

**REPUBLIC OF MALAWI**

**PRESIDENTIAL AND  
PARLIAMMENTARY ELECTIONS  
20 May 2004**

**EUROPEAN UNION  
ELECTION OBSERVATION MISSION**

**FINAL REPORT**

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## I. EXECUTIVE SUMMARY

In response to an invitation from the Malawi Electoral Commission (MEC), a European Union Election Observation Mission (EU EOM), headed by Chief Observer Marieke Sanders-ten Holte, Member of the European Parliament, and consisting of a Core Team of six, 22 Long Term Observers (LTOs) and 52 Short Term Observers (STOs), was deployed to Malawi for a two month period, from 5 April to 5 June, to observe the 20 May presidential and parliamentary elections. The EOM assessed the elections in terms of their compliance with international standards for democratic elections.

As the third national elections to be conducted since the introduction of multi-party politics in 1994, they provided an opportunity for significant progress towards international standards for democratic elections and the further consolidation of democracy in Malawi, which is so important for sustainable development.

While the 20 May elections were conducted in a generally peaceful environment, voting proceeded smoothly, and they resulted in a change in the political composition of parliament, they fell short of international standards in a number of key areas. The overall process failed to provide a level playing field for political contestants, voter registration was unsatisfactory and the tabulation of results seriously lacked transparency to the extent that it is not possible to have full confidence in the accuracy of the results of the elections. More political will is needed from the authorities if future elections are to be conducted in line with international standards.

The legal framework provided an adequate basis for the conduct of democratic elections. However, it should be improved in a number of key areas, including the composition of the MEC, clarification and clear division of the competencies of the MEC and the Malawi Communications Regulatory Authority (MACRA) in regulating the media, and requirements for transparency in the declaration of campaign funds from private sources. In a significant and positive contribution to the development of democracy in Malawi, the High Court and Supreme Court dealt with electoral complaints, submitted to them, in a timely and independent manner.

The overall performance of the MEC was disappointing. While planning for election day was generally good and training of officials was conducted reasonably well, the MEC failed to address complaints filed by political parties on a number of important issues, provide sufficient instructions to polling officials or allow observers or party representatives to attend its meetings. This resulted in widespread lack of confidence in the MEC by election stakeholders.

The voter registration process was particularly unsatisfactory. Significant delays in the processing of data from the January 2004 registration period resulted in failure of the initial verification period in April 2004. This led the Supreme Court to instruct the MEC to postpone the elections to a date no later than 25 May to allow more time for the display and verification of the voters' roll. The MEC postponed the elections for two days to allow verification to take place until 19 May. Even during this period, however, the voters' roll was not easily accessible and there was no clear system for changes or amendments to be made.

The campaign was conducted in a generally calm atmosphere with only isolated reports of violent incidents. In a positive development, multi-party liaison committees operated for the first time

and were influential in reducing tension and resolving problems in some areas. Voters were provided with a wide range of political contestants. However, there was widespread and overt distribution of money to voters and abuse of state resources by the ruling party in flagrant breach of international standards for democratic elections. In some areas, the UDF also failed to follow the formal application procedure for the holding of rallies. The EU EOM received credible reports of intimidation by the Young Democrats (UDF), and campaign obstruction of opposition and independent candidates by traditional chiefs.

Throughout the campaign period, the state controlled electronic media showed substantial bias in favour of the ruling coalition, almost to the exclusion of opposition parties and independent candidates. Despite not standing for re-election, President Muluzi's campaign activities received a large amount of coverage by state controlled media. In a welcome contribution to the electoral process, private radio stations and print media monitored by the EU EOM generally provided reasonably balanced coverage. However, in a worrying development, a number of journalists were detained by police and one radio station was closed for more than a week by police without official authorisation. This demonstrated excessive control of the media by the authorities and restrictions on freedom of expression.

On a more positive note, more women stood as candidates than in the past and the number of women elected to the 193 seat parliament increased from 17 to 28. While still short of the Southern African Development Community (SADC) target of 30% membership, the increase to 14.5% represents a step in the right direction. Women were well also represented in the election administration as polling station officials. However, further work should be undertaken to involve women more in the electoral process, in particular in political parties where they currently experience difficulties in gaining prominent positions.

Civil society organisations played a significant role in election observation and the delivery of voter education. Comprehensive evaluation of the electoral process was undertaken by a number of organisations and domestic observers were present in a large number of polling stations on election day. While much of the voter education was of good quality, funding problems resulted in insufficient coverage. In particular, greater attention could have been paid to women, the illiterate and vulnerable groups. In future elections, greater funding for civic education and parallel vote counts would strengthen public awareness and confidence in the electoral process.

On election day, voting proceeded smoothly in the vast majority of the 540 polling stations visited by EU observers. Polling station officials generally performed their duties in a professional manner and party and candidate representatives were present in large numbers, contributing to the transparency of the process. However, problems with the voters' roll were apparent throughout the country. The patience and orderly behaviour of voters and polling staff was commendable.

Counting at the polling stations proved to be more problematic. The process was overly bureaucratic, slow and conducted in poor conditions, often without sufficient lighting. No reports of fraud were reported by EU observers and the results were publicly displayed at most polling stations. However, a number of fundamental ballot security safeguards were missing from the regulations. This must be addressed prior to future elections.

The aggregation of results was slow, inefficient and seriously lacked transparency. Important verification procedures were not undertaken. Following the initial announcement of the results on 23 May, rioting took place in Blantyre, which resulted in the death of up to seven people. The inauguration of the new President on 24 May placed unacceptable pressure on the MEC to complete the aggregation process. At the inauguration, President Muluzi incorrectly stated that EU observers had declared the elections to be “free and fair” when neither word had been used in the preliminary statement issued by the EU EOM on 22 May or by the Chief Observer during the press conference accompanying its release. The MEC failed to meet the deadline of 28 May to publish the final results in the Government Gazette, and only did this on 16 July. When this report was released in Malawi, on 4 August 2004, the final results were still not widely known.<sup>1</sup> No results issued by the MEC have been broken down to the polling station level. Without this information, it is not possible for stakeholders to fully assess the accuracy of the results. This failure to produce a breakdown of results damaged confidence in the democratic process and undermined the credibility of the results announced by the MEC.

If future elections are to be conducted in line with international standards, it is essential that work begins immediately to improve the electoral framework. This report includes a number of recommendations to address the concerns highlighted above and further detailed herein. Key recommendations include:

- Changes should be made to the composition of the MEC to increase the confidence of election stakeholders in the administration of elections;
- The MEC should address complaints on all issues within its competencies as outlined in electoral legislation in a timely and professional manner;
- Serious efforts should be made to ensure a level playing field for political contestants, in particular by taking action against the abuse of public resources and media bias;
- The roles of MACRA and the MEC in regulating the media during an election campaign should be clarified and the competencies of each body clearly defined and effectively implemented; and
- Electoral results should be published within the legal deadline and clearly broken down to the polling station level.

The EU is willing to assist the authorities and civil society of the Republic of Malawi in continuing to improve its electoral process and encourages the people of Malawi to continue to peacefully work for genuine, democratic elections in line with international standards.

## II. BACKGROUND TO THE MISSION AND ACKNOWLEDGEMENTS

The European Commission, in consultation with the European Parliament and relevant Council Working Groups, identified the 2004 election cycle in Malawi as a priority for possible EU election observation. The elections were considered to represent a significant moment in Malawi’s democratic development, in which a broad and pluralistic electoral competition was

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<sup>1</sup> The first reference to the publication of the final results (noting that the gazetted results were different from the initial results announced by the MEC on 23 May) appeared in the Daily Times on 4 August, the day the EU Chief Observer presented this final report to the President.

expected to take place against the background of controversies in the consolidation of political institutions.

An exploratory mission was therefore deployed between 23 January and 2 February 2004 which concluded that Malawi satisfied the criteria for an EOM. An invitation was sent to the EU in March 2004 by the MEC and a Memorandum of Understanding was signed between the EU and the Malawi authorities on 4 April 2004. The EOM was deployed as a practical expression of the EU's on-going support for the process of democratization in the country.

The EOM was led by Ms. Marieke Sanders-ten Holte MEP (Netherlands), Vice President of the European Parliament Development and Co-operation Committee and member of the Africa Caribbean Pacific-European Union (ACP-EU) Joint Parliamentary Assembly. The other Core Team members were Mr. Alister Baird (UK), Deputy Chief Observer; Ms. Maria Rosaria Macchiaverna (Italy), Legal and Election Expert; Ms. Cristina Ramos Alves (Portugal), LTO Coordinator; Mr. Javier Gutierrez (Spain), Media Expert; and Mr. Stuart Poucher (UK), Operations Expert. The Core Team arrived in Malawi on 5 April.

In addition to the Core Team, 22 LTOs were deployed in pairs throughout the country for a five week period as follows: three teams in the northern part of the country: Karonga, Mzuzu and Mzimba; three teams in the centre: Lilongwe, Kasungu and Salima, and five teams in the south: Blantyre, Zomba, Mangochi, Mulanje and Ngabo. All 28 districts were visited before polling day and election day observations took place in 27 of them.

Shortly before election day, a group of 47 STOs were deployed to observe the end of the political campaign, election day, counting and aggregation of results at the district level. They were joined by six locally recruited STOs from the British High Commission and the Dutch Consulate to make a total of 53 STOs. In total, the EOM observed proceedings in around 540 polling stations on election day. A delegation of five members of the ACP-EU Joint Parliamentary Assembly, headed by Ms. Karin Junker MEP (Germany) and Mr. Ephriam Kamuntu (Uganda), was also present in the country over the election day period and shared the conclusions of the preliminary statement issued by the EOM on 22 May.

STOs left the country on 22 and 23 May. LTOs stayed on for several days to follow the aggregation process and complaints, and a number remained in country until 1 and 2 June. The Core Team departed on 5 June.

Throughout the deployment of the EOM, the Chief Observer and other Core Team members met with the representatives of the authorities (including President Muluzi, the Minister of Foreign Affairs and the Chairman of the MEC), political parties (including all presidential candidates), media, civil society and international community. The Chief Observer held three press conferences, at which she stressed the independence of the mission and that its purpose was to observe and not to interfere with any aspect of the election or the affairs of government.

The EOM wishes to express its appreciation to the Ministry of Foreign Affairs of the Republic of Malawi, the MEC, other authorities and civil society organisations for assistance provided. The patience and understanding of staff of the MEC and election officials throughout the country was particularly appreciated.

The EOM would also like to thank the European Commission Delegation in Lilongwe, and in particular the Head of Delegation, Mr. Wiepke Van der Goot, for the invaluable support provided and also other resident diplomatic missions, in particular the German Embassy and British High Commission.

The EOM also extends its gratitude to all other election stakeholders who gave of their time when they were most busy with the job of being elected or trying to make the electoral process work as well as it could. Finally, the EOM would like to express appreciation to other international observation groups from the Commonwealth, African Union, SADC Parliamentary Assembly and Electoral Institute of Southern Africa (EISA) for their useful co-operation and exchange of information.

### III. POLITICAL HISTORY<sup>2</sup>

Before achieving independence in 1964, Malawi was the British Protectorate of Nyasaland. Between 1953 and 1964, it formed part of the Federation of Rhodesia and Nyasaland, a self governing British colony comprising North and South Rhodesia and Nyasaland. Following the dissolution of the Federation in 1964, Northern Rhodesia became the independent nation of Zambia and Southern Rhodesia became the self-governing British Dependency of Rhodesia, later to become Zimbabwe.

The catalyst for independence was the imposition of the Federation. In 1958 the leadership of the then Nyasaland African Congress Party was led by two men in their twenties. These young men invited Dr. Hastings Kamuzu Banda, then living in exile in Ghana, to return home and lead the independence movement. The party was then renamed the Malawian Congress Party (MCP) and adopted a policy of passive resistance. The colonial government tried to quell this resistance, declared a state of emergency and detained its leader. Dr. Banda was not released until April 1960.

Dr Banda had been educated in the United States and Scotland and became a medical doctor who practiced in Ghana and Edinburgh, where he was an elder of the Church of Scotland. When he became involved in the struggle for independence in 1958, he had spent four decades outside the country. Early on he established an autocratic style of leadership rendering him undisputed leader. For a long time leading up to independence the dominant force in Malawian politics was Dr. Hastings Banda and the MCP.

When Malawi achieved its independence it was essentially a one party state with its institutions, including a Westminster style parliamentary system, modelled on those of Great Britain. The first reportedly democratic elections were held in Malawi in 1961 when the MCP won all the seats. Although multi-party in principle, the MCP dominated in practice because the only seats not held by the MCP were the few that were reserved for the white minority.

In 1964, the elections were cancelled because all MCP members were returned unopposed. After these elections, some younger cabinet ministers – mostly from the Northern Region - criticised

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<sup>2</sup> One source used for this section is “Malawi’s Process of Democratic Transition”, by Dr. Heiko Meinhardt and Dr. Nandini Patel, published by the Konrad Adenauer Foundation in 2003.

some of Dr. Banda's key political decisions and complained about his autocratic style. This challenge was perceived by Banda as a potential threat and was summarily crushed by the President, who consequently consolidated his authoritarian leadership system by introducing a new constitution in 1966 that abolished the parliamentary system and the multi-party concept. From that time all constitutional powers were vested in him as executive state president; a position he held from 1971 until he lost the first multi-party general elections in 1994. The MCP, which Banda had led as president since 1960, was the only legal party.

After 1971, Banda moved from being president to being a dictator and the suppression he became renowned for became apparent and overt. Top government officials were targets of Banda's regime when in his eyes they became too popular or too powerful. The position of General Secretary of MCP- the highest post after the presidency – proved to be too hot a seat; it remained vacant between 1983 and 1993 after one office holder had been killed, one executed, another put in detention and two others summarily dismissed.

No democratic elections took place between 1964 and 1994. For the elections of 1983, 1987 and 1992, all candidates had to be members of the MCP. Donor demands and pressure from two underground opposition groups and the churches brought pressure to bear on the regime. The underground groups, United Democratic Front (UDF) and Alliance for Democracy (AFORD), came into the open in 1992. Banda called a referendum on whether a multi-party system should be introduced or not. In spite of the MCP's well organised structure that went down to the grassroots level, Dr. Banda lost the 1993 referendum. The North and South Regions voted in favour of the multi-party system. The democratisation process was encouraged by the international donor community which demanded democratic reforms in return for aid. The democratic reforms and transition were achieved peacefully with the elections in 1994.

A comparison between the results of the 1994 and subsequent 1999 and 2004 elections is as follows:

### Presidential Elections

<u>1994</u>			<u>1999</u>		<u>2004</u>			
<u>Candidate</u>		<u>Votes</u>	<u>Candidates</u>	<u>Votes</u>	<u>Candidates</u>		<u>Votes</u>	
Muluzi	UDF	1,404,754	Muluzi	UDF	Mutharika	UDF	1,119,788	
Banda	MCP	996,353	Chakuamba	MCP	2,106,790	Tembo	MCP	846,457
Chihana	AFORD	562,862			Chakaumba	RP	802,302	
					Mpinganjira	NDA	272,172	
					Malewezi	Ind	78,892	

### Parliamentary Elections

<u>1994</u>					
<u>Region</u>	<u>MCP</u>	<u>UDF</u>	<u>AFORD</u>	<u>Independent</u>	<u>Total</u>
North	0	0	33	0	33
Centre	51	14	3	0	68
South	5	71	0	0	76
Total	56	85	36	0	193

1999

Region	MCP	UDF	AFORD	Independent	Total
North	4	1	28	0	33
Centre	54	16	1	1	72
South	8	77	0	3	88
Total	66	94	29	4	193

2004

Region	MCP	UDF	AFORD	Indep	RP	NDA	PPM	MGOE	PETRA	CONU	Total
North	1	3	6	5	7	1	5	3	1	0	32
Central	58	7	0	5	0	0	1	0	0	0	71
South	0	39	0	28	9	7	1	0	0	1	85
	59	49	6	38	16	8	7	3	1	1	188

It is clear from the above tables that the main political parties have had a regional influence and the 2004 elections brought changes to the political map.

#### **IV. THE LEGISLATIVE FRAMEWORK**

##### **A. Legal Instruments Regulating the Process**

Elections in Malawi are regulated by the following legislative framework:

1. Constitution of the Republic of Malawi of 18 May 1994
2. Malawi Electoral Commission Act No. 11 of 1998
3. Parliamentary and Presidential Elections Act No. 31 of 1993 (hereafter referred to as the PPE Act)
4. Local Government Elections Act No. 24 of 1996
5. Communications Act No. 41 of 1998
6. Political Parties (Registration and Regulation) Act No. 15 of 1995
7. Political Parties Code of Conduct

The legislation regulating the electoral process provides an adequate basis for the conduct of democratic elections. However, it should be improved in a number of key areas, including the rules governing the composition of the MEC and to clarify the role of the MEC and the Malawi Communications Regulatory Authority (MACRA) in regulating the media during the campaign period. The legislative framework should also require transparency in the declaration and use of campaign funds from private sources and be amended to include additional necessary provisions to regulate voting procedures, including a number of fundamental ballot security safeguards. Political will is needed to implement these changes.

##### **B. The Structure of Government**

Malawi is a Republic with a President, who according to Section 78 of the Constitution is the Head of State and the Head of Government. A First Vice-President, elected on the same ticket at the President, assists the President in his/her duties. The President may nominate a second Vice-

President if he or she considers it desirable in the national interest, but this person has to come from a different political party. The President and Vice-President are elected for a five-year term and for a maximum of two consecutive terms.

In advance of the 2004 elections, a campaign was launched to hold a referendum to change the Constitution to enable President Muluzi to run for a third term. When it became clear that there was insufficient public support to win such a referendum, the government tried to pass a parliamentary bill to remove the term limit. This failed by only three votes in July 2002. Finally, after failing to get the limit increased from two to three terms, in November 2003 President Muluzi stated that he would step down from the Presidency at the end of his second term.

