses in MEC's internal communication and capacity as well as logistical and technical difficulties resulted in serious delays in the correct processing of voter registration data. The number of voters in the 2014 final register was 7,470,806.

Both the preliminary and final voter registers were made available very late in the process, affecting the level of confidence of certain stakeholders in the capacity and impartiality of the MEC. Insufficient dissemination of information to the public about the initial problems with registration data processing helped fuel rumours and doubts regarding the integrity of the register. However, no substantiated complaints of widespread irregularities have been reported. Poor publicity about postponements had an impact on the voter verification exercise, contributing to a relatively low turnout estimated by MEC. The fact that MEC shared the provisional voter register with political parties, enhanced the level of transparency of the process.

Given the inexistence of a civil register, the lack of systematic registering of births and deaths, and the lack of regulated documents on both date of birth and Malawian citizenship, there is inevitable imprecision about the total number of eligible voters in the country. This needs to be taken into account when questions are raised about the number of registered voters compared to the estimated number of eligible voters in population projections. Whilst issues around spelling of some voters' names, errors in date of birth and quality of some voter photos used in the register clearly exist, these are not sufficient to put in doubt the overall integrity of the voter register.

Constituency boundaries have not been reviewed since 1999. The current delimitation based on the 193 constituencies does not reflect equal proportions of the electorate and the highly populated areas are under-represented in terms of seats in parliament. As a result the existing lack of balance undermines the principle of equal representation of voters.

CANDIDATE NOMINATION

Requirements to stand for elections are reasonable and in line with the international commitments of Malawi. As members of parliament are constitutionally banned from being nominated as candidates due to holding a public office, and the dissolution of parliament only took place on 20 March, the MEC delayed the official announcement of the nominations until the same day. This solution, although practical and generally accepted, remains legally questionable. According to the law, the candidate is deemed duly nominated when his or her valid nomination paper is delivered to the returning officer and not at the moment of the announcement by the MEC.

The MEC had originally rejected nominations of one presidential (John Chisi of the Umodzi Party) and 14 parliamentary candidates on the grounds of holding public office. The MEC considered employment at universities and membership on boards of public entities - such as the Malawi Broadcasting Corporation - as public offices. Public office holders are prohibited by the Constitution from standing for elections but the legislation contains no definition of this term, thus creating legal uncertainty regarding the eligibility of a certain category of candidates. Therefore, following successful appeals to the High Court, all rejected candidates were reinstated.

ELECTION CAMPAIGN

The election campaign was largely calm and peaceful with only a few isolated incidents, which had a very limited impact on the election atmosphere. Political parties and candidates were able to campaign freely in all parts of the country, except for a few instances where EU observers noted traditional authorities limiting access of opposition candidates to some areas in Karonga (Mlare), and Zomba (Chikowi and Mulumbe).

Only the four main political parties – the PP, DPP, UDF and MCP – were able to hold large rallies and country-wide whistle-stop tours. The remaining political parties channelled the majority of their resources into small meetings and door-to-door campaign activities with much less visibility, due to lack of financial resources and lack of party structures at local level. Campaign messages have focused on general socio-economic development issues, with most opposition parties also giving significant emphasis to corruption and governance issues. The incumbent PP focused its messages on the achievements and successes of Joyce Banda's presidential initiatives in providing housing and livestock to the population.

During the 144 campaign rallies observed by the EU EOM, most of the main parties provided participants with material handouts (campaign t-shirts and other party paraphernalia, food and drink) as well as financial incentives to attend the events.

The ruling PP clearly had an advantage over the other three main parties as it benefitted from the advantages of the incumbency that included more state-owned media coverage. The distinction between the ruling PP campaign activities and the activities inherent to the presidential office were not always clear. The blurring was evident in daily state television and radio broadcasting of PP rallies and in presidential activities where attendants and speakers wore clothes and party paraphernalia of the ruling party, including the President herself. Such events included the inauguration of public works such as the Malawi Rural Electrification programmes, construction of roads and housing projects in Mulanje, Zomba and Thyolo the promoting of a traditional chief in Machinga, Chikwawa and Mulanje, where appeals to vote for PP were addressed to the audience.

