



CONSOLIDATED ISSUES AND RECOMMENDATIONS FOR ELECTORAL REFORMS IN MALAWI

National Task Force on Electoral Reforms

July 2015

Blantyre, Malawi

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List of Abbreviations and Acronyms

AFORD	Alliance for Democracy
CEO	Chief Elections Officer
CMD	Centre for Multiparty Democracy
CONU	Congress for National Unity
CSOs	Civil society organizations
CVE	Civic and Voter Education
DPP	Democratic Progressive Party
EC	Electoral Commission
EMB	Electoral Management Body
ERG	Expert Reference Group
FPTP	First Past- the-Post
MAFUNDE	Malawi Forum for National Development
MCP	Malawi Congress Party
MDP	Malawi Democratic Party
MDU	Malawi Democratic Union
MEC	Malawi Electoral Commission
MESN	Malawi Electoral Support Network
MHRC	Malawi Human Rights Commission
MMC	Multi Member Constituency
MoJCA	Ministry of Justice and Constitutional Affairs
NDI	National Democratic Institute
NGO GCN	NGO Gender Coordination Network
NGOs	Non -Governmental Organizations
NICE	National Initiative for Civic Education
NIMD	Netherlands Institute for Multiparty Democracy
NUP	National Unity party
OMR	Optimal Mark Recognition
PETRA	People's Transformation Party
PPE	Parliamentary and Presidential Elections
PPM	People's Progressive Movement
PR	Proportional Representation
TRS	Two Round System
TWG	Technical Working Group
UDF	United Democratic Front
UNDP	United Nations Development Programme
VE	Voter Education
VI	Voter Information

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Acknowledgements

The National Task Force on Electoral Reforms would like to thank all people who have contributed their ideas in identifying issues in the electoral process, have offered suggestions on corrective measures. In particular, the Task Force would like to thank participants to the National Conference on Electoral Reforms that took place at Sogecoa Golden Peacock Hotel in Lilongwe on 11th and 12th December 2014; Justin Dzonzi, Ngeyi Kanyongolo, Emma Kaliya, Sean Dunne, Ollen Mwalubunju and Nandini Patel for presentations made to the national conference on electoral reforms; Members of the Technical Working Groups and members of the Expert Reference Group who made significant contributions to the electoral reforms process and to this paper.

The Task Force would also like to acknowledge a team of consultants - Henry Chingaibe, Asiyati Chiweza, Ngeyi Kanyongolo, Augustine Magolowondo and Aloisious Nthenda - who helped the Task Force with in-depth analysis of the issues and the proposed reforms and assembling the seemingly disparate parts of the reforms agenda into a cohesive package that is presented in this paper.

Further thanks are due to the National Democratic Institute (NDI) and United Nations Development Programme (UNDP) for financial and technical support to the electoral reforms process and to the Malawi Electoral Commission (MEC) and the National Initiative for Civic Education (NICE) for financial support that enabled meetings of the Task Force.

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EXECUTIVE SUMMARY

Election Reform

The main appetite for election reform in Malawi is driven by the need to achieve democratic progress through credible and genuine elections. A level playing field must be the reality for all participants (citizens, voters, candidates and parties) in the election competition. These proposed election reforms have been shaped with this goal in mind: not to tip the field in any direction, but to improve the election process for all.

The National Election Task Force convened following rounds of consultations with the public after Malawi's 2014 inaugural tripartite elections. Founded on issues raised by grass root voices the Task Force has collected, integrated and analyzed the reforms through various consultative and expert groups, as well as a peer review mechanism.

The Task Force's work is grounded in four principal objectives: to enhance political legitimacy, inclusiveness and representativeness in the election of all officials; to improve the coherency, integrity and adequacy of Malawi's electoral legal framework; to improve the impartiality, effectiveness and credibility of election administration and management; and, to improve civic competence of citizens on electoral matters.

SECTION I: Reforms to enhance political legitimacy, inclusiveness and representativeness in the election of all officials.

Presidential Election:

Recommendation: In response to the demand for ensuring that the President enjoys nationwide support and legitimacy, the Task Force recommends that the standard for nomination be raised from 10 supporting signatures per District to 1,000 supporting signatures in 90 percent of all the districts.