The Parliament (National Assembly), has legislative powers as provided by Section 48(1) of the Constitution. According to Section 62 of the Constitution, the number of seats in the National Assembly, which is currently 193, is determined by the MEC.<sup>3</sup>

The Supreme Court of Appeal, headed by Chief Justice L.E. Unyolo, is the highest court of appeal and can hear appeals from the High Courts (based in the three regions). At the lower level, Magistrate Courts have competence over districts. The country does not have a Constitutional Court but cases raising constitutional questions are considered by a panel of three High Court judges, and three Supreme Court Judges if there is any appeal.

Administratively, Malawi is divided into three regions (North, Centre and South), 40 Assemblies comprising 28 Districts, three Cities of Lilongwe, Blantyre and Mzuzu, nine Town Assemblies and 859 Wards. The Wards are relevant only for local elections.

### **C. The Malawi Electoral Commission (MEC)**

The MEC is generally regulated by Article 75 of the Constitution which states that “there shall be an election commission which shall comprise a chairman who shall be a judge nominated in that behalf by the Judicial Service Commission, and such other members that shall be not less than six, as may be appointed in accordance with an Act of Parliament”. A person shall not be qualified to hold office as a member of the commission if that person is a Minister, Deputy Minister, Member of Parliament or a person holding public office. Detailed provisions are contained in the Electoral Commission Act.

The present Election Commission is based in Blantyre and comprises of:

Justice James Kalaile, Chairman, appointed April 1999. The other Commissioners are:

<b>Commissioner</b>	<b>Party</b>
Lilian Kapanda	UDF
Marco Kanjo	UDF
Monica Ngwembe	MCP
Professor Kafwe Tembo	AFORD
Kasigele Nsanja	MCP
Lusekelo Mwalughali	AFORD

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Arthur V. Nanthulu                      UDF  
Rev. Emmanuel Chinkwita Phiri      UDF

Under the Electoral Commission Act, the MEC is an independent body, which should perform its functions and exercise its powers independently of any public official, organ of government, political party, person or organisation. However, there was a widespread feeling that the MEC was not sufficiently independent, which resulted in a lack of confidence in the administration of the elections by election stakeholders.

The structure of the election administration bodies is as follows:

Malawi Electoral Commission (Chairman and 8 Commissioners)  
I  
3 Regional Elections Offices  
I  
28 Returning Officers (generally District Commissioners)  
I  
193 Assistant Returning Officers  
I  
3,981 Polling Centres  
I  
Approximately 7,000 Polling Stations<sup>4</sup> (Polling Officials and Counting Officers)

The current Commission was appointed in August 2002 and for most of the Commissioners, the 2004 elections were their second election experience after the 1999 General Elections and the 2000 Local Government Elections, in addition to numerous by-elections.

The Commission is serviced by a Secretariat, headed by the Chief Elections Officer (CEO). The CEO is supported by two deputies, one is responsible for Electoral Services, and the other for Finance and Administration. Under the Deputies are various Heads of Divisions and Sections. The CEO is appointed by the MEC for a renewable period of five years, and is answerable only to the Commission.

The Commission also has powers to appoint other professional, technical and administrative officers and support staff as it deems necessary on terms and conditions as it deems fit. There may also be seconded to the Commission such number of public officers as the Commission may arrange with the appropriate authority responsible for such public officers for such periods and on such terms and conditions agreed upon between the Commission and the authority concerned. The Commission shall deploy persons in its service in such manner as it deems appropriate and shall for each district, constituency, ward and polling station, designate a District Elections Officer, election officers, assistant election officers, returning officers, presiding officers,

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<sup>4</sup> Polling Centres can contain a number of Polling Stations. The exact number of polling stations that opened on 20 May 2004 was still not known when this report was published.

registration officers, polling officials and counting officers in such numbers as the Commission shall deem appropriate for the purposes of conducting or supervising elections.<sup>5</sup>

#### **D. Powers and Functions**

The Commission functions within the powers conferred upon it by the Constitution of the Republic of Malawi and management of its affairs is regulated by provisions of the electoral laws.

According to the Constitution, the powers and functions of the MEC include:

- (a) determining and reviewing constituency boundaries;
- (b) determining electoral petitions and complaints; and
- (c) ensuring compliance with the law.

Additional powers under the Electoral Commission Act include:

- (d) exercising general direction and supervision over the conduct of every election;
- (e) determining the number of constituencies and wards;
- (f) undertaking or supervising the demarcation of constituency and ward boundaries;
- (g) organising and directing the registration of voters;
- (h) devising and establishing voter registers and ballot papers;
- (i) printing, distributing and taking charge of ballot papers and voter registers;
- (j) Approving and procuring ballot boxes;
- (k) establishing and operating polling stations;
- (l) establishing security conditions for the conduct of elections;
- (m) promoting public awareness and conducting civic and voter education on electoral matters;
- (n) promoting and conducting research into electoral matters and publishing results thereof; and
- (o) taking such measures and doing such other things as are necessary for conducting free and fair elections.

### **V. NOMINATION OF PRESIDENTIAL AND PARLIAMENTARY CANDIDATES**

#### **A. Nominations for Presidential Candidates**

The nomination process begins with the MEC publishing a notice in the *Gazette* declaring:

- (a) a place(s) and a day(s) not less than 14 days after the day of publication of the notice on which the Commission shall receive nominations of candidates for election to the office of President; and

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<sup>5</sup> The MEC did not have its own staff at the district level, and had to use local authority staff as Returning Officers. This was difficult as the MEC had less control and staff had other responsibilities.

- (b) a day(s) not less than 21 days after the nomination day or last nomination day, as the case may be, fixed under (a) above, on which a poll shall be taken if a poll becomes necessary in accordance with the Act.

The qualifications to be nominated or elected as a candidate are clearly defined in the Constitution and are standard. The procedure for nomination is as follows:

- (a) the candidate shall be nominated by at least 10 registered voters in each district, who shall sign a nomination paper in the prescribed form;
- (b) the candidate or his/her election representative shall lodge such nomination paper with the Commission;
- (c) the candidate shall produce evidence, or statutory declaration made before a magistrate or a commissioner for oaths, that he/she is a citizen of Malawi and has attained the minimum age of 35; and
- (d) the name of the Vice-President appointed by the candidate as his/her running mate in the elections shall be specified;

Nomination papers to stand for election as President and Vice-President had to be received by the MEC by 23 March 2004 and the names of registered candidates were subsequently published in the *Gazette* in alphabetical order of surnames, on the radio and in a newspaper in general circulation in Malawi. Each presidential candidate paid a non-refundable fee of 50,000 MK. The following five candidates were registered to stand for the Presidential election:

- |     |                       |                        |
|-----|-----------------------|------------------------|
| (1) | Dr Bingu wa Mutharika | UDF/AFORD/NCD Alliance |
| (2) | Mr. Gwanda Chakuamba  | Mgwirizano Coalition   |
| (3) | Mr. Brown Mpinganjira | NDA                    |
| (4) | Mr. John Tembo        | MCP                    |
| (5) | Mr. Justin Malewezi   | Independent Candidate  |

A sixth Presidential Candidate, Dr. Hetherwick Ntaba, National Congress for Democracy (NCD), withdrew after joining the UDF/AFORD/NCD Alliance.

## **B. Nomination of Parliamentary Candidates**

A total of 30 political parties are currently registered with the Registrar of Political Parties, appointed by the Minister of Justice. Of these, the following took part in the parliamentary elections:

Malawi Congress Party (MCP), United Democratic Front (UDF), Republican Party (RP)\*, National Democratic Alliance (NDA), Alliance for Democracy (AFORD), Peoples Progressive Movement (PPM)\*, Congress for National Unity (CONU), Movement for Genuine Alliance for Democratic Change (MGODE)\*, National United Party (NUP)\*, United Party (UP)\*, Malawi Democratic Union (MDU), Peoples Transformation Party (PETRA)\*, Malawi Forum for Unity and Development (MFUNDE)\*, Malawi National Democratic Party (MNDP).<sup>6</sup>

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<sup>6</sup> The parties with stars beside their names formed the Mgwirizano Coalition.

According to the PPE Act, the nomination of every parliamentary candidate shall:

- (a) be made by means of a nomination paper in the prescribed form;
- (b) be made and signed by at least ten voters registered in the constituency in which the candidate wants to stand;
- (c) be endorsed with the candidate's consent. If s/he is to stand for or be sponsored by a political party, such fact shall be specified together with the party's name; and
- (d) in case of independent candidates, this fact shall be specified as well.

The qualifications to be nominated or elected as a Member of Parliament are clearly defined in the Constitution as are the reasons for not being qualified to be nominated or elected to Parliament. No candidate may be nominated for election in more than one constituency.

The MEC issued an order, notice of which was published in the *Gazette*, indicating that nomination papers of the candidates had to be lodged with the Returning Officer of the constituency where the candidate intended to run by 26 February 2004. Each parliamentary candidate paid a non-refundable fee of 5,000 MK.

No problems were reported with this stage of the electoral process for either the presidential election or the parliamentary elections.

## VI. THE PERFORMANCE OF THE MEC

### A. Voter Registration

The voter registration process to update the existing voters' roll for the 2004 elections was originally due to take place in November 2003, but was re-scheduled for 5-18 January 2004. The EOM was not present in Malawi at this time, but reports from other observers who were present indicated a number of problems, including a shortage of materials such as forms, films and duplicate certificates, no genuine verification of voters' residency, and failure of registration centres to open for the entire prescribed period.<sup>7</sup> There was also a consensus among virtually all election stakeholders, including MEC officials, that the registration process was flawed and seriously affected by:

- the delay caused by the debate about the third term for the President;
- the delay in the decision to have bi-partite or tripartite elections;
- the time of year (planting season);
- the low turn out of new registrants, those verifying their own details and those intimating the deaths of registered voters;
- poor voter education;
- the shortage of critical materials and equipment (cameras, films and forms); and
- an underestimate of the number of duplicate certificates required.

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<sup>7</sup> Other observers present included a team from the Commonwealth Secretariat which expressed a number of concerns about the process and urged a review of registration procedures and plans.

While the MEC extended the voter registration period for a week, there was no improvement in the supply of registration materials or quality of voter education. The National Initiative for Civil Education (NICE) and the Centre for Human Rights and Rehabilitation (CHRR) reported that due to the lack of forms, people were registered with unofficial forms. Staff morale was also reported to be poor due to a pay dispute. Additional problems reported to the EU EOM, by political party representatives and NGOs, included people being brought in from outside the district, under age registration, people registering twice, inconsistent processing of transfer applications, and purchase of registration certificates by local politicians.

The processing of information from the voter registration period was carried out at the MEC IT Centre. Four sophisticated electronic scanning machines, capable of processing 30,000 forms an hour, were used for the task. However, bottlenecks arose in the photograph processing section of the applications and in making corrections to applications, which had to be done manually. This delayed production of the voters' roll.

As a result of these problems, the display of revised voters' rolls at polling centres (previously registration centres) for verification purposes, scheduled to take place during the week beginning 26 April, did not take place. Where voters' rolls were displayed, they were the old lists (from 1999 and 2000) that were used during the January 2004 registration process. At this stage the verification exercise was based on registration cards, transfer and deletion forms that were filled in manually during the registration period at the registration centres. These were sent to the District Offices and then to the MEC IT Centre in Blantyre for processing. According to the MEC, the correct lists could not be displayed because the processing of the "transfer forms" had not been completed.

It was recognised at that time that it was going to be technically very difficult, if not impossible in the days preceding polling day, to change or amend the 2004 voters' roll, which was still in the process of compilation. The MEC failed to meet deadlines of 16 April, 26 April and 7 May and therefore the verification process could not properly be achieved and corrections were no longer a possibility.

On 5 May, the MEC announced that an external contractor that had been brought in to accelerate the processing of the information relating to transfer voters had completed its job and that the voter figures on the revised computerised voters' roll had dropped from 6,668,839 to 5,745,455. The lower post-processing figure was more in line with the general forecast of 5.4 million. There was widespread concern, however, at very large discrepancies in many polling centres between the amount of applications submitted in January 2004 and the amount now on the voters' roll. The MEC had already printed 6.6 million ballot papers (plus 10% for the parliamentary elections and 6.6 million plus 15% for the presidential election) based on the higher voters' roll figure.

The above discrepancies, along with the 900,000 further additional spare ballot papers, caused alarm among the opposition parties and independent candidates that resulted in the Mgwirizano Coalition referring their complaints to the High Court. On 14 May, the High Court ruled that insufficient time had elapsed between the display of the voters' roll and the scheduled election day. It therefore instructed the MEC to postpone the elections to a date no later than 25 May so that there would be sufficient display and verification of the voters' roll. In response, the MEC decided that the elections would be held on 20 May. However, the MEC did not make a serious

effort to ensure that there was adequate opportunity for voters and political parties to verify the voters' roll during this period.

### **B. State of Preparedness**

The failure to deal adequately with the registration of voters and to provide adequate information on the voters' roll adversely affected the atmosphere during the pre-election phase. The poor performance of the MEC on this issue, as well as political criticism because of its composition, resulted in loss of credibility and confidence by stakeholders.

The MEC planned well for election day. Early in the deployment of the mission it was able to provide details of the programme of delivery of the election material, the secure storage of sensitive materials and the subsequent delivery to the polling centres. However, in practice the delivery did not work out as smoothly as planned due to vehicle shortages and lack of secure storage and practices.

The MEC operated in the Districts through the District Commissioner (who in all but one case was the Returning Officer). The District Commissioner (DC) is not an employee of the MEC, but is a civil servant with a range of responsibilities for the district. DCs were generally assisted by two Elections Clerks and a stringer (for media work).

The DCs were also assisted by a District Election Supervision Team (DEST) comprised of eight or nine people from the district administration. This included a high proportion of state security officials. In addition to the police officer in charge, there were representatives of the Criminal Investigation Department and the National Intelligence Bureau. The involvement of such security sectors raises questions about the perceived independence of the election administration and is unacceptable in a democratic election. It should not occur in any future elections. In some districts, the DEST became directly involved in the training of party monitors and in the delivery of civic education. On election day, polling stations sent their results to DEST for aggregation. In many areas, EOM observers were not invited to attend DEST meetings.

The MEC was responsible for training election officials. It permitted the EOM to observe the training at all levels and a good relationship developed between DCs, electoral staff and LTOs. Initially, supervisors and presiding officers (generally selected from teachers or government administrators) were trained by MEC central senior staff between 14 April and 6 May. Many of those selected had previous election experience. The training they received was well and professionally presented to classes of approximately 50 persons. Participants were generally satisfied with the information received. In areas where all the election equipment was available, the polling station and the voting process were simulated. In other cases the election manual was used. Regrettably the manual did not include reference to spoiled and invalid votes. A high proportion of those attending the training were women.

Using the cascade method, presiding officers and supervisors then trained polling staff. This was supposed to take place on 15-16 May, but in some cases was not carried out until the eve of polling day. The quality of this training was determined by the level of competence of the presiding officer and their understanding of polling procedures. Election day revealed shortcomings in the training of polling staff, particularly in remote areas.

The MEC was also assisted by Multi-party Liaison Committees (MPLC). These Committees comprised election officials, state security personnel, political parties and NGOs, and were chaired by the local Returning Officer (RO). Regrettably, independent candidates were not always invited to MPLC meetings. The committees, whose prime objective was to resolve conflict matters related to electoral issues, generally operated well and, in the opinion of many LTOs and other observers, were influential in reducing intimidation and conflict during the campaign period.

Throughout the process, the MEC did not communicate well with lower level officials or other election stakeholders and there was a lack of clear, written instructions on certain issues. Most instructions were initially only communicated orally to polling staff and other stakeholders and instruction manuals did not contain sufficient information. Even though instructions on some issues were later put into writing, they were not dispatched to stakeholders in sufficient time before polling. Significantly, stakeholders at the National Elections Consultative Forum (NECOF) meeting on 19 April 2004 requested the MEC to provide clearer instructions on counting procedures.

The MEC also changed its instruction on a key issue. At the beginning of 2004, it stated that only those who registered in 2004 would be allowed to vote. However, nearer to polling day it stated that those who had registered in 1999 would be allowed to vote provided their names could be found in the voters' roll of the centre where they registered.

The MEC generally met when an issue needed to be addressed and was, therefore, often perceived as being crisis-led. Also, the fact that the meetings of the MEC were not open to international and domestic observers compounded the view of a lack transparency within the organisation.

The MEC failed to deal adequately with complaints from political parties and independent candidates, particularly concerning the abuse of state funds, transport and materials for party campaign purposes and bias in reporting by the electronic media. This resulted in court cases being filed by the National Democratic Alliance (NDA) and Mgwirizano Coalition. In the second of these cases, the High Court found that the MEC had abdicated its responsibility, a judgment that was then upheld on appeal by the Supreme Court.

## VII. POLITICAL BACKGROUND

### A. Candidates for the Presidential Election

The UDF appointed **Dr. Bingu wa Mutharika** as its presidential candidate and former Minister, Cassim Chilumpa, as his running mate. Dr. Bingu wa Mutharika is an economist by training and has been a member of the UDF since the Banda regime began to disintegrate in 1993. Prior to the elections, allegations that Mutharika had been dismissed from a position with the Common Market for South and Eastern Africa (COMESA) on four counts relating to misuse of funds, abuse of office, management style and breaking the COMESA Treaty, were reported in the press. The fact that he is Catholic only became significant late in the campaign when religion became an issue, though in fact at a Sunday mass, his parish priest, with Dr. Mutharika in the congregation, advised his flock not to vote for the UDF.

The presidential candidate for the MCP, the oldest political party and only political party between 1964 and 1993 was **John Tembo** who at 72 was the oldest of the candidates for the presidency. Tembo was first elected to parliament in 1961, three years before the country gained independence. He was a member of the Banda inner circle and was regarded as the power behind the throne in Dr. Banda's later years in office. His long time rival, Gwanda Chakuamba, had been appointed head of the MCP, but Tembo regained the leadership after waging a personal war against his presidential rival.

**Gwanda Chakuamba**, the candidate for a coalition of seven parties which formed the Mgwirizano Coalition, was regarded as the opposition's front runner and had the support of powerful religious leaders. The 69 year old former member of the MCP and Minister during the Banda era was reportedly an enforcer with the Malawi Young Pioneers, though he fell out of grace with the former President, Dr. Banda, who accused him of trying to have him murdered. On this account, Mr. Chakuamba served 12 years out of a 22 year prison sentence. His running mate was Aleke Banda, former Minister of Agriculture in the UDF government, who had also had a political career already in the previous MCP government of Dr. Banda.