The laxness of campaign financing rules results in practically inexistent mechanisms for accountability. Also, the lack of explicit prohibition of the use of state resources for campaigning, as already highlighted by the 2009 EU EOM, opens up the possibility of blurring between the ruling party resources and state resources.

MEDIA

Freedom of expression and of the press were respected throughout the campaign period. Coverage of election activities was reported to be carried out without restriction of movement or access. Journalists generally adhered to the Code of Conduct for media reporting on the 2014 elections adopted by the MEC, media institutions and the Media Council of Malawi (MCM).

The media provided substantial coverage of the electoral process, with special radio programmes and supplements in newspapers. This contributed to the broadening of the debate on the electoral campaign and electoral procedures. Also, the organisation of presidential and vice-presidential debates, which were broadcast by private radios and the state-owned media, provided voters with the possibility of making a more informed political choice.

Although MEC made efforts to level the playing field for media coverage by purchasing airtime for political parties and candidates, some media provided unbalanced coverage of political activities. The presidential race dominated news coverage over parliamentary and local government elections. The PP dominated the airtime on both state-owned radio and television, partly due to the live broadcasts of 'development rallies' and 'Presidential Diary' events, where the separation between the president's political party and presidential functions were unclear.

According to the EU EOM media monitoring results,^[1] Galaxy radio allocated more airtime to DPP whereas Joy radio provided more coverage to UDF, by broadcasting live the two parties' campaign rallies. According to both radio stations, the time allocated to the two parties was paid airtime. The private television station Times TV afforded MCP more airtime in its news coverage than other parties. *The Daily Times*, *The Nation* and radio stations Zodiak and Capital FM provided adequately balanced coverage of political actors. The four main political parties that enjoy the biggest financial resources purchased more paid advertisement in the media than other parties. News bulletins and election related reports were broadly neutral. However, the state-owned radio and television covered the PP in a more positive tone, whereas Joy radio and Galaxy gave a more positive tone to UDF and DPP respectively.

The Malawi Communications Regulatory Authority (MACRA) warned broadcasters over unprofessional conduct in terms of hate speech and unbalanced coverage. Nevertheless, only Galaxy was punished for broadcasting abusive language. During the campaign, no broadcaster was disciplined for unbalanced coverage.

ELECTORAL JUSTICE

The legislation provides for sound mechanisms to address election related disputes. All complaints related to alleged irregularities are handled by the MEC, whose decision may be appealed to the High Court in accordance with international and regional commitments. Nevertheless, the access to justice for individual voters is limited by geographical and financial reasons due to the presence of only four High Court registries in the country and submissions to the courts being subject to court fees. Nevertheless, the establishment of the MEC Complaints Handling Unit, shortly before election day, and the possibility to communicate the complaints by email or telephone improved the accessibility of the complaints mechanisms to general public.

The legal channels for election related disputes were rarely used during the pre-election period as most complaints from stakeholders were resolved through the Multiparty Liaison Committees (MPLC). Although there were a number of complaints submitted to the MEC structures at district level, mostly from political parties and candidates, related to voter registration and campaigning, in the majority of cases these were forwarded to the MPLC for resolution. Despite the fact that the MPLCs are of an informal nature and have no legal enforcement powers, they served as the preferred tool for conflict resolution in almost all districts. Nevertheless, in three districts (Balaka, Machinga and Mangochi) the effective functioning of the MPLC was hampered by lack of funding.

A small number of electoral offences tried before magistrate courts included multiple registration, possession of multiple voter cards, theft of a voting card, and destruction of campaign material. The penalties applied by the courts were either fines from MWK 10,000 to 30,000 (approx. € 20 to € 60) or suspended sentences.