Additional Considerations: An additional option is whether a successful candidate should attain a minimum threshold of votes to win the election, known as a two round system (TRS). If the winning threshold is not met in the first round, a second round is conducted between the top two candidates (refer to annex) or to maintain the status quo of a simple majority.

National Assembly Elections:

Recommendation: The current 193 single member first-past-the-post (FPTP) elections be replaced by a closed list proportional representation (PR) system at the District level. Multiple MPs will be elected to represent a District.

Recommendation: In line with Malawi's regional AU and SADC obligations a women's gender quota of 50% should be implemented by requiring the party lists to contain a minimum number of female candidates.

Recommendation: the nomination requirements for candidates should be raised from 10 to 250 supporting signatures.

Additional Considerations: the process by which parties select their candidates should be observed and supervised by the MEC.

Local Council Elections:

Recommendation: maintain FPTP, the nomination requirements for candidates should be raised from 10 per Ward to 50.

Recommendation: in line with Malawi's regional AU and SADC obligations a women's gender quota of 50% should be implemented. A recommended approach towards this is to have at least one male and one female candidate elected per Ward.

Boundary Delimitation:

Recommendation: boundary delimitation should be conducted before the 2019 elections, using demographic data from the National Registration System.

Recommendation: with PR for the National Assembly, electoral boundaries would be fixed as the District, and seats allocated based on population and other constitutional variables.

Recommendation: for Wards, the MEC should be able to determine these boundaries, subject to a Regulation for the purpose.

SECTION II: Improve the coherency, integrity and adequacy of Malawi's electoral legal framework.

Key Legislation:

Recommendation: the Parliamentary and Presidential Act and the Local Government Election Act, should be integrated into a single Election Act.

Recommendation: a Referendum law should be legislated to detail the provisions and requirements to be met for a referendum.

Recommendation: a Political Party Campaign and Finance law should be legislated to oversee political party financing and campaign funding.

Recommendation: a law to administer the period of transition from the date of the election of the President to their inauguration should be put in place that ensures sufficient time for a petition to be resolved prior to inauguration.

Key Amendment Recommendations:

Recommendation on voter eligibility: Section 77 of the Constitution should be amended to establish the age of voter eligibility to be 18 years of age or older, on the day of the election.

Recommendation on polling: Section 67(1) of the Constitution should be amended for general elections to be conducted in September rather than May.

Recommendation to empower MEC to issue subsidiary legislation: in line with international best practice, the MEC should be empowered to issue Regulations on its key areas of competence and the election process under the Electoral Commission Act.

Recommendation to deter vote buying: a specific offence for vote buying (whether by handouts or other means) should be included in the election laws, as well as the Corrupt Practices Act.

Recommendation: staggered announcement of results as follows; 7 days for the president, 14 days for national assembly and 21 days for local councils.

Recommendation: “Public office” should be defined under electoral legislation for the purpose of defining candidate criteria.

Dispute Resolution Recommendations

Recommendation: under the Electoral Commission Act, an Electoral Tribunal be established, which would be delegated the complaint decision-making powers of the Commission during the period from candidate nomination until the announcement of results.

Recommendation: the MEC shall issue a Regulation on the use of Alternative Dispute Resolution (ADR) mechanism to support a peaceful election process.

Recommendation: timelines for the resolution of electoral petitions by the High Court should be legislated under the Election Act.

SECTION III: Improve the impartiality, effectiveness and credibility of election administration and management.

Recommendation: the MEC should draft, implement and publish its Standing Orders to make the roles of the Commission and Secretariat transparent.

Recommendation: the MEC should report to the National Assembly and not the President, at least once every six months, and upon the request of the Commission.

Recommendation: the MEC should have a “protected budget” that once approved by the National Assembly cannot be diminished or reallocated, unless such amendments are approved by the National Assembly.

Recommendation: the composition of the Commission should be a minimum of five and a maximum of seven, with a minimum of two women. Commissioners should be employed a full-time basis for a five year term. At least two Commissioners should be retained between Commissions, with a lifetime limit of serving two terms.

Recommendation: the selection of Commissioners should be based on an open selection process via a panel of representatives that considers professional qualifications measured against a job description. To be eligible for appointment a person would need to have “no objection” to their selection, by a majority of the political parties represented in the National Assembly.