The presidential candidate for the NDA, which registered as a political party before the elections, was party leader **Brown James Mpinganjira**, President Muluzi's right hand man until he was sacked from Ministerial office in 2000 over allegations of corruption. A powerful, charismatic leader he is widely regarded as the architect of the ruling party's previous winning strategy, but also demonised as the creator of the UDF's Young Democrats.<sup>8</sup> He transformed the NDA from being a pressure group into being a credible political party. He is the only one of the five candidates who for sure can run for election in five year's time because the others will probably be too old to qualify for candidature.

**Justin Malewezi**, cabinet secretary in Banda's administration, stood as an independent candidate. A science teacher, he studied in the United States and rapidly rose through the ranks of the MCP until he was dismissed after suggesting that Malawi embrace political reform. In the early 1990s he joined the UDF when it was still an underground movement. At the end of 2003, he left the party, while still holding the elected post of First Vice President of the government from which he could not be dismissed, and took the leave of entitlement due to him which covered the period up to election day. Shortly after, he joined the PPM and was elected Vice President of the party. Once PPM became one of the parties that formed the Mgwirizano coalition and it became clear that he could not become its Presidential candidate or running mate, he decided to register his candidacy to the Presidency as an independent.

Significantly, all five presidential candidates are men of considerable, lengthy and varied experience in Malawian political life and have been senior politicians with either one of the two main parties, and in some cases with both. Although it is positive that there was a choice of five candidates, the political diversity of the candidates was questionable. There was no untainted fresh face that might bring a change of direction for the electorate to consider.

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<sup>8</sup> The Young Democrats are the UDF's equivalent Dr. Banda's Malawi Young Pioneers (MYP) who operated as a paramilitary organisation.

## **B. Political Developments Prior to the Elections**

In the run-up to the elections, the UDF experienced a number of difficulties. First, a number of high profile members of the party were aggrieved as they would have preferred a contest to select the party's presidential candidate rather than simply an appointment. Second, as mentioned above, Aleke Banda resigned from his position of Minister of Agriculture, and stood as the Mgwirizano Coalition's candidate for Vice President. Third, the party lost the support of the newspaper, *The Nation*, owned by Aleke Banda, which became very critical of the government.

The appointments of the candidates for both President and Vice-President reflected the wishes of President Muluzi, who was appointed to the position of Chairman of the UDF for a five-year period. In theory, this position only involves internal party affairs. However, it was significant that during the campaign, President Muluzi had a higher campaigning profile than Dr. Mutharika.

AFORD, the third largest party in parliament prior to the elections, and the strongest party in the Northern region, experienced considerable problems in advance of the elections. These started when its leader, Chakufwa Chihana aligned the party with the UDF, and it became part of the ruling coalition. Senior members of the party opposed this move, left AFORD and formed a grouping known as the Genuine AFORD. They then formed a new party, the Movement for Genuine Alliance for Democratic Change (MGODE). In addition, in spite of agreement to the contrary, their coalition partner, the UDF, supported independent candidates who had previously been with the UDF and were campaigning against AFORD.

Further difficulties arose for UDF and AFORD during the process of selecting candidates to stand in the parliamentary elections, when the executive committees of both parties imposed candidates on constituencies on the pretext that the party required proven people to stand for parliament. Many of those not selected had a popular support base within their party (some had even held posts in government) and therefore decided to stand as independent candidates.<sup>9</sup> While some remained party members and supported their party's presidential candidate, tension and intimidation were frequently reported between them and UDF/AFORD and there were allegations that some independent candidates continued to use party resources.

The MCP, the main party in opposition with a base in the Central Region, also experienced leadership troubles, and split into three factions, none of which co-operated with each other during the elections. Further, the party's candidate for President, John Tembo, was initially prevented from running in the Presidential election after being convicted, together with the party secretary, of contempt of court for holding a convention that party president, Gwanda Chakuamba, had been granted a court injunction to stop. However, on appeal, the Supreme Court ruled that Mr. Tembo would be able to stand in the election.

In advance of the elections, nine political parties, including the MCP and the NDA tried to form a coalition with the assistance of the assistance of the Church of Central African Presbyterians (CCAP) and other churches such as the Anglican Church and Catholic Church. While the MCP and NDA subsequently withdrew from discussions, the seven parties that remained formed themselves into the Mgwirizano Coalition. However, the coalition failed to reach an agreement

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<sup>9</sup> In total, there were 382 independent candidates out of a total 1,277 candidates (nearly 25%).

that would prevent candidates of different parties from standing against each other at the constituency level.

## VIII. THE CAMPAIGN PERIOD

### A. General

Campaigning by political parties and candidates varied considerably, but a general lack of enthusiasm at rallies was widely reported. The UDF campaigned longest and was consistently the most active and the most visible party. Its rallies were generally bigger and more festive than other parties and were attended by a larger proportion of women and children.

Rallies provided political parties with the opportunity to express appreciation to supporters for the services given to the party. While opposition parties generally gave thanks verbally, the ruling party distributed money (either openly or in yellow envelopes), or gifts (such as bicycles). Such distribution (including in Blantyre Kabula, Lilongwe South West, Lilongwe North East, Salima and Mangochi) was documented and photographed by EU observers. This practice is unacceptable in a democratic election. This overt display of largess at rallies clearly indicated the disparity of resources between the ruling party and the opposition and throughout the pre-election period the opposition complained of an uneven playing field. EU observers reported widespread abuse of state resources by the ruling party throughout the campaign period, including the use of government and parastatal vehicles and human resources.

In order to hold rallies, political parties and independent candidates were required to follow a set procedure and obtain permission from the District Commissioner, in consultation with the police. While opposition parties generally followed the procedure and their programmes could be obtained from the DCs, the UDF generally ignored the formal application procedure. This issue was often the root of some of the problems that took place at opposition rallies when the UDF, through the Young Democrats, would claim the site of a rally on the basis they had reserved it and a skirmish would ensue. In Blantyre, a former UDF independent candidate, Samuel Kaphuka, tried on four occasions to hold rallies but was allegedly prevented from doing so by UDF supporters. On the fourth occasion, his supporters were attacked while preparing the rally and one was hospitalised. A written complaint was filed in this case. Another independent candidate in Blantyre alleged that he was unable to hold a rally because of the violent atmosphere caused by UDF supporters. In a Northern Region constituency, AFORD block booked a facility to prevent other parties obtaining the use of it.

Opposition parties and independent candidates often reported that the traditional chiefs were obstructing their campaigns.<sup>10</sup> The most frequent complaint related to their refusal to grant permission to use land for the purpose of holding rallies. Some LTOs reported that some chiefs had been instructed to do this under threat of dismissal, and indeed in Mangochi chiefs were reportedly replaced. In Salima, LTOs reported that some traditional chiefs in the area responded positively to the ruling party and were rewarded and left in peace, while others behaved

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<sup>10</sup> The traditional authorities are represented at three levels – at the District level by the Paramount Chief, at the sub-district level by the Group Village Headmen, and at the village level by the Village Headman Adviser.

independently of the ruling party, cooperated with all the players in the elections, and were threatened with removal. In Ngabu, LTOs reported that while some traditional chiefs were misused by politicians and others participated in political activities, most were well aware of their expected role as neutral agents in the democratic process. Traditional chiefs were regularly observed receiving envelopes containing cash from officials of the ruling party.

The atmosphere during the pre-election phase was generally calm. Incidents that did take place generally involved younger members of the parties, and often the Young Democrats. Towards the end of the pre-election phase the number of incidents reduced reportedly because the UDF realised that the intimidation and earlier violence that it had used had been counter-productive and more covert means had to be employed.

Late in the election religion entered the debate. While an undercurrent of resentment has always existed between the indigenous population and the Asian population, caused by the amount of wealth that rests with the Asian sector, attitudes seemed to harden during the pre-election period. In Chipita, a Catholic priest expressed concern about the economic and political situation and suggested that as a result of the President inviting Palestinian and Asian businessmen into the country the Muslim political power base was increasing. It was also reported to LTOs that a Muslim candidate was receiving financial support from Libya. According to press reports, the Catholic Justice and Peace Commission issued guidelines on who its faithful should vote for, based on how the presidential hopefuls presented themselves during a series of meetings with the clergy. In general, the Anglican and Catholic Churches were widely believed to be supporting opposition parties.

During the week before the elections, the Civil Liberties Committee (CILIC) reportedly requested Radio Islam and people who participated in panel discussion programmes to “desist from promoting hate speech which could divide people on religious lines”. This request followed two radio broadcasts where panellists and telephone callers spoke against Christians in general and Catholic priest, Father Boniface Tamani, Chairman of the Public Affairs Committee (PAC), in particular.

## **B. Intimidation**

Intimidation was reported in many different forms and in most districts. Independent candidates who had previously been members of the UDF were frequent victims. In Machinga district, in one constituency where ex president Muluzi’s son was a candidate, it was reported that of the four independent candidates standing for election, two dropped out, one was never seen and another feared for his life. In another constituency in Machinga district, two independent candidates were put in jail, but still won.

The UDF was accused of intimidating the traditional authorities if they failed to fulfil their obligation towards the ruling party. This took the form of withdrawal of position, payments and privileges. In turn the traditional chiefs were reported to have threatened electors within their control if they did not vote “correctly”. On election day, the chief in one area reportedly stood behind the polling booths when their people were voting. In this situation, voters did not want to be seen speaking to observers.

The Young Democrats (UDF) were regularly reported to be intimidating through violent or threatening behaviour at rallies. Indeed their very appearance was said to be intimidating. The Young Democrats were often confronted with their equivalents from MCP, NDA or independent candidates. These confrontations caused many of the reported incidents during the campaign period. In all districts the UDF was frequently accused of recording information from voters' cards. This act was seen by many stakeholders as intimidatory because it left voters feeling that the UDF would know who they would be voting for.

Another reported source of intimidation was the presence of National Investigation Bureau (NIB) and the Criminal Investigation Department (CID) at Multi Party Liaison Committee meetings and in DESTs.

### **C. The Police**

Early in the campaign the Police reported that it was their intention to have a low profile at rallies and often use plain-clothed rather than uniformed police. According to LTO reports, they did maintain a low presence, although were present at all UDF rallies observed. The Police were widely perceived as being close to the ruling party

Observers reported that on several occasions people did not present written complaints to the Police because they believed that they would not intervene. They also reported difficulties in obtaining information from the Police, which resulted in arduous follow up measures in order to investigate specific incidents. Observers were frequently not able to deal with the local police but were referred to a national spokesperson.

Two cases of police arresting candidates prior to the elections were reported. In Machinga South East, Reverend Ndomondo, an independent candidate (former UDF) was accused of having organised trouble at a rally at which President Muluzi was present, and arrested for six days. However, according to Reverend Ndomondo, he was held as a result of his decision to stand as an independent candidate. The second case involved another independent candidate, Elock Maotcha (running for Machinga Constituency Ntaja), who was accused of having disturbed the campaign activities of UDF candidate, Alice Sumani, a government minister, by kidnapping one of her supporters to prevent him from announcing the arrival of the candidate in the village the next day. He was jailed for two weeks. Maotcha denied the accusations, saying that he has was attacked by seven UDF members and that Ms Sumani had paid the Police to keep him in jail.

## **IX. THE MEDIA**

### **A. Media Framework**

A good selection of media can be found in Malawi, but their presence is limited to urban areas. Radio, TV and newspapers are available, with radio the most effective means of spreading information in the country.

The state controlled Malawi Broadcasting Corporation (MBC) is the dominant media outlet and most listened to station in Malawi. Established as a parastatal radio station in 1964, it became a

public radio station with the emergence of the pluralistic system of government in 1994. It has two channels (Radio 1 and Radio 2) and reaches almost 80% of the country.

The private radio stations, Capital Radio, Malawi Institute of Journalism (MIJ) Radio and Power 101, are MBC's main competitors. However, their effectiveness is weak as they cannot broadcast far outside Blantyre, Lilongwe and Mzuzu. Other radio stations are Radio Islam, Calvary Family Church Radio (CFC), Transworld Radio and Radio Maria. All of these are religious based focusing mainly on music and prayers, punctuated by a few news bulletins and other programmes. Many Malawians listen to the British Broadcasting Corporation (BBC), although this is reachable only on urban areas. Its "Focus on Africa" programme is particularly popular and is usually rebroadcast on Capital FM.

Television of Malawi (TVM) is the only TV station in the country. Wholly owned by the government of Malawi, it is considered to be a public media station and is funded by public taxes. However, TVM has been registered as a private company in the Registrar General since 1999, the year of its inauguration, and the Malawi Communications Regulatory Authority (MACRA) has only issued it with a draft license to broadcast. While it reaches 70% of the country, its influence is less than MBC because TV receptors are not affordable in the rural areas. As a result of a fire in 2002, which destroyed most of its equipment, its resources are quite short.<sup>11</sup> Nevertheless, TVM broadcasts news bulletins twice a day and produces a total of 24 programmes a week.

Only two daily newspapers are available in Malawi, The Nation (Weekend Nation at the weekend) and The Daily Times (Malawi News at the weekend). Both are private newspapers printed in Blantyre. They have a small circulation (10,500 papers/day for The Daily Times, and 16,100 papers/day for The Nation) and because of the high illiteracy rate in the country their influence is small. The Nation is managed by Aleke Banda's daughter. Given that Aleke Banda (leader of the PPM, and Chakuamba's presidential running mate) is the owner of the newspaper, it held a strong anti-government position throughout the election campaign. The Daily Times used to be an anti UDF newspaper, but after the departure of Dr. Cassim Chilumpa, who was Chief Executive and Chairman of a group of companies under Blantyre Print and Publishing, including the Daily Times newspaper, in April 2004, to become the presidential running mate to Bingu wa Mutharika, its position was more neutral.

A number of weekly papers are available in Blantyre and Lilongwe, including The Chronicle, The Weekly News, UDF News, The Exclusive, The Dispatch and The Malawi Standard.

## **B. EU EOM media monitoring**

The EU EOM in Malawi established a media monitoring team, which monitored 10 media outlets:

- five electronic media: TVM, MBC 1, Capital Radio, Malawi Institute of Journalism (MIJ) Radio and Power 101.
- five newspapers: The Nation, Weekend Nation, Daily Times, Malawi News and The Chronicle.

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<sup>11</sup> Four digital video-cameras, one Beta-camera, one editing room and five vehicles.

Monitoring began on 16 April and finished on 17 May. During this period, the media monitoring team measured time, space and tone devoted to political parties and candidates.

The results of the monitoring revealed that MBC 1 showed overwhelming bias in favour of the ruling coalition, allocating 97.7% of its electoral coverage airtime to UDF/AFORD/NCD. Within this allocation, UDF presidential candidate, Bingu wa Mutharika, received 89.6% of airtime (see graphs in Annex 8).

Before the start of the electoral campaign, MBC appointed a task force on elections to work with the MEC to oversee and coordinate all electoral programming. The MEC sent 60 stringers to the field to cover electoral activities in the districts and provide reports to MBC. However, MBC broadcast these reports only on special programmes, (“Campaign News”), and devoted its national news bulletins, which are broadcast much more often than the special programmes, almost exclusively to the UDF and presidential activities.

MBC managers reported difficulties in receiving reports from the districts and lack of transport and equipment to carry out a proper coverage of the electoral campaign throughout the country. They also accused the MEC of not providing, as agreed, three vehicles for the three regional offices of the radio station.<sup>12</sup> Nevertheless this lack of resources should not have affected its coverage of parties and did not appear to be a problem when following the President and the UDF presidential candidate at their rallies. Further, the production of the special programmes such as “Campaign News” proved that the station was capable of producing balanced broadcasts.

The monitoring figures for TVM show that UDF/AFORD/NCD enjoyed 79.5% of electoral coverage, followed by the Mgwirizano Coalition with only 8.5% of electoral coverage and the MCP with only 6.5% of coverage. During the last days of the campaign, TVM did show some improvement when it broadcast the special programmes and interviews with opposition candidates. However, this came too late to balance the coverage over the whole period monitored.

Staff at TVM also reported a lack of resources and budget to properly cover the rallies of all parties. They also alleged that on some occasions, some opposition candidates refused to be interviewed by TVM reporters or excused themselves because of their full programme of rallies.

A crucial factor that contributed to the huge imbalance in electoral coverage by the state controlled media is the assumption by MBC and TVM that “because he is the President of the country, the President has to be followed and all his activities broadcast in the national news”. MBC and TVM managers conceded that this has been their policy since 1994 and, although no official instruction had been received from the Office of the President or the Ministry of Information, this is the way they felt they should proceed. This became a significant issue during the campaign since President Muluzi campaigned for the UDF during all the presidential activities he carried out as Head of State.<sup>13</sup>

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<sup>12</sup> Only one vehicle was provided to MBC, but after few weeks it was withdrawn by the MEC.

<sup>13</sup> These activities and rallies were broadcast on MBC and TVM (in a daily program called “Presidential Dairy”) usually twice a day.

The private radio stations monitored by the EU EOM generally provided reasonably balanced coverage of the campaign and included all the parties and candidates in their broadcasts. Some, however, such as MIJ Radio, provided a more negative view of the UDF presidential candidate than the other contestants.

The print media generally provided good coverage of all contestants, with equitable space devoted to parties and candidates. However, the two daily newspapers, The Daily Times and The Nation, displayed a negative tone and questionable neutrality when referring to the ruling coalition. The Nation, in particular, strongly criticised the UDF presidential candidate, particularly during the last two weeks of the campaign. The Chronicle mostly covered the UDF negatively and the Mgwirizano Coalition positively.

### **C. The media and the electoral campaign**

The electoral campaign period was extensively covered by both electronic and print media, with private newspapers and radio stations showing a variety of political tendencies. Media coverage became a serious issue due to the clearly biased performance of the state controlled media in favour of UDF/AFORD/NCD and its presidential candidate, almost to the exclusion of opposition parties and independent candidates.