PARTICIPATION OF WOMEN AND MARGINALISED GROUPS

For the 2014 elections, two presidential candidates were female: the President and Helen Singh of the UIP. Two running mates were also women. Approximately 20 per cent of the parliamentary and 17 per cent of the Local Council candidates were women (259 and 415, respectively). To encourage participation of women, the MEC reduced nomination fees for female parliamentary and Local Council candidates by 25 per cent. Female parliamentary and Local Council candidates enjoyed support under the auspices of the 50:50 campaign which included capacity building and financial assistance to cover part of their campaign expenses. Cultural barriers and economic constraints are the main

^[1] The sample of the EU EOM Media Monitoring Unit included the state-owned MBC TV and the Times TV; the state-owned MBC Radio 1, Capital Radio, Zodiak Radio, Galaxy FM and Joy Radio; and two privately owned newspapers, *The Nation* and *The Daily Times*.

impediments to more active participation of women. The fact that some parties were hesitant to put women forward as candidates resulted in a number of women candidates running as independents. Women participated in large numbers in the campaign events. On election day, in the polling stations visited by EU observers, approximately half of the polling station staff and 30 per cent of presiding officers were women.

The Constitution protects the right of persons with disabilities to participate in the public affairs of the country. The legislation contains reasonable provisions on assisted voting. The majority of polling stations observed were accessible to voters with disabilities with only minor assistance.

The right to vote was guaranteed for prisoners both on remand and convicts, with the exception of those sentenced to death. Prisoners could register as voters and polling stations were set up in prisons. There were targeted Civic and Voter Education activities conducted in prisons.

DOMESTIC OBSERVERS

Civil society organisations played an important and active role throughout the electoral process. The main groups deploying observers were the National Initiative for Civic Education (NICE) and the Malawi Election Support Network (MESN). For the 2014 elections, there was an unprecedented level of cooperation between MEC and civil society organisations. A Parallel Vote Tabulation (PVT) exercise is being conducted by MESN in close cooperation with the MEC. MESN also established the Malawi Election Information Centre (MEIC), the Election Situation Room and Citizen Journalism Initiative. On election day, NICE and MESN deployed observers to all polling stations in the country.

POLLING AND CLOSING

Notwithstanding considerable organisational shortcomings and a few isolated incidents of unrest, in particular in Blantyre, calm prevailed on election day. Lack of essential material resulted in delays in the opening of polling stations. However, the commitment of polling station staff facilitated the voting process, along with the implementation of *ad hoc* solutions, made in agreement with political party representatives, to address problems caused by the lack of material. Various essential material were missing including voter register, indelible ink, ballot boxes, seals, and ballot papers, amongst others. In Blantyre, Mangochi and Chikwawa some polling stations opened as late as 4:00pm. Although these *ad hoc* solutions facilitated the conduct of the voting process, their impact on the tabulation process and the results transmission system remains to be assessed.

Of the polling stations visited during opening, 51 per cent opened either on time or with less than 30 minutes delay. These shortcomings were reflected in the EU EOM assessing the overall opening process as either good or very good in 49 percent of the polling stations visited.

Voting was generally conducted in an orderly, calm and peaceful manner. Voters patiently waited to cast their vote despite long queues being reported in many polling stations visited by EU observers. In the 404 polling streams observed by the EU EOM during voting, the overall conduct of voting was assessed as being good or very good in 92 per cent of cases and the performance of polling staff was assessed to be good or very good in 93 per cent of the polling stations visited. Political party representatives were present in 99 per cent of polling streams visited, with the PP present in 93 per cent and the DPP in 81 per cent. Local monitors were present in 97 per cent of streams visited.

In some polling stations where opening was delayed or voting interrupted, voting was prolonged until 9:00pm. In 45 other polling stations in Blantyre, Lilongwe and Dedza, MEC annulled the voting on 20 May and re-opened polling on the following day, in order to guarantee the right to vote for every registered voter.

The overall assessment of the closing and counting process was good or very good in 64 per cent of the polling streams observed by the EU EOM, with the transparency of the process being assessed as

good or very good in 82 per cent of the streams observed. The counting process in the polling streams observed was conducted in the presence of political party representatives and local monitors and the integrity of the counting process was sufficiently protected.

The EU EOM continues to observe the aggregation of results and will follow any complaints and the appeals process before reaching its final conclusions.

An electronic version of this Statement is available on the Mission website www.eueom.eu/malawi2014.

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