The Presidential and Parliamentary Elections Act (PPE), in Article 63, section 1c establishes that the MEC “...shall ensure equal news coverage of the campaigning by all political parties”, and in section 2 establishes that “the Commission may, by arrangements with MBC, allocate time on the radio during which political parties may be allowed to speak in campaigning for an election and the Commission shall allocate equal time to every political party”. However, no instructions were provided by the MEC in this regard. On the contrary, the MEC remained passive on this issue and failed to ensure equal news coverage on MBC and TVM for the competing parties and candidates.

A Special Committee on Media, led by Commissioner Mrs. Lilian Kapanda-Phiri, was created by the MEC to follow all matters related to the performance of the media during the electoral campaign. However, this Committee seemed invisible. The media were unaware of its existence and were never approached by any representative of the Committee. At the end of the electoral period, the MEC was unable to present an account of its activities.

In advance of the elections, the MEC produced a document called “Procedures for media coverage of the parliamentary and presidential elections and local government elections”. The purpose of this document was to ensure full, fair and balanced political coverage at all times for all registered parties and candidates during the campaign period. This document, which committed all participants to fulfil an obligation of neutrality and balance, was signed by the MEC, media outlets and representatives of all political parties before the start of the campaign. However, the performance of the state controlled media did not measure up to the standards outlined in the document.

The MEC reported a lack of cooperation from MBC and TVM in relation to the implementation of this agreement. In response, both stations accused the MEC of not fulfilling its obligation to provide them with transport and materials to develop proper coverage of the electoral campaign. An example of this lack of co-operation related to tapes containing the manifestos of the political

parties that were produced by the MEC very late in the campaign and were supposed to be sent to different radio stations. The slots were broadcast only during the last eight days of the campaign and only on one radio station (MBC). The MEC alleged lack of budget to buy airtime on the other radio stations.

The Communications Act (CA) refers to the regulation of the media during the electoral campaign. Article 45 section 1 of the CA states that MACRA, not the MEC, is the body to “ensure equitable treatment of political parties and election candidates by all broadcasting licensees during any election period”. The law does not include provisions to enforce or define what MACRA is supposed to do to achieve the demands of section 1.

This issue was not clarified before the start of the campaign. As a result, during the whole electoral campaign MEC and MACRA referred to each other as being responsible for addressing this aspect of the process. Both bodies avoided taking actions to resolve the clearly unbalanced electoral coverage by MBC and TVM.

Remarkable also is the fact that since MBC and TVM have not yet been licensed, it is difficult for MACRA to regulate them in accordance with the provisions of the CA. Worse still is the fact that the legal status of TVM is not yet determined because neither PPE nor the CA makes reference to TVM, only to MBC.

During the election period, a number of activities by the authorities raised serious questions over the degree to which freedom of expression is respected in Malawi:

- On 14 May, MACRA asked Radio Maria to provide tapes of some of its electoral broadcasts. MACRA considered that because of its status as community radio station, Radio Maria should not include politics in its broadcasting.
- On polling day, a journalist from Capital Radio, George Kalungwe, was detained by Police after broadcasting inaccurate information about the supposed detention of a traditional chief in Mzimba for having ballot papers in his possession. Although Capital Radio amended its error by airing a correction and addressing an official apology to the traditional chief, the Police kept Kalungwe under detention for 24 hours.
- On Sunday 23 May, three days after polling and with no official results announced by the MEC, the Police shut down MIJ Radio after considering an interview with the Mgwirizano Coalition spokesperson, Kholiwe Mkandawire, to be “inflammatory”, and arrested four journalists at the station. Two of them were released the same day while the other two were released on bail 72 hours after being arrested. Nine days later, a court decided that the Police should have concluded their investigation and as the national situation was calm, the radio station could reopen.

In the last case two issues arise. First, the Police overreacted and closed the station illegally, without any official authorisation. Second, MACRA, which has the power under legislation to close radio stations, restricted its action to asking MIJ Radio to provide tapes containing the interview with Mkandawire.

## X. PARTICIPATION OF WOMEN IN THE ELECTORAL PROCESS

### A. Gender

Of the approximately 1,268 candidates that stood for election to parliament, 154 (12.15%) were women. In the major political parties, their selection as candidates was as follows:

- AFORD:	five out of 40 candidates were female	(12.5%)
- MCP:	11 out of 174 candidates were female	(6.3%)
- MDP:	one out of 10 candidates was female	(10%)
- MAFUNDE:	two out of 21 candidates were female	(9.5%)
- PPM:	five out of 111 candidates female	(4.5%)
- MGODE:	three out of 22 candidates were female	(13.6%)
- NDA:	23 out of 187 candidates were female	(12.3%)
- NUP:	three out of 9 candidates were female	(33.3%)
- NCD:	two out of 23 candidates were female	(8.7%)
- PETRA:	five out of 18 candidates were female	(27.8%)
- RP:	16 out of 110 candidates were female	(14.5%)
- UDF:	32 out of 165 candidates were female	(19.4%)
- Independent:	three out of 46 candidates were female	(6.5%)

At the 1999 parliamentary elections, 17 of the 193 MPs elected were women.<sup>14</sup> At the 2004 parliamentary elections, the number of women elected increased to 28 (14.5%). While this does not reach the SADC target of 30% it is a significant step forward and a platform to build on at future elections.

However, women do not hold prominent positions in political party hierarchies and experienced difficulties during the selection process. According to the CILIC, three women candidates who won primary elections were not selected by their parties during the presentation of nomination certificates, forcing them to contest as independents. Many women candidates complained of intimidation and the former Deputy Mayor of Blantyre had her house vandalised.

Women were well represented as polling station officials on election day, mainly because these officials were largely drawn from schoolteachers and school Administrators.

Women are increasingly represented in civil society and there are groups that are involved specifically in women's interests. Civil society groups have pledged to continue advocating and lobbying for fair representation of women in parliament.

## XI. ROLE OF CIVIL SOCIETY IN THE ELECTORAL PROCESS

Civil Society Organisations (CSOs) have focused on democratisation, human rights and governance issues since 1994. Among the CSOs, Churches, followed by NGOs, have played a particularly prominent role in the transition to democracy.

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<sup>14</sup> Eleven of the 95 UDF MPs elected were women, four of the 64 MCP MPs elected were women, one of the 29 AFORD MPs elected was a woman and one of the four independent MPs elected was a woman.

During the 2004 elections, CSOs played a significant role in election observation. Comprehensive evaluation of the electoral process was undertaken by a number of organisations and domestic observers were present in a large number of polling stations on election day. NICE advised that it had trained sufficient domestic observers to provide for every polling centre. However, EU observers reported that domestic observers' knowledge of the process varied considerably.

CSOs were also involved with the delivery of voter education. Together with other organisations, NICE and CCAP advised that they had reached most parts of the country with their voter education programmes. While much of the voter education was of a good quality, funding problems resulted in insufficient coverage, particularly in remote areas. In particular, greater attention could have been paid to women, the illiterate and vulnerable groups. At future elections, greater funding for civic/voter education and parallel vote counts would strengthen public awareness and confidence in the electoral process.

## **XII. VOTING, COUNTING AND AGGREGATION**

### **A. Election Day**

Polling day went smoothly despite anticipated difficulties regarding the handling of the voters' rolls. The willingness of the majority of polling station officials to enfranchise as many registered voters as possible, regardless of whether they were found on the voters' roll, enabled polling staff to avoid a long voter identification process. Any voter with a voter registration card was generally allowed to vote. However, different stations used different procedures for deciding whether a person should be allowed to vote.

The voter turnout was lower than stakeholders expected. There were long queues mainly in the morning. By mid-afternoon, voters were coming in at a slow pace. Had the turnout been as high as expected and as had occurred in previous elections, then the situation at polling stations could have been very administratively challenging. The number of registered voters per polling station was as high as 1,100. Ballot papers had been printed and packed according to the pre-processing numbers on the voters' roll. However, the number of registered voters at polling centres had changed considerably in many cases (some increasing and some reducing). In the end, no additional ballot papers were necessary.

### **B. Opening of Polling Stations**

According to observers, only half of the 36 polling stations observed at the beginning of the day opened on time. However, most delays were minor and due mainly to weak organization or heavy rain (for example in the Mzuzu area).

The Catholic Institute Primary School in Blantyre (Polling Centre 61), which had 12 polling stations, did not open until 11:00 because ballot papers were found in a ballot box before the opening and party agents wanted an additional polling station to be established. Polling was extended appropriately to compensate for this late start.

In over 90% of the polling stations observed at opening all the sensitive materials were present. The same percentage applies to the presence of all polling stations clerks (94%) and political party representatives (92%). In 86% of the 36 polling stations observed the ballot box was emptied and properly sealed.

### **C. Voting procedures**

The overall assessment of the voting process was considered to be very good in 32% and good in 53% (out of a total of 540 polling station visits). In 76 polling stations (14%) the process was considered to be bad, and in six polling stations (1%) very bad.

Procedures for identifying registered voters were not always followed properly and consistently by polling station officials. Voters' rolls were not checked systematically and no proper records were maintained on who was permitted to vote if not found on any of the several voters' rolls available. However, no complaints regarding the absence of procedures were reported. Irregularities regarding voting procedures were witnessed, but no attempt to take advantage of the situation by officials or political party representatives was observed.

Officials checked voters for ink before they cast their ballots in 98% of the polling station visited. The majority of people (60%) not found on the voters' rolls were permitted to vote if in possession of a voter registration card. In 99% of cases, officials asked for the voter registration card to be presented and marked it. Indelible ink was properly applied before casting both ballots in 99% of polling stations observed, but was not always allowed to dry completely before the voter moved to the polling booth. The secrecy of the vote was respected in 98% of polling stations observed.

In the vast majority of areas no instances of intimidation in polling centres were reported. One exception to this was reported from Machinga district where the son of outgoing President Muluzi was running for North East 123 constituency. In one polling station, his mother, sister and aunt were reportedly sitting by the polling booths in an intimidatory manner. Voters apparently greeted them respectfully before proceeding behind the booth to vote.

Two other incidents involving UDF representatives occurred in Chiponde and Mangochi South. In both cases, UDF representatives arrived at voting centres in UDF cars and with money allegedly to pay a party monitor. In Chiponde, voters complained to the police. In Mangochi South the party representative was assaulted by voters.

More than one Political Party Representative (PPR) was present at 99% of polling stations observed.<sup>15</sup> Domestic observers from groups including NICE and PAC were also highly represented. However, PPRs were not always sufficiently well trained and many observers reported that both PPRs and domestic observers did not appear to be following the process as closely as they should have been.

The role of the Police on election day was not always clear. In many places they actively participated in the election organisation and, as they had also participated in the training,

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<sup>15</sup> UDF/AFORD/NCD, NDA, MCP, Mgwirizano coalition, Malewezi and Independent Candidates were registered as PPRs.

performed the duties of polling officials. In many polling stations police were reported to be inside rather than outside the station.

#### **D. Closing and Counting**

Closing and counting at polling stations was more difficult. Many polling stations were in the open air and, after nightfall, no appropriate lighting system was available. In some areas, police cars were used to provide light, obliging people to count on the floor. In many places counting took place only by the light of candles. Poor material conditions (no desks, no black boards, no reliable torches) made the situation more difficult.

Polling stations closed on time in 88% of cases observed and virtually no queues were observed at closing (97% of polling stations observed had no queues). Closing procedures such as starting the count immediately after closing and filling in the official MEC forms, were followed at most of the polling stations observed (81% and 91% respectively). One EU observer team in the north observed the closing procedures at Mzuzu prison. Voting stopped at noon and no incidents were reported.

Closing procedures were complicated and counting was bureaucratic and slow in most places (the last results from counts in Lilongwe apparently only arrived at the result centre on 23 May). EU observers reported that in Mzuzu district and a number of other areas, procedures were not followed and decisions were taken by consensus by all officials and monitors present. Polling officials were reported to be highly committed to perform their best but were not always well-trained.

No reconciliation process, whereby the number of voters marked as having cast a ballot is counterchecked against the number of ballot papers given out, took place at polling stations. These steps were not required by the electoral procedures and not considered necessary by polling officials and PPRs. This is a weakness in the process. The potential for ballot stuffing was further increased by there being no requirement for voters to mark or sign the voter list and by ballots not being signed or stamped upon issue.

More than one PPR was present during the counting process in all polling stations observed and domestic observers were present during the count in 97% of polling stations observed. PPRs were able to check the ballots in over 90% of cases. This was not always easy due to lack of light. EU observers reported that PPRs were often not sufficiently aware of procedures.

At the completion of the count, the process of signing the MEC result forms was properly followed in around 90% of cases. Observers reported that, without carbon paper, as many as six copies had to be prepared, which turned out to be very tedious process. At most polling stations results were publicly posted, however, at 13% of polling stations, PPRs were not given a copy of the result forms. In only one of the polling stations observed was a formal complaint made to the PO about the counting process.

The closing and counting was observed in 32 polling stations. In 44% of cases the process was rated as very good, in 38% as good and in 18% as bad.

The EOM was concerned at the lack of accounting of ballot boxes and sensitive material when being returned to the central warehouse after the elections (it was not clear how many ballot boxes should be accounted for from each district and how many did in fact return). Ballot boxes were also not sufficiently labelled so that their constituency, centre or station could be identified.

#### **E. Aggregation**

POs had to return the polling station result forms to the Returning Officers (RO) or Assistant Returning Officers to be aggregated onto a constituency summary form. The constituency results were then aggregated onto a district tabulation form. In most districts, arriving results were announced orally and then aggregated. In many places computers were not used during tabulation. Where possible, EU observers accompanied the POs to the DC office. However, in 31% of cases, they reported that transport to the ROs was delayed.

The aggregation process was slow and not always sufficiently transparent. The quality and preparedness of tabulation officials varied from district to district. Some EU observers reported that ROs delayed production of the results without a specific reason. In Mulanje, for example, no district results were available 18 hours after the results from the district's last polling station had been handed to the RO. In Zomba, the RO's office was disorganized and POs had to wait up to eight hours to deliver their results.

PPRs and domestic observers were present at most district aggregations (93% and 97% respectively) but experienced problems with transparency of the process. In many areas, including Lilongwe, the aggregation forms were not displayed and they were therefore unable to follow the process properly. In Mzuzu, observers were not allowed to move around in the RO tabulation centre because it was too crowded and thus the handing over of results from POs to ROs could not be properly followed. Significantly, in only 44% of cases observed were ROs seen to provide a signed copy of the results to each PPR.

In Karonga district, the results for one constituency were changed after a domestic observer pointed out mistakes in tallying to the RO just before he faxed the results to the MEC result centre.<sup>16</sup> In Kasungu one PO while orally presenting the results to the RO, changed the results. Domestic observers immediately protested and attacked the PO. Police had to close the DC office and tabulation was interrupted for one hour. In Karonga, observers reported that a lot of mistakes in the transfer of results made it difficult for them and domestic observers to follow the process closely.

ROs were required to fax their constituency results to the MEC (which was temporarily based at Comesa Hall, Blantyre) as soon as they were available. However, this did not always happen and the process was slow and drawn-out. In Mzuzu district, the RO sent the first fax 10 hours after the close of polling (at 4 am). In Mulanje, results were available at an early stage but faxes were not sent to the MEC until later in the day. In Kasungu, the RO informed observers at 11:00 that the tabulation process was almost over and district results should be available shortly after. However, in the late afternoon, results were not yet available and the RO could not explain the

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<sup>16</sup> Dr Mponda Mkandawire, MCODE, was initially wrongly declared winner and was replaced by Mr. Edwin Kabango, PPM.

reason for the delay. The RO in Karonga was visibly in a hurry to finalize, sign and send the District Aggregation Forms to the MEC without allowing for any verification.

The intended national aggregation system appeared to be thorough and transparent. However, the delay in receiving information from the districts, the lack of availability of ROs and monitors in the districts for re-checking information, and the pressure to produce results in time for the inauguration of the President to take place on 24 May, produced a break-down of the system. This resulted in necessary accuracy and mathematical checks not being conducted. In the end, results sent by ROs were used without being checked for errors, despite it being known that the district totals consistently contained errors (not surprising given that officials were working very long hours and even making additions manually). Indeed, information received informally suggests that not all of the district totals were even received prior to the announcement of results.<sup>17</sup>

By the morning of Sunday 23 May, the MEC had only received 26 faxes out of a total of 193. However, at 15:00, it announced the results, apparently not based on the results from all constituencies. The only figures provided were the candidate totals for the presidential race.<sup>18</sup> No results were provided for the parliamentary elections, and no results were broken down by polling station, a basic requirement for electoral transparency. This lack of transparency was further compounded when observers were denied access to the IT centre for a number of days following 23 May. The MEC subsequently missed the legal deadline to publish the final results in the government *Gazette* within eight days from the date of polling day (28 May 2004). By the time the EU EOM left Malawi on 5 June, the final results and the exact number of polling stations that operated on election day were still unknown.

During the announcement on 23 May, there was no mention of the results being provisional, although it later emerged that this was the case. The results were disputed by the Malawi Electoral Support Network (MESN), a group of 20 NGOs accredited to conduct civic and voter education for the elections, which urged Malawians not to accept results because of they were marred by serious flaws. The group also blamed the MEC for rushing to announce the results and inaugurate the new President before solving the problems that affected the elections, specifically the counting process, which they described as a mess.

### **XIII. THE RESULTS**

In the presidential election, Dr. Bingo wa Mutharika (UDF) was declared the winner with 1,119,778 votes. Second was John Tembo (MCP) with 846,457 votes. Third was Gwanda Chakuamba (Mgwirizano Coalition), with 802,302 votes. The other two candidates were well behind with Brown Mpinganjira (NDA) gaining 272,172 votes and Justin Malewezi (independent), receiving 78,892 votes. The new President was inaugurated on 24 May, within 24 hours of the announcement of results.

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<sup>17</sup> Informal information obtained from a civil society organisation, indicates the total figure for all candidates to be more than 100,000 higher than the total announced by the MEC.

<sup>18</sup> After the announcement of results on 23 May, it was discovered that some of the results were wrong.

In the parliamentary elections the clear winner in terms of seats was the MCP, which gained 59 seats. Second was the UDF with 49 seats and third were independent candidates who did well in jointly gaining 38 seats.<sup>19</sup> Since the elections, at least 26 independent MPs have joined the UDF and the party has gained the support of MPs from the NDA, RP and MCODE. The UDF therefore has enough MPs to pass parliamentary bills.

As a result of the new composition of parliament, the constitution of parliamentary committees had to be changed. It is to be hoped that the new committees will approach issues such as the budget, ethics, public appointments and the changes proposed in this report more constructively than the previous government.

#### **XIV. POST ELECTION**

##### **A. General**

Out of the 193 constituencies, elections took place only in 187. The MEC announced on 20 May that by-elections would be held in the following six constituencies, for the following reasons:

- Lilongwe East candidate details had been transposed
- Blantyre City East an independent candidate was left off the ballot paper
- Mangochi Lutende a candidate's photograph appeared twice
- Mzimba South East the High Court ruled that the MEC had improperly disqualified a candidate
- Mzimba North one of the candidates died in April
- Ntchieu South the courts decided that Stanley Billiat, an independent candidate who was disqualified in February 2004, should be allowed to stand.

On 26 May, the MEC announced that it was withholding results for three constituencies that it had already announced on 23 May, because it was still checking the results. These were Nchieu Bwanje North, (originally won by A. Mtukula for UDF), Zomba Chisi (originally won by P.R. Gonani, independent) and Lilongwe City Central (originally won by B. Kadzamira, MCP).

In addition, the results in three constituencies were reversed: Chitipa East originally won by P. Chiona, MCP, was given to C. Mulwafu, independent, Mzimba Solola originally won by J.D. Nyirenda, RP, was given to G. Nya Mkandawire, PETRA, and Salima South originally won by R. Kamphinda, MCP, was given to U. Mussa, UDF.

After the results were announced, the EU EOM was regularly in contact with various MEC officials in order to have access to the result details per polling station, centre, constituency and national level. The Chief Elections Officer, Mr. Gondwe, informed the EU EOM that results would only be ready after the Commissioners had finished investigating the results for three constituencies (Lilongwe City Central Constituency, Ntcheu Bwanje North Constituency and Salima North Constituency) where parliamentary results had been withheld. However, no results

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<sup>19</sup> In addition, the RP gained 16 seats, NDA 8 seats, PPM 7 seats, AFORD 6 seats, MCODE 3 seats, PETRA 1 seat and CONU 1 seat.

were provided to the EU EOM before its departure from the country on 5 June. The MEC only published the final results in the Government Gazette on 16 July. The final results differed substantially from those initially announced, though the outcome of the presidential election remained unchanged.<sup>20</sup>

## **B. Police Response to Civil Disorder**

After the announcement of results and declaration of Bingu wa Mutharika as winner of the presidential election, there were sporadic incidents of violence in Blantyre. Angry protesters looted shops, vandalised cars and cordoned off streets with tree trunks and rocks in Chilobwe, Zingwangwa and Ndirande townships. The Malawi Police Service responded strongly through the use not only of teargas and rubber bullets, but also live bullets.

Up to seven people, including a 10 year old girl, were reported by the local press as having died as consequence of police shooting. Ninety six people were arrested on suspicion of participating in the riots, and later released on bail. The British High Commission, Malawi Human Rights Commission and civil society groups demanded full investigations into the deaths, saying that the law should take its course on the conduct of the police. Police spokesperson Willie Mwaluka denied police involvement in the killings and stated that they were investigating the position. Mwaluka said the police did not have exact figures of how many people were killed in the incidents. LTOs visited Blantyre's Queen Elizabeth Hospital and were able to confirm that people had indeed been killed by live ammunition. Survivors and witnesses testified to police responsibility and stated that some of those wounded and killed had not been participating in the rioting or looting but were simply bystanders.

## **XV. COMPLAINTS AND APPEALS**

### **A. Complaints**

The MEC has wide powers under the law to deal with complaints. Under Section 113 of the PPE Act, any complaint submitted in writing alleging an irregularity at any stage, if not satisfactorily resolved at a lower level of authority, should be examined and decided on by the Commission. Where an irregularity is confirmed, the Commission should take necessary action to correct the irregularity and the effects thereof. According to the PPE Act, the Commission is to endeavour to determine every complaint or appeal relating to the registration of voters before polling day and to remedy any confirmed irregularity.

A decision of the MEC can be appealed to the High Court by way of petition supported by affidavits of evidence clearly specifying the declaration the High Court is requested to make. No

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When this report was released in Malawi, on 4 August 2004, the final results were still not widely known. The first reference to the publication of the final results (noting that the gazetted results were different from the initial results announced by the MEC on 23 May) appeared in the Daily Times on 4 August, the day the EU Chief Observer presented this final report to the President.

application shall be made to the High Court for an injunction or for an order restraining the holding of an election within 14 days immediately preceding the date of the election.<sup>21</sup>

The MEC established guidelines to be followed when submitting a complaint. The complaint should have full particulars of the complainant, the official, or the person being complained about; the complaint should be reflected in the incidents register and challenged or appealed from the registration centre; if the complaint is of criminal nature, it should be reported to the police officer on duty or the nearest police station; if there third parties were present such as independent monitors, then their particulars should be given. Lastly, full details of the nature of the complaint should be in form of an affidavit.

The procedure for submitting specific complaints emanating from the polling station is stipulated under section 89(1) (2) (3) of the PPE Act. Any voter or political party representative to a polling station may raise and present in writing complaints relating to the voting at the polling station and shall have the right to obtain information from the polling station officials and from relevant documents available at the polling station. No polling station staff can refuse to receive a complaint presented to them and shall initial every such presentation and annex it as part of the official record of the polling station. Any presentation received by polling station officers is to be deliberated upon among, and be resolved by, the polling station officials who may, if necessary in their opinion, postpone such deliberation or resolution until the end of the voting process to enable the process to proceed.

Before polling day, a high number of complaints were filed with the MEC. However, the MEC, Chairman, Justice Kalaila, refused to address electoral complaints. At the National Elections Consultative Forum (NECOF) Meeting in Blantyre on 19 April, he stated that the MEC had no jurisdiction to hear any complaints and directed the complainants to the courts, the Office of the Ombudsman, the Police and other institutions.<sup>22</sup>

Complaints were also filed with the High Courts in Mzuzu, Lilongwe and Blantyre. The highest profile cases included the NDA vs. MEC, MBC and TVM and the Mgwirizano Coalition vs. MEC, UDF and Attorney General. In the pre-election period, the High Court and Supreme Court dealt with electoral complaints in a timely and independent manner.

In the first case, the NDA petitioned the High Court against the MEC's failure to ensure that the public media gave a fair and balanced coverage of campaign propaganda to both the opposition and the ruling UDF. The court dismissed the case on technical grounds stating that NDA did not bring in sufficient evidence. In the second case, the Mgwirizano Coalition complained against the MEC referring to its complaint against UDF's abuse of public resources for campaign

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<sup>21</sup> However the High Court ruled in the case of Mgwirizano Coalition vs. MEC, MBC and TVM that this provision does not apply where there is a request to move the polling date to a date not later than seven days from a Tuesday of the third week of May in the fifth year of Parliament.

<sup>22</sup> In one case, the UDF complained to the MEC that the PAC was biased against it and requested that PAC's accreditation, to provide voter education and monitor the elections, be revoked. In a letter dated 14 April, the UDF complained that PAC Chairman, Father Boniface Tamani, a Catholic priest, while delivering his homily on Easter Sunday in Blantyre, told his flock not to vote for the UDF. In May, the MEC wrote PAC a letter requesting it to respond to the allegations within seven days and threatened to revoke PAC's accreditation as an NGO providing civic education. However, the UDF failed to prove its case and the matter was not pursued.

purposes. The court held that the MEC had abdicated its responsibility. The case was appealed to the Supreme Court of Appeal, which confirmed the above ruling.

According to Mr. Aleke Banda, Vice President candidate for the Mgwirizano Coalition, a total of 51 complaints were lodged with the MEC to be dealt with before announcing the results.<sup>23</sup> These included complaints that (i) voters had been disenfranchised because their names were missing from the voters' roll, (ii) polling stations had opened late, (iii) results from some polling centres were unsigned, and (iv) numbers of voters were exaggerated. In a worrying development, in the early hours of Sunday 23 May, the Mgwirizano coalition's office was broken into and computers and other materials were removed. This included theft of files that the Mgwirizano coalition possessed relating to legal challenge to the results and inauguration process.

On 25 May, the MCP informed the EU EOM that it was collecting findings in order to file a court case in due course. The 48 hour deadline foreseen by the PPE Act subsequently expired and no official complaint was filed. Findings were reported to be with their lawyer Mr. Gift Mwakhwawa for analysis.

On 25 May, the Mgwirizano Coalition filed a petition in the High court for the nullification of the presidential results and requested the court to order a re-run due to irregularities during the entire electoral process. The hearing of preliminary issues of the case was initially postponed from 27 May to 2 June, due to failure by the petitioners to serve court documents to the defendants, Bingu wa Mutharika and the MEC. As the President is immune to civil suits under Section 91 of the Constitution, both parties were requested to address the court whether it is proper that Bingu wa Mutharika should be made a party to the proceedings.

On 2 June, before a panel of five judges, the petitioners (Gwanda Chakaumba and Aleke Banda) stated that they had not followed the court order of 27 May. Instead they applied for extension of time as they were still trying to reconcile their evidence. They also informed the court that they had replaced Bingu wa Mutharika with the Attorney General as first respondent, and therefore the issue of presidential immunity no longer applied. The petitioners withdrew their application for expedited hearing of the case. The respondents asked the court to dismiss the petition for failure to comply with the court order, stating that the petitioners did not appear to be ready for the case. The court ruled that it would be too harsh a punishment to dismiss the case for non-compliance with a court order but decided that since the petitioners had withdrawn their application for an expedited hearing, normal rules of service would apply and the case will be treated as any other case.

On 3 June, Mr Chakuamba dropped the legal challenge when he joined government. At the time of publication of this report, Hon. Aleke Banda was continuing with the case, and Hon. John Tembo of the MCP had joined as petitioner.

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<sup>23</sup> Quoted in the *Weekend Nation* of 29-30 May.

## XVI. CONCLUSIONS AND RECOMMENDATIONS

### A. Conclusions

The May 2004 elections were the third multi-party elections in Malawi since the introduction of multi-party politics in 1994. The political environment has somewhat improved since the 1994 elections and there are reasons for optimism in relation to the political development of the country. The evidence for this includes:

- the decision of parliament to refuse the president the opportunity to run for a third term;
- increased number of political parties (albeit these new parties arose as a result of difficulties in the traditional parties);
- prospective candidates not selected by their political parties at the primaries standing (and winning) as independent candidates against the party supported candidates;
- a small increase in the number of women who stood as candidates and were elected to parliament;
- formation of the Mgwirizano coalition by seven political parties to form a credible alternative to the ruling party;
- increased involvement of civil society in civic education and election observation; and
- the commitment and integrity of polling staff and voters to a peaceful election day process.

There were, however, many problems with the electoral process, some of which were so serious that confidence in the accuracy of the results was undermined. It is therefore vital that stakeholders continue developing democratic practice in Malawi. Of particular concern to the EOM are the following issues:

#### **Election Administration**

- the lack of confidence by stakeholders in the MEC, resulting from a perception that it favoured the ruling coalition and its poor performance in a number of areas;
- the poor quality of voter registration, in particular failure by the MEC to meet verification deadlines, and when the voters' lists were put up for verification, access was difficult;
- the considerable variation in the size of constituencies which profoundly undermines the principle of equality of the vote;
- the involvement of state security organisations in District Election Supervisory Teams;
- the failure of the MEC to deal with complaints;
- the failure of the MEC to deal with the biased reporting of the electronic media;
- the failure of the MEC to allow observers to be present at its meetings;
- the incorrect printing of candidate information on ballot papers in a number of constituencies, which required by-elections to be held;
- the failure to provide proper checks on the issuing of ballots (voters were not required to mark the lists, ballot papers were not stamped or signed and the number of entries marked on the voter lists were not counted); and
- the failure to provide better conditions for counting, in particular satisfactory lighting;
- the serious problems in the tabulation of results, including (i) failure of the MEC to publish results within the legal timeframe, (ii) failure of the MEC to provide the number of polling

stations that operated on election day, (iii) discrepancies in the results, and (iii) failure to provide a breakdown of results to the polling station level.

#### **Lack of level playing field**

- the uneven playing field during the campaign period arising from (i) the use of state resources for the purpose of campaigning by the ruling party, (ii) distribution of money at rallies by the ruling party, and (iii) biased reporting by the state owned electronic media;
- the intimidation perpetrated by the ruling party, in particular by the Young Democrats; and
- the influence of the ruling party over the traditional authorities;

#### **Timing of inauguration**

- the inappropriate timing of the inauguration of the president which put pressure on the results to be announced before aggregation had been properly completed.

#### **Actions of Police**

- the unchecked action of police particularly in relation to the temporarily closure of MIJ and use of live ammunition in the post-election period.

### **B. Recommendations**

#### **1. Constitutional and Legislative Framework**

- Legislation should be amended to:
  - (i) clearly define the abuse of public resources and means that can be used to control this malpractice;
  - (ii) clearly prohibit the distribution of money by political contestants to voters;
  - (iii) require transparency in the declaration and use of campaign funds from private sources; and
  - (iv) state that electoral complaints should be resolved before the President can be inaugurated;
- Consideration should be given to introducing legal provisions to increase women's representation;
- All MEC and other public officers breaching the electoral process should be held accountable for their actions.

#### **2. Voters' Roll**

- Before the next national elections, a civil register should be established, from which a new voters' list can be created and updated annually.
- Regulations should be introduced to ensure greater rigor and transparency in making changes to the voters' register and a more effective system for voters who move and need to transfer their voting location.
- The voter registration and verification period should be clearly specified and sufficient time allowed for the process.

### 3. Election Administration

- Composition of the MEC and structure of the election administration should be reviewed with a view to ensuring confidence among political contestants and efficient administration of elections.
- The MEC should:
  - (i) provide clear, timely and comprehensive written instructions as well as clarification to regulations where necessary;
  - (ii) address complaints on issues within its competencies as outlined in electoral legislation in a timely and professional manner;
  - (iii) provide political party representatives, domestic observers and international observers with access to meetings at all levels of the election administration;
  - (iv) involve election stakeholders, including umbrella organisations for the handicapped and blind, prisoners etc., at an early stage in preparations to ensure improved accessibility;
  - (v) improve preparatory work, particularly to ensure careful checking of information on ballot papers, proper procurement arrangements and the efficient collection of sensitive materials after election day;
  - (vi) develop polling station forms that are easy to use, for example with carbon copies and serial numbers;
  - (vii) introduce necessary reconciliation and ballot security procedures. These should include a requirement for voters to mark the voters' roll upon receipt of a ballot paper, the stamping and/or signing of ballots upon issue, and a comparison of the total number of people marked as having received a ballot paper against the number of ballot papers issued;
  - (viii) swiftly publish results broken down by polling station as they are announced, including on the internet;
- District Elections Supervisory Teams (DEST) should include representatives of civil society but not members of state security organisations;
- Election officials should be better trained, particularly in counting and aggregation procedures;
- Polling stations should close at 16:00 rather than 18:00 to ensure that counting can be undertaken in daylight; and
- A revision of constituency boundaries should be undertaken to ensure that constituencies contain broadly equal numbers of people (even if this means cutting across Territorial Authority boundaries).

### 4. Civic Education

- Civic and voter education should be conducted by state bodies (such as education and public information services) and civil society organisations. The police and National Intelligence Bureau (NIB) should not be involved in such work.
- Increased efforts should be made to target civic and voter education at women, young people, the illiterate and other vulnerable groups, particularly in remote areas.
- Efforts should be made to increase public awareness of what can be expected from political representatives and leaders.

## 5. The Media

- The roles of MACRA and MEC in regulating the media during an election campaign should be clarified and clearly defined to remove the possibility of a power vacuum or clashes between the two. There should be a clear division between the responsibilities of MACRA and MEC in this area.
- Clear instructions should be provided for the allocation of equitable free airtime on public media for political contestants during the campaign period.
- Coverage of the president by public electronic media should be regulated during the campaign period.
- A full licence should be issued to TVM.
- Action against the media should only be taken by the licensing authority and MACRA, and not by the police.
- Political debate and discussion programmes should be increased, particularly during the campaign period.
- Composition of management boards of MBC and TVM should ensure the confidence of election stakeholders.

## 6. Stakeholders

- National Elections Consultative Forum (NECOF) meetings should be held on a regular basis during the pre-election period and recommendations emerging from the meetings properly implemented.
- Multi-Party Liaison Committee meetings should be held more regularly in the lead up to elections, and should include the participation of independent candidates.

## 7. Political Parties

- Political parties should be required to declare their funding sources and how funds have been used. There should also be maximum limits for funding, donations received and funding expenditures.
- Training should be provided for political parties and candidates in a number of areas including (i) policy development, (ii) manifesto preparation, (iii) communication with voters, (iv) the role and rights of monitors (for example, on complaint mechanisms).

## 8. Civil Society

- Training and support should be provided to civil society to strengthen capacity to conduct civic and voter education and election observation, including parallel vote tabulation.
- Sufficient resources should be provided to enable civil society to conduct civic and voter education and election observation in a comprehensive manner.

## 9. Participation of Women

- Political parties should make serious efforts to (i) ensure that women are represented in senior positions, and (ii) select more women candidates in order to reach the SADC target of 30% female representation in parliament.
- The MEC should take steps to increase the representation of women in all levels of the election administration.

10. Police

- Police should be properly trained on the role they should play on election day, specifically that they should not perform the tasks of polling officials.

Annex 1

ACRONYMS

<b>AFORD</b>	Alliance for Democracy
<b>AG</b>	Attorney General
<b>CA</b>	Communications Act
<b>CCAP</b>	Church of Central African Presbyterian
<b>CHRR</b>	Centre for Human Rights & Rehabilitation
<b>CILIC</b>	Civil Liberties Committee
<b>COMESA</b>	Common Market for Eastern and Southern Africa
<b>CONU</b>	Congress for National Unity
<b>DEC</b>	District Election Committee
<b>DEST</b>	District Election Supervision Team
<b>DPP</b>	Director of Public Prosecutions
<b>ECAMA</b>	Economics Association of Malawi
<b>GADC</b>	Genuine Alliance for Democratic Change
<b>GOM</b>	Government of Malawi
<b>HRC</b>	Human Rights Commission
<b>IMF</b>	International Monetary Fund
<b>MACRA</b>	Malawi Communications Regulatory Authority
<b>MBC</b>	Malawi Broadcasting Cooperation
<b>MCP</b>	Malawi Congress Party
<b>MEC</b>	Malawi Electoral Commission
<b>MESN</b>	Malawi Electoral Support Network
<b>MGOODE</b>	Movement for Genuine Alliance for Democratic Change
<b>MIJ</b>	Malawi Institute of Journalism
<b>MPTC</b>	Multi-party Liaison Committee
<b>MYP</b>	Malawi Young Pioneers
<b>NCD</b>	National Congress for Democracy
<b>NDA</b>	National Democratic Alliance
<b>NECOF</b>	National Elections Consultative Forum
<b>NGO</b>	Non governmental organisation
<b>NICE</b>	National Initiative for Civic Education
<b>PAC</b>	Public Affairs Committee
<b>PETRA</b>	Peoples Transformation Party
<b>PO</b>	Presiding Officer
<b>PPE</b>	Parliamentary & Presidential Elections Act
<b>PPM</b>	Peoples Progressive Movement
<b>PPR</b>	Political Party Representatives
<b>REP</b>	Republican Party
<b>RO</b>	Returning Officer
<b>SADC</b>	Southern African Development Community
<b>TVM</b>	Television Malawi
<b>UDF</b>	United Democratic Front

## Annex 2



European Union Election Observation Mission Malawi 2004

### THE EU ELECTION OBSERVATION MISSION IN MALAWI

On the invitation of the Malawian Electoral Commission, the European Union has established an EU Election Observation Mission (EU EOM) to observe the 18<sup>th</sup> of May Presidential and Parliamentary elections in Malawi. This mission is a practical expression of the EU's on-going support for the process of democratization in the country.

The EU EOM is led by the Chief Observer, Ms. Marieke Sanders-ten Holte, Member of the European Parliament, Vice-Chairwoman of the Development and Cooperation Committee and Member of the Parliamentary Assembly of the ACP-EU.

As in any other EU Election Observation Mission, the key objectives of the EU EOM in Malawi are:

- To make a comprehensive and national analysis of the electoral process, and offer an impartial, balanced and informed assessment of the election.
- By presence of the observers, to seek to reduce tensions, minimize instances of fraud, intimidation and violence, and increase confidence to contestants and voters to participate freely.

In total, the EU EOM plans to deploy some 70 observers. The deployment has started already with the arrival of a core team of 6 experts who will be based in Blantyre: the Chief Observer, a Deputy Chief Observer, an Election/Legal Expert, a Media Expert, a long term observers (LTOs) Coordinator and an Operation Expert. On the 14<sup>th</sup> of April 20 LTOs will arrive to Malawi and be deployed across the country to follow the pre-electoral preparations, voting day and post-electoral period. Later on 42 short term observers (STOs) will join the mission and be deployed closer to Elections Day.

The EU EOM in Malawi will assess the whole electoral process, including the legal and administrative framework, the political environment and campaign, the media conduct as well as the voting, counting and tabulation procedures. Shortly after Election Day, the EU EOM will issue a preliminary statement on the conduct of the elections. At a later stage, a final and more comprehensive report will be issued detailing the findings of the mission and recommendations where appropriate.

The observation of elections is an important component of the EU's policy to promote human right and democratization throughout the world. In this respect the EU works on the basis of partnership with the host country.

Blantyre 8 April 2004

### Annex 3



European Union Election Observation Mission Malawi 2004

#### **THE EU EOM IN MALAWI DEPLOYS 22 OBSERVERS AROUND THE COUNTRY**

A total of 22 long term observers (LTOs) of the European Union Election Observation Mission (EU EOM) in Malawi have been deployed today around the country to observe the Presidential and Parliamentary electoral process.

The LTOs will come from 11 different countries. In teams of two they will cover all twenty eight districts of the country, including the new Likoma District.

The LTOs will assess the legal and administrative framework, the political environment and campaign, and the media conduct at the district level. On Election Day they will observe the voting, counting and tabulation procedures. All their findings will be systematically processed by the EU EOM to make a comprehensive analysis of the electoral process.

The presence of LTOs seeks to reduce tension, minimize instances of fraud and violence, and thereby increase confidence to contestants and voters and allow them to participate freely in the 18<sup>th</sup> of May elections.

Shortly before Election Day, 42 short term observers (STOs) will join the LTO teams to reinforce the observation of the polling and counting procedures.

Blantyre 16 April 2004

#### Annex 4



European Union Election Observation Mission Malawi 2004

### **THE EU EOM TO MALAWI REACHES FULL STRENGTH AHEAD OF ELECTION DAY**

A total of 57 short term observers (STOs) of the European Union Election Observation Mission (EU EOM) to Malawi have been deployed today around the country to reinforce the observation of the Presidential and Parliamentary Election Day period.

The STOs come from 13 different countries. In teams of two they will join the 22 long term observers (LTOs) who have been deployed since 16<sup>th</sup> April in all twenty eight districts of the country, including the new Likoma District. With their presence the mission strengthens the observation of the polling, tabulation and counting procedures of the May 18<sup>th</sup> polls.

The EU EOM will also be joined by six members of the Africa Caribbean Pacific-European Union (ACP-EU) Joint Parliamentary Assembly, who will observe the polling on Election Day. Therefore the EU EOM will have a total of 91 observers, which makes it the largest international election observation mission in Malawi for the forthcoming polling.

The presence of LTOs and STOs hopefully will reduce tension, minimize possible instances of fraud and violence, and increase confidence to contestants and voters and thereby allow them to participate freely in the 18<sup>th</sup> May elections. All their findings will be systematically processed by the EU EOM to make a comprehensive analysis of the electoral process.

Soon after close of poll, the EU EOM through its Chief Observer, Mrs. Marieke Sanders-Ten Holte will present a preliminary statement with the results of the observation carried out during its 6 weeks presence in the country.

Blantyre, 12<sup>th</sup> May 2004

## Annex 5



European Union Election Observation Mission Malawi 2004

### **THE EU ELECTION OBSERVATION MISSION RESPONDS TO COMMENTS BY FORMER PRESIDENT DR. BAKILI MULUZI**

The European Union Election Observation Mission (EU EOM) to Malawi wishes to respond to remarks made by the former President Dr. Bakili Muluzi, during the inauguration of the new President, Dr. Bingu wa Mutharika.

In his remarks, Dr Muluzi stated that EU observers have declared the 20 May Presidential and Parliamentary elections to be free and fair. This statement, however, is factually incorrect. “In no place in our preliminary statement, issued on 22 May, did we use either the word free or the word fair”, said Marieke Sanders-ten Holte, Chief Observer of the EU Observation Mission. “Rather, our overall assessment at this point is that while the elections were peacefully conducted with a wide choice of political contestants they were marred by serious shortcomings in the electoral process. Indeed, since the preliminary statement was issued we are increasingly concerned about a lack of transparency in the tabulation of results to the extent that we now urge the Malawi Electoral Commission (MEC) to rapidly publish detailed results down to the polling station level”, she added.

The EU EOM will remain in Malawi for the next two weeks to observe the post-election phase, including any complaints and appeals that arise. The Chief Observer will return to Malawi at the beginning of August to present the Mission’s final report on the elections. This will contain an assessment of the degree to which the entire electoral process was consistent with international standards and will include detailed recommendations to improve the electoral process.

The EU EOM was established in Malawi on the invitation of the MEC and after the conclusion of a Memorandum of Understanding between the Government of Malawi and the European Commission, to observe the Presidential and Parliamentary Elections, originally scheduled for 18 May 2004 but postponed to 20 May 2004.

Blantyre, 24<sup>th</sup> May 2004

Annex 6

Long Term Observers

TEAMS	LTO NAME	NAT	AREAS OF DEPLOYMENT - Districts
N1	Mercedes Navarro	SP	Karonga, Chitipa
	Benoit Bouyssou	FRA	
N2	Jacques Allamassey	FRA	Mzuzu city, Rumphi,
	Jorgen Sorensen	DNK	Nkhata Bay, Likoma
N3	Jan Stolen	NOR	Mzimba
	Gerard Le Marec	FRA	(Except Mzuzu town)
C1	Nora-Hasmig Kankashian	AUS	Lilongwe town, LL District
	Hans H. Joergensen	DNK	Mchinji
C2	Maria Serena Alborghetti	IT	Kasungu, Nkhota Kota
	Teuvo Tapani Tikkanen	FIN	Ntchisi
C3	Grete Skou	DNK	Salima, Dowa, Dedza
	Cornelius Adrian Verspuij	NL	
S1	Hannah Theresa Roberts	GBR	BL town, BL district,
	Andreas Falkenburg	GER	Mwanza, Neno
S2	Tage Burman	SWE	Zomba, Chiradzulu
	Helmut Seebald	AUT	Balaka, Ntcheu
S3	Michael Irish Stephenson	NL	Mangochi, Machinga
	Federico Santopinto	IT	
S4	Simone Barengi	IT	Mulanje, Phalombe
	Hubert Meinrad Strobel	GER	Thyolo
S5	Morten Joedal	NOR	Chikwawa, Nsanje
	Jan Kretzschmar	GER	

22 LTOs

**Annex 7**

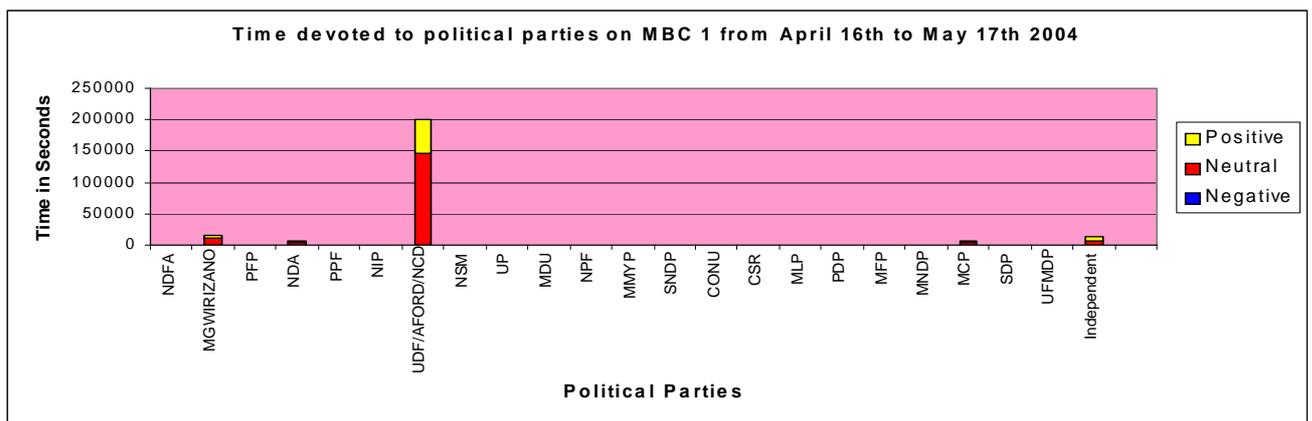
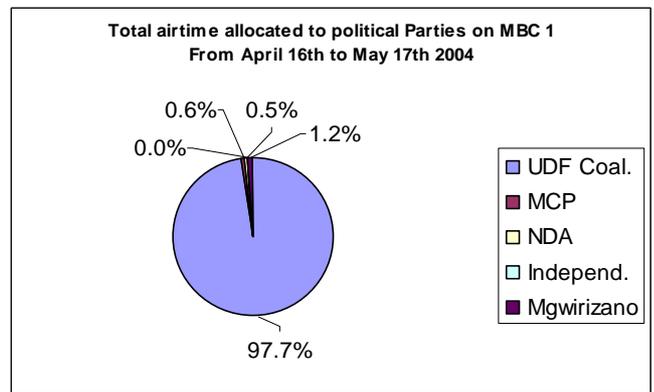
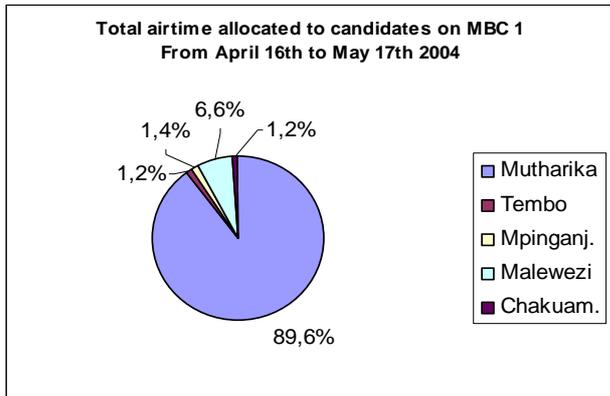
**Short Term Observers**

<b>SURNAME</b>	<b>FIRST NAME</b>	<b>NAT</b>	<b>47 STOs</b>
Abbati	Elena	IT	
Bermudez	Maria Del Mar	SP	
Birkoff	Carl Fredrik	SWE	
Blair	James Alexander Templeton	GBR	
Capion	Anne Louise	DNK	
Dalamanga	Anna	GRC	
Daniel	Maria Joana	PORT	
Dapporto	Lorella	IT	
De Las Casas	Isabel	SP	
Fourman	Michel, Joseph, Marie	BELG	
Giendl	Susanne	AUT	
Glette	Henrik	NRW	
Gomez Diaz	Claudia	PRT	
Hanotier	Frederique Sidonie Nathalie	BELG	
Hofmeirer Prof.	Rolf	GER	
Loannou	Dimitra	GREC	
Jensen	Conny	DNK	
Kutzner Dr	Gerhard	GER	
Legene	Susanne Martin	DNK	
Leirfall	Anne-Marie	NRW	
Levy	Michael	FRA	
Lovicu	Maria Luisa	IT	
Maderud	Anne-Christine	SWE	
Meinhardt	Heiko	GER	
Miekkavaara	Markku	FIN	
Nielsen	Erik Neils	DNK	
Pauwels	Thomas Maria Johan Estella	BELG	
Peach	Michael	GBR	
Ramadan	Annamajja	FIN	
Raunio	Aino Inkeri	FIN	
Ribo Chalmeta	Juan	SP	
Riiser	Anja	NRW	
Sander	Michael David	GBR	
Seigert	Robert – Jan	NL	
Soergaarden	Alf Rose	NRW	
Sourmelis	Konstantinos	GREC	
Steeman	Anna Maria Agatha Petronella	NL	
Teindas	Nicolas	FRA	
Toulet	Stephane	FRA	
Ulvaer	Lill Marie	NRW	
Vanhanen	Kari Tapio	FIN	
Vidaich	Elisabetta	IT	
Vivo Cavalier	Mercedes	SP	
Waegerle	Henriette	GER	
Walraet	Anne	BELG	
WeiÃ	Raimund	AUT	
Yrttiaho	Kaarlo Juhani	FIN	

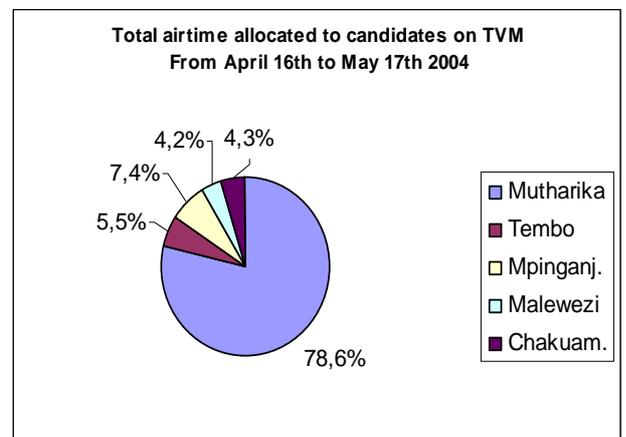
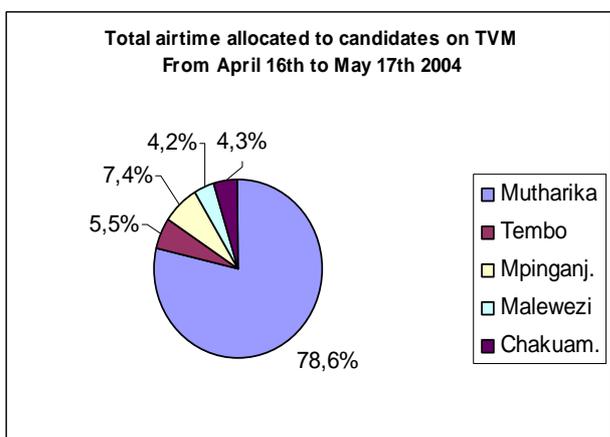
Annex 8

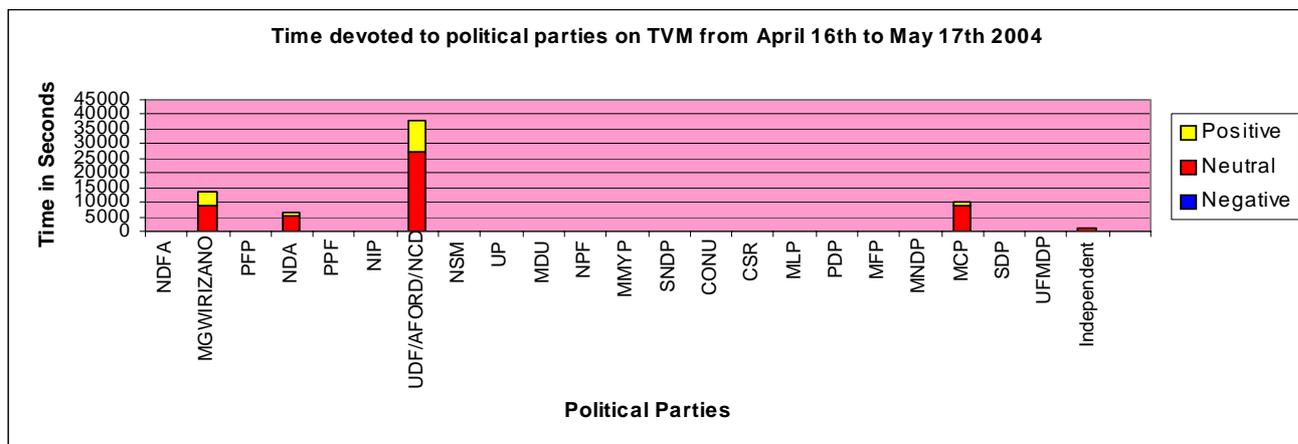
**Media Monitoring Graphs**

**MBC1**

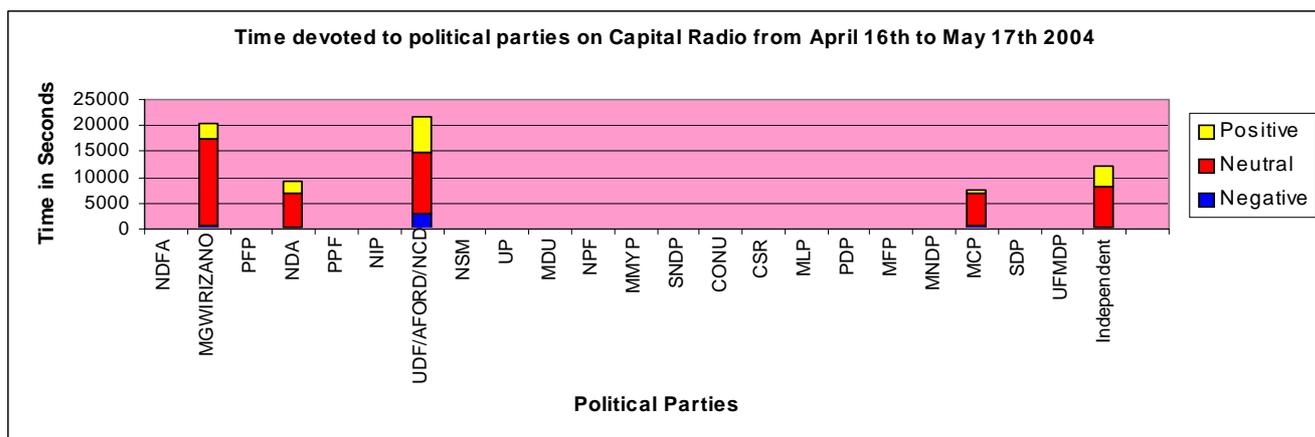
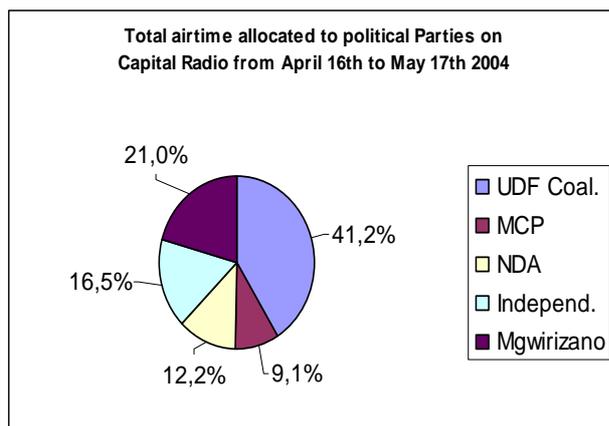
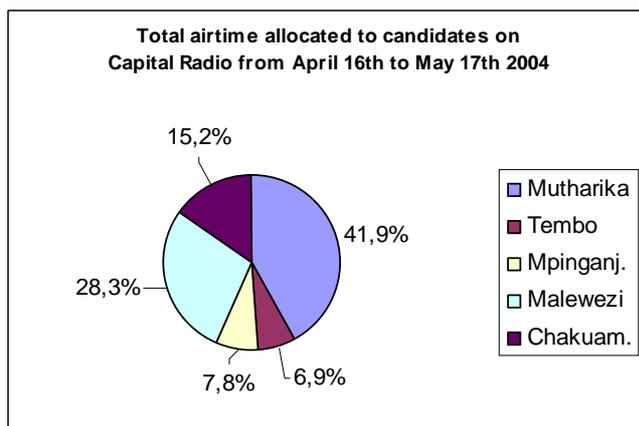


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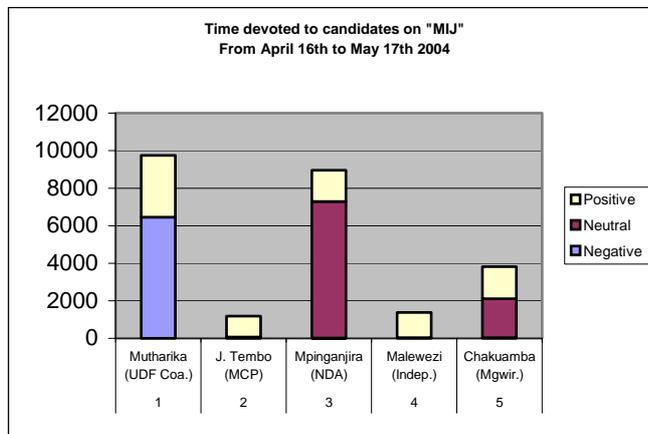
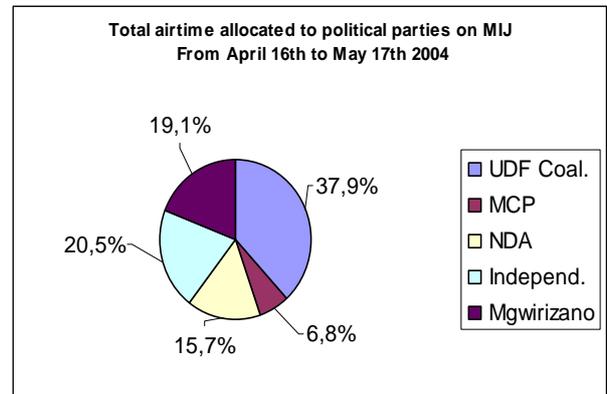
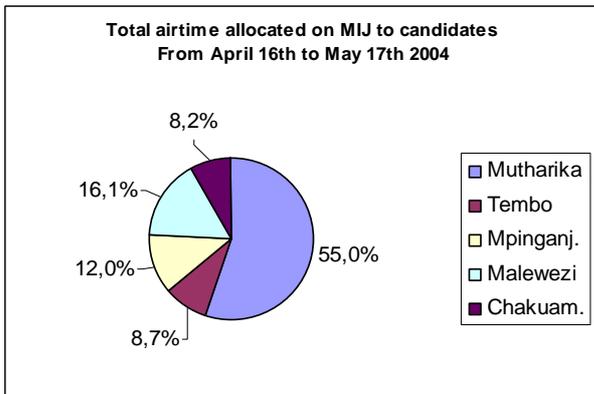




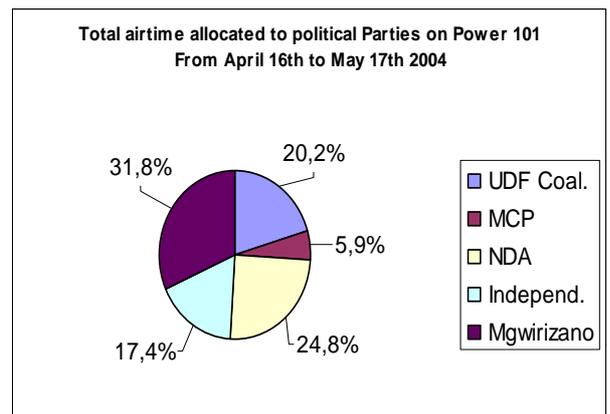
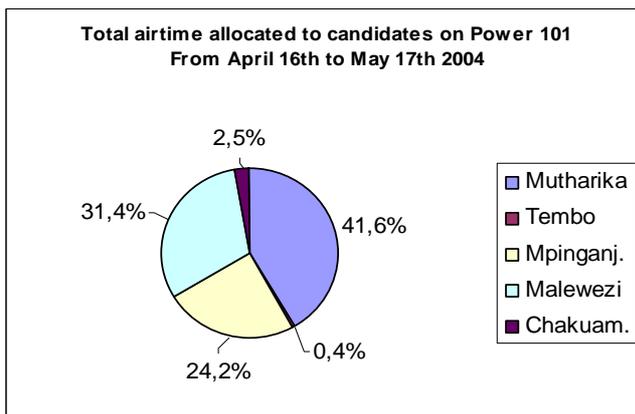
**Capital Radio**

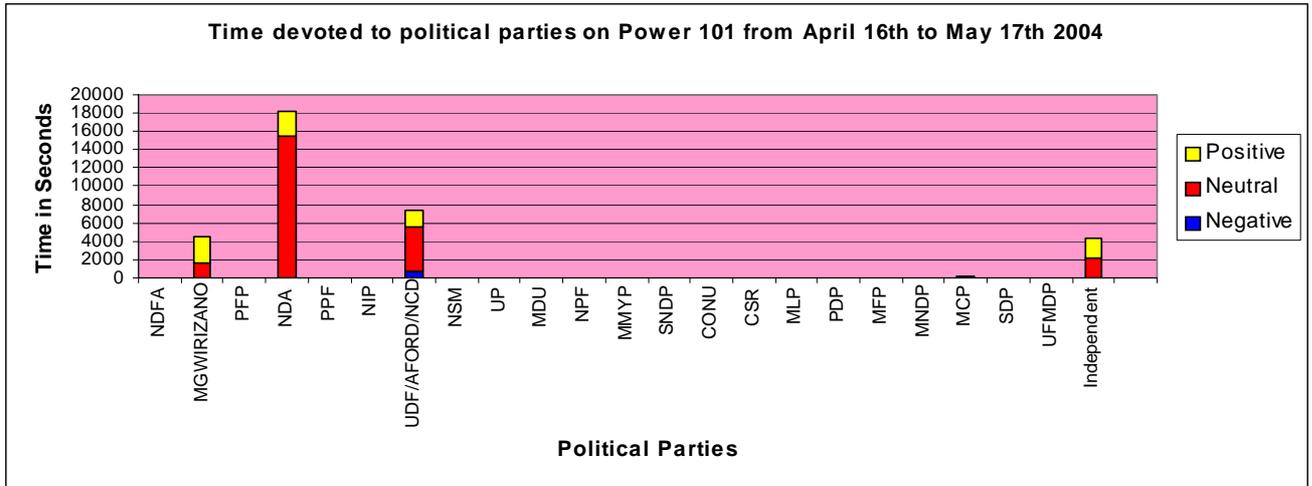


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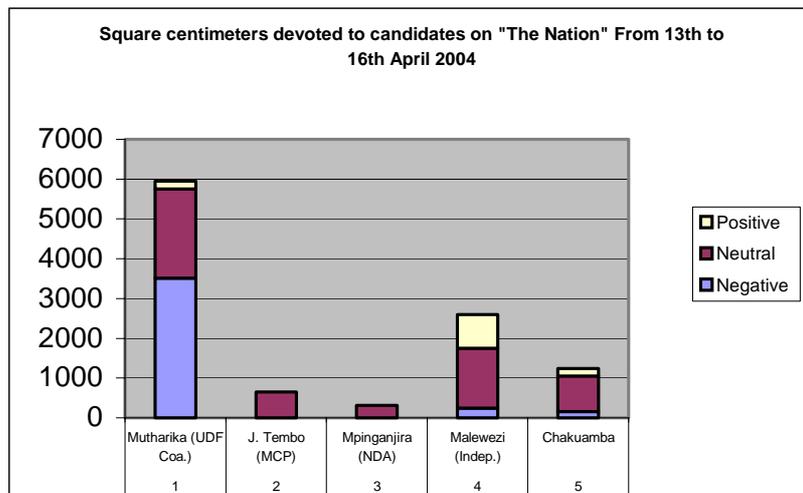
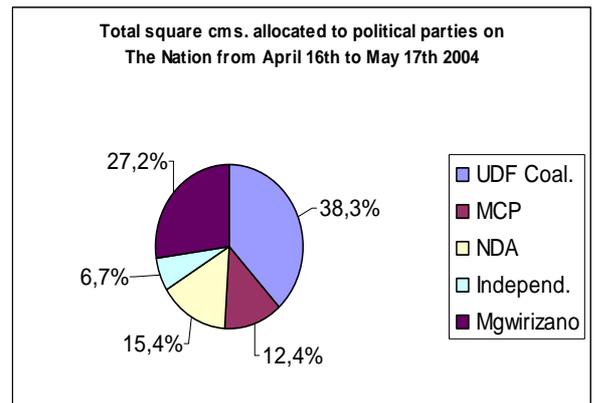
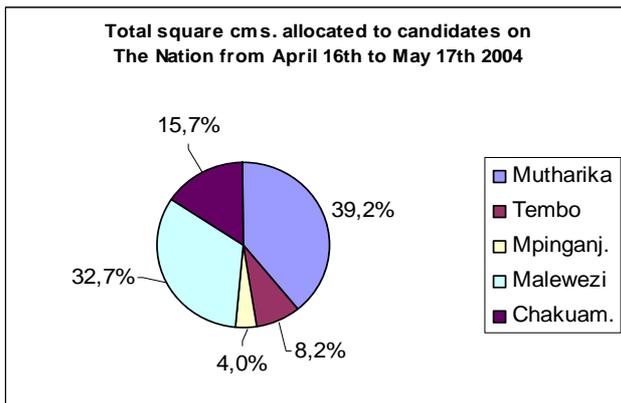


**Power 101**

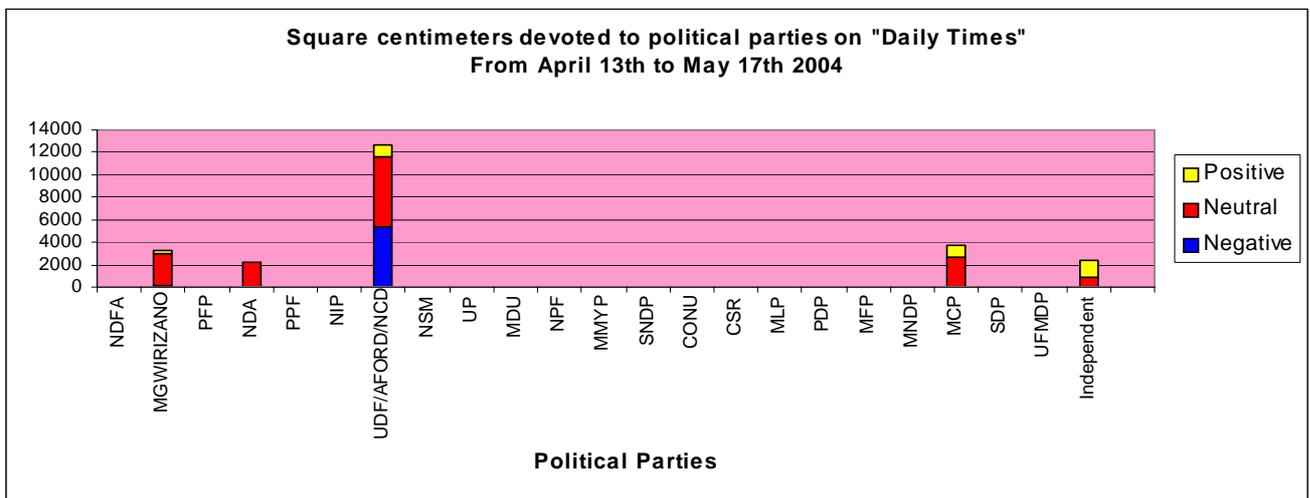
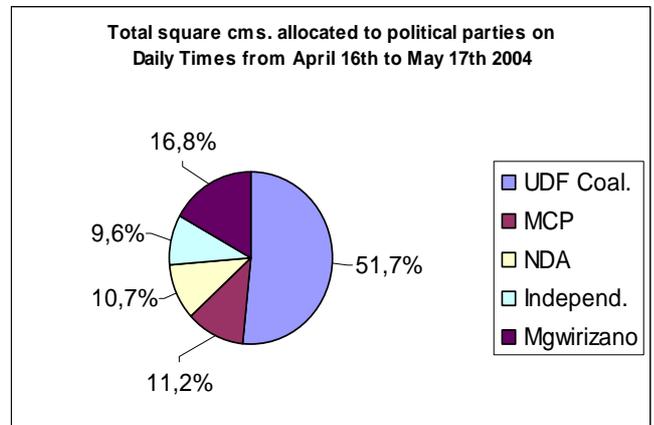
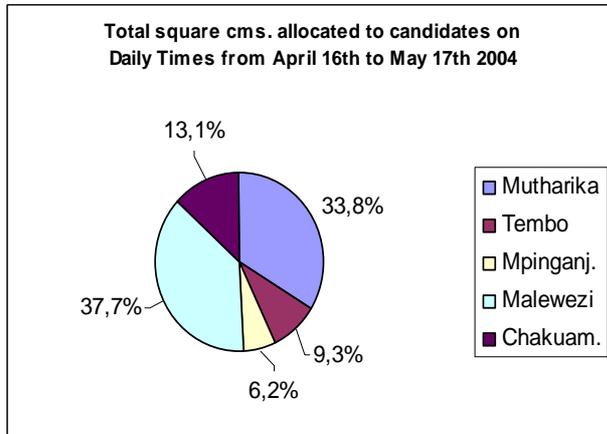




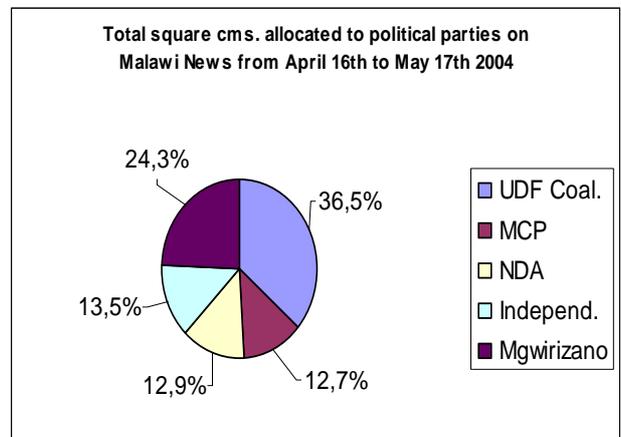
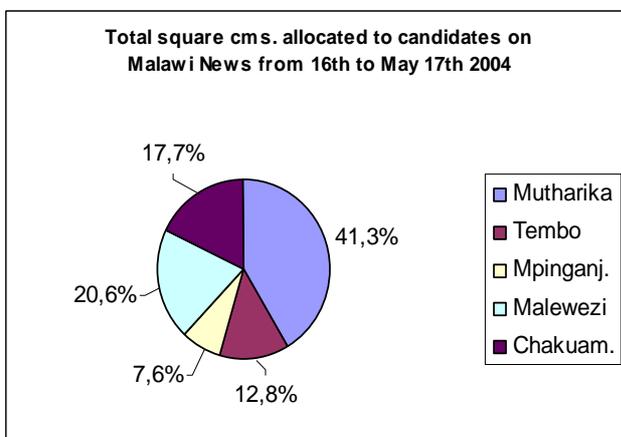
**The Nation**



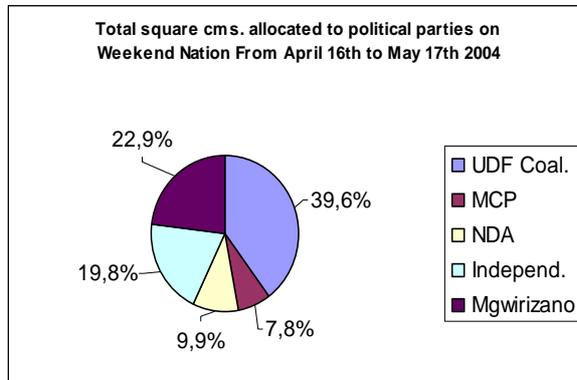
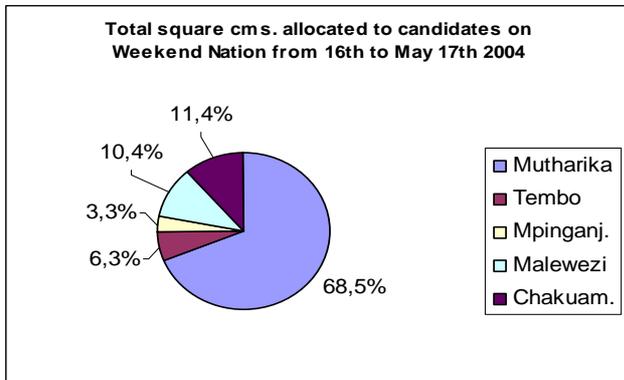
**Daily Times**



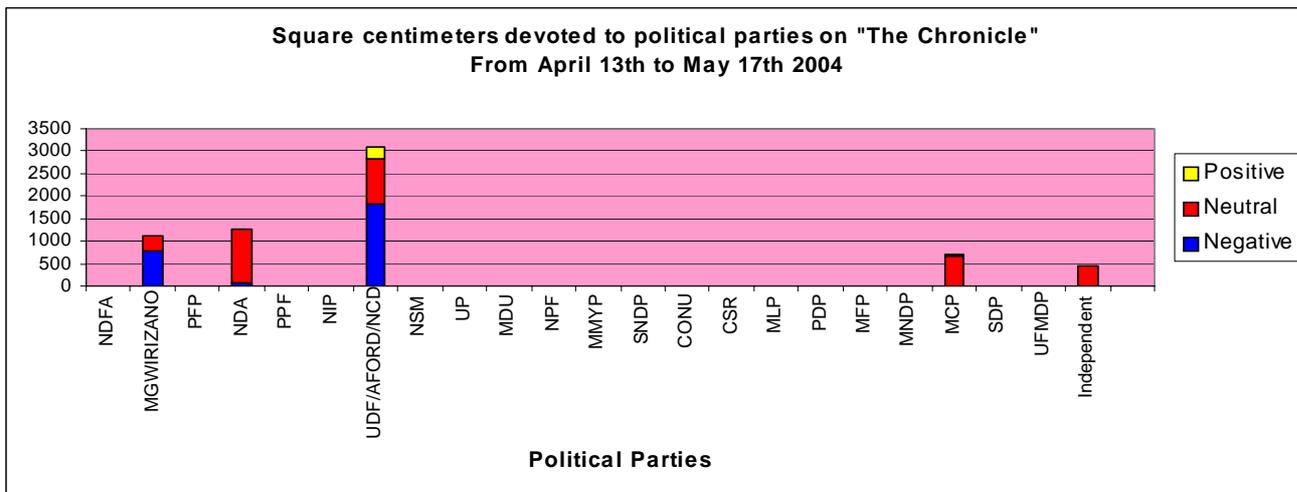
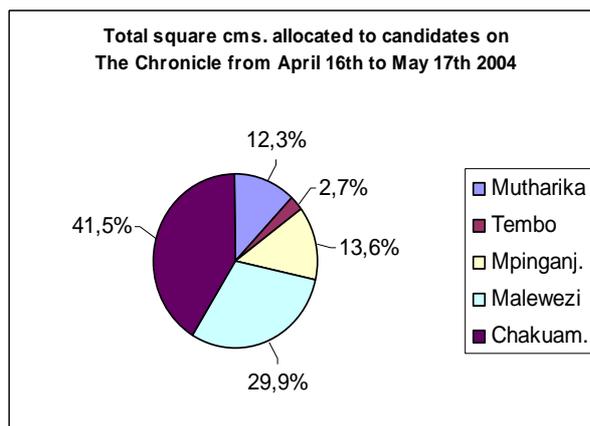
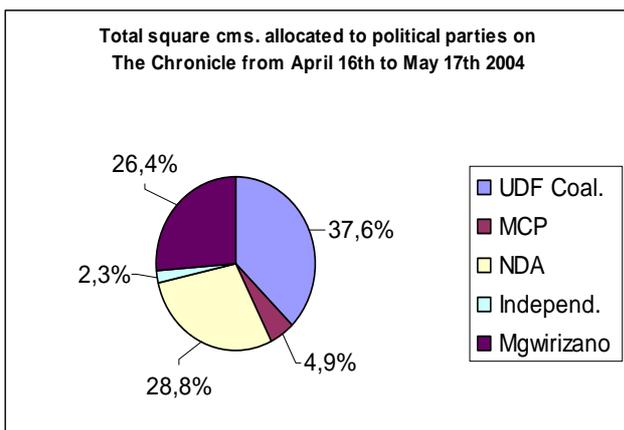
**Malawi News**



**Weekend Nation**



**The Chronicle**



Annex 9

FORM 1

Election Day Reports - Summary

Opening of Polling Station

- 1 Were all members of the Polling Station present at the opening?
- 2 Were all the sensitive materials at the Polling Station?
- 3 Did the Polling Station open on time? If not, at what time?
- 4 Was the ballot box empty and then properly sealed?
- 5 Were party agents present at the opening?

Yes %	No %	No of Forms
94%	6%	36
97%	3%	36
50%	50%	36
86%	14%	36
92%	8%	36

6a Number of voters registered: \_\_\_\_\_

6b Number of voters voted so far: \_\_\_\_\_

Voting Procedure

- 7 Did officials check fingers for indelible ink before issuing ballot papers?
- 8 How many voters were not found on the voters roll?

1 - 4

5 - 9

10+

98%	2%	531
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- 9 Were people not on the voter's roll permitted to vote?
- 10 Were the voters asked to present their voter registration certificates?
- 11 Was the voter registration certificate marked by Polling officials?
- 12 Were voters added to the voter's roll?

How many?

0 - 10

10 - 50

50 - 100

60%	40%	556
99%	1%	530
99%	1%	526
29%	71%	455

- 13 Was the voter inked before casting each of the two ballots?
- 14 Was the secrecy of the vote respected?
- 15 Was any voter intimidation in the Polling Centre / Station observed?

Polling Station

- 16 Was more than one party /candidate representative present at Polling Station?

16a

16b

16c

16d

16e

16f

17a

17b

17c

17d

17e

17f

17g

17h

17i

17j

17k

17l

17m

17n

17o

17p

17q

17r

17s

17t

17u

17v

17w

17x

17y

17z

17aa

17ab

17ac

17ad

17ae

17af

17ag

17ah

17ai

17aj

17ak

17al

17am

17an

17ao

17ap

17aq

17ar

17as

UDF / Afford / NCD	484		
NDA	520		
MCP	475		
Mgwirizano	473		
Malewezi	458		
Ind Cs	470		
	488		
PAC	474		
NICE	470		
CCJP	467		

- 18 Did the layout of the Polling Station allow the easy flow of voters?
- 19 Were any unauthorised persons present in the Polling Station?
- 20 Was there campaign material displayed around or in the Polling Centre? (100m)
- 21 Was there any complaint recorded on a specific form?

If yes please specify on the back of this paper

Assessment

- 22 Your overall assessment of the voting process in this Polling Station is:

	N1	N2	N3	C1	C2	C3	S1	S2	S3	S4	S5	Total	%
Very good	4	2	1	9	2	5	3	4	4	8	1	171	32%
Good	1	1	9	5	3	3	5	2	1	1	1	287	53%
Bad	3	3		9	5	8	9	0	7	3	1		
	1	7	1	1	2	3	1	5	2	8	3	76	14%
				1		5		0	0				
Very bad	2	0	0	0	0	0	2	0	2	0	0	6	1%
												540	100%

FORM 2

Counting Reports Summary

**Closing of Polling Station**

1 Did the Polling Station close at 18h?

If not give time:

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If late closing , please state the reason on the back of this paper

2 Were voters queuing at 18h?

3 Were voters queuing at closing time allowed to vote?

Give an approximate nr.

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4 Were the forms MEC 065a and 065b duly filled by Polling officials?

**Counting Procedures at Polling Station**

5 Did the counting procedure take place immediately after closing?

6 Was more than one party / candidate representative present?

6a UDF / Afford / NCD

6b NDA

6c MCP

6d Mgwirizano

6e Malewezi

6f Independent Candidates

7 Were domestic observers present?

7a PAC

7b NICE

7c CCJP

8 Were party representatives able to check the ballot papers?

9 Were formal complaints regarding the counting process recorded?

If yes, specify the reason for the complaint on the back of this paper

10 Was the form MEC 065 duly filled and signed?

11 Were the forms MEC 058 and 059 filled and one copy of each given to political party / candidate representatives?

12 Did party/candidate representatives receive a copy of the result form MEC 065?

13 Were the results posted outside the polling station?

14 Your overall assessment of the closing and counting in this Polling Station is:

Very good

Good

Bad

Very bad

**Total number of Forms**

	N1	N2	N3	C1	C2	C3	S1	S2	S3	S4	S5	Total	%
Very good													
Good	0	2	1	3	1	0	3	2	0	0	2	14	44%
Bad	2	1	1	1	2	1	1	2	1	0	0	12	38%
Very bad	0	0	0	0	0	0	1	0	2	2	1	6	18%
<b>Total number of Forms</b>	0	0	0	0	0	0	0	0	0	0	0	0	0%
												32	100%

Yes %	No %	No of Forms
88%	12%	32
3%	97%	32
0%	100%	32
91%	9%	32
81%	19%	31
100%	0%	31
100%	0%	30
87%	13%	31
77%	23%	31
65%	35%	31
16%	84%	31
74%	26%	31
97%	3%	32
71%	29%	31
77%	23%	31
68%	32%	31
94%	6%	32
4%	96%	29
90%	10%	31
87%	13%	31
79%	21%	29
58%	42%	31

**Collation Procedure Summary**

**District Centre**

	Yes %	No %	No of Forms
1 Did you follow the Ballot Boxes to the District Centre?	69%	31%	29
2 Did party representatives follow the Ballot Boxes to the District Centre?	57%	43%	23
3 Were party representatives present at the District Centre?	97%	3%	29
3a UDF / Afford / NCD	93%	7%	29
3b NDA	83%	17%	29
3c MCP	83%	17%	29
3d Mgwirizano	86%	14%	29
3e Malewezi	41%	59%	29
3f Ind. Cs	79%	21%	29
4 Were there any domestic observers present at the District Centre?	97%	3%	31
4a PAC	97%	3%	30
4b NICE	93%	7%	30
4c CCJP	70%	30%	30
5 Were there any unauthorised persons present in the District Centre?	0%	100%	23
6 Were the official Record and Summary Forms MEC 065a and 065b handed directly by the Supervisor Presiding Officer to the Returning Officer ?	100%	0%	28
7 Did the Returning Officer faithfully copy the results onto the Aggregation Forms? (Constituencies / Districts)	96%	4%	28
8 Did any party / representative ask for a re-aggregation?	0%	100%	22
9 Did the Returning Officer give a signed copy of the results to each party / candidate representative?	44%	56%	9
10 Was there any complaint registered? If yes, please specify on the back of this paper	0%	100%	23

**General Assessment**

11 What is your overall assessment of the aggregation process at the District?

	N1	N2	N3	C1	C2	C3	S1	S2	S3	S4	S5	Total	%
Very Good	1	0	2	0	1	0	3	3	0	1	0	11	39%
Good	2	2	0	1	2	1	3	1	1	1	2	14	50%
Bad	0	0	0	1	0	0	0	1	0	1	0	3	11%
Very Bad	0	0	0	0	0	0	0	0	0	0	0	0	0%
												28	100%

**LIST OF PEOPLE THE EOM MET**

**PRESIDENTIAL CANDIDATES**

Bingu wa Mutharika	United Democratic Front (UDF)
Gwanda Chakuamba	Republican Party (RP)
Aleke Banda	Peoples Progressive Movement (PPM)
Brown Mpinganjira	National Democratic Alliance (NDA)
Justin Malewezi	Independent
John Tembo	Malawi Congress Party (MCP)

**OTHERS**

Bakili Muluzi (President)	United Democratic Front (UDF)
Kazuni Kumwenda (President)	National Solidarity Movement
George Kalanda	Peoples Popular Front
Jan Sonke	PPM
Harold Williams	PPM
Viva Nyimba (2nd vice president)	NDA
Peter Chupa (organising secretary)	NDA
Shuma Mwase (elections co-ordinator)	Mgwirizano Coalition
Kholiwe Mkandawire (spokesperson)	Mgwirizano Coalition
Knox Valera	Mgwirizano Coalition
Nicholas Dausi (2nd vice president)	MCP
Jimmy Korea-Mpatsa (running mate)	Independent

**GOVERNMENT OFFICIALS**

Henderson Mabeti	Minister of Information
Davis Katsonga	Speaker of the National Assembly
Peter Fatchi	Attorney General
K. Mzumara	Registrar General

**POLICE**

Often Thyolani (Commissioner of Police)	Malawi Police Service
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**JUDICIARY**

Justice Leonard Unyolo (Chief Justice)	Malawi High Court
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**MALAWI ELECTORAL COMMISSION**

Justice James Kalaila (Chairman)	MEC
Roosevelt Gondwe (Chief Elections Officer)	MEC
Arthur Nanthuru (Commissioner)	MEC
H. Magombo (International Observers Desk)	MEC
Muhabhi Chisi (IT Manager)	MEC
Monica Ngwembe (Chairperson, Training Committee)	MEC

**INTERNATIONAL BODIES**

Susan Sikaneta (Executive Secretary)	African Union
Zahra Nuru (Resident Co-ordinator)	United Nations Development Programme (UNDP)

**OBSERVER GROUPS (FOREIGN)**

Christopher Child	Commonwealth Observer Group
Justice Warioba (Chairperson)	Commonwealth Observer Group
Ms Koki Muli	Commonwealth Observer Group
Sir Ketumile Masire (Mission Leader)	Electoral Institute of Southern Africa
William Shija (Head of Team)	African Union
Hon. E. Mnangagwa (Head of Mission)	SADC Parliamentary Forum Election Observation ACRA

**OBSERVER GROUPS (LOCAL)**

PAC, NICE, MHR

**RELIGIOUS ORGANISATIONS**

Representatives of Catholic and Protestant Churches  
Muslim Association of Malawi

**NGOS**

Dr. Patel	Institute of Policy Interaction
Christian Peters Berries (Project Manager)	National Initiative for Civic Education
Robert Silungwe (Regional Civic Education Officer)	National Initiative for Civic Education
Mr. Nthenda	Catholic Commission for Peace & Justice
Steven Msowoya	Malawi Council for the Handicapped
Ollen Mwalubunju (Director)	Centre for Human Rights & Rehabilitation
Emmie Chanika (Executive Director)	Civil Liberties Committee
Makoko Chirwa (Executive Director)	Women's Voice
Steve Mkai	Malawi Foundation for General Civic Education
Ollen M.K. Mwalubunju (Executive Director)	Centre for Human Rights and Rehabilitation

**OTHERS**

Dr. Edge Kanyongolo (Law Lecturer)	Chancellor College University of Malawi
Nixon Khembo (Political Scientist)	Chancellor College University of Malawi
Boniface Dulani (Political Scientist)	Chancellor College University of Malawi
Peter Killick	Malawi/Canada Programme Support Unit

**DIPLOMATIC MISSIONS**

Franz Ring (Ambassador)	German Embassy
Peter Seleka (High Commissioner)	South African High Commission
Norman Ling (High Commissioner)	British High Commission
Chris Raight (First Secretary)	British High Commission
Debbie Palmer (Assistant Governance Adviser)	DFID (Malawi)
Peter Lord (Ambassador)	United States Embassy
Serge Lavroff (Chargé d' Affaires)	Embassy of France
Henk Munnich	Honorary Consul, Kingdom of the Netherlands
Margriet Sacranie-Simons	Honorary Consul, Kingdom of the Netherlands

**MEDIA**

Evans Namanja (Director General)	MACRA
Mike Kuntiya (Director of Telecommunications)	MACRA
Al. S. Osman (Station Manager)	Capital FM
Benson Tembo (Director General)	TVM
Owen Maunde (Director General)	MBC

James Ng'ombe (Director)  
Vini Phiri (Editor in Chief)  
Jerome Cartillier (Correspondent)

MIJ  
Daily Times  
AFP