Recommendation: the position of Chairperson of the Commission should be open to competent Malawians from different professions with relevant expertise and leadership qualities including retired Judges and not be restricted to the judiciary, but should be identified by the selection panel.

Recommendation: Commissioners should be appointed by the President based on the outcomes of the selection panel. Once convened, the Commission should elect from itself a Vice Chairperson.

SECTION IV: Improve civic competence of citizens on electoral matters

Recommendation: MEC mandate should focus on voter information and education, and become a stakeholder in civic education, not a duty bearer.

Recommendation: MEC issue a Regulation on the accreditation of CSOs as service providers.

Recommendation: MEC issue Regulations and not Codes of Conduct for the behavior of the media, in close coordination with MACRA and other media regulatory bodies.

1.0. Introduction and background

In the aftermath of the May 2014 tripartite elections a number of organizations including the Malawi Electoral Commission (MEC), the Malawi Electoral Support Network (MESN), National Initiative for Civic Education (NICE) the Public Affairs Committee (PAC), among others, conducted post-election reviews which generated recommendations for electoral reforms. The reforms were being proposed in reaction to the challenges that were experienced during the elections that had recurred from previous elections. The key challenges that galvanized the call for electoral reforms included problems in the process of management, determination and announcement of results. There were widespread perceptions that the credibility of the electoral process was sub-optimal, as well questions over the legitimacy and representativeness of the outcome of the elections and widespread discontent with the inadequate gender inclusivity of the electoral outcomes.

Post-election reviews lacked coordination as stakeholder organizations appeared to be pursuing lone agendas. Against this background, the Malawi Electoral Support Network (MESN) organized a consultative meeting on electoral reforms. The meeting agreed on a joint approach to electoral reforms and resolved to form the National Task Force on Electoral Reforms in order to concretize the reforms agenda and chart out a process of collective action to realize the demanded changes.

The Task Force comprises of public and civil society organizations as well as development partners interested in any aspects of the electoral reforms agenda. These organizations are as follows:

Table 1: Membership of the Task Force

Public Organizations	Civil Society Organizations	Development Partners and international Non-Governmental Organizations
<ul style="list-style-type: none"> i. Malawi Electoral Commission(MEC) ii. Ministry of Justice & Constitutional Affairs (MoJCA); iii. Malawi Law Commission; iv. National Initiative for Civic Education (NICE). v. Malawi Human Rights Commission (MHRC) vi. Ministry of Local Government and Rural Development 	<ul style="list-style-type: none"> i. Centre for Multiparty Democracy(CMD) ii. Malawi Electoral Support Network (MESN). iii. NGO Gender Coordination Network (NGO GCN) iv. Public Affairs Committee (PAC) 	<ul style="list-style-type: none"> i. United Nations Development Programme (UNDP); ii. National Democratic Institute(NDI)

The mandate of the Task Force is to implement and oversee an agreed programme of work on electoral reforms. The Task Force is co-chaired by the Malawi Electoral Commission and the Malawi Electoral Support Network. MESN also serves as the secretariat for the Task Force.

This paper analyses key issues in the electoral process in Malawi and provides recommendations for reforms. The issues were identified through bottom-up consultative processes carried out by various stakeholders including the Malawi Electoral Commission, the Catholic Commission for Justice and Peace, the Public Affairs Committee and the Malawi Electoral Support Network. The various consultative processes culminated into a broad-based consultative National Conference on Electoral Reforms in December 2014, organized by the multi-stakeholder Task Force. The conference firmed up the issues for reforms and set out a road map for the initial reforms agenda. The list of issues was consolidated by the Technical Working Groups (TWGs) which carried out issue analysis and identified reform options. These were further refined by the Expert Reference Group in April 2015.

This paper is intended to provide a consolidated technical analysis and presentation of the proposed reforms agenda as the basis for structured discussions on electoral reforms and advocacy work by the Task Force. The analysis of issues draws primarily from Malawi's own experience with five general elections since the transition to multiparty democracy in 1993. The recommendations for reform draw from comparative insights on best practices and on expressed aspirations of Malawians on what kind of reform they would like to see.

The paper is organized in sections. Section 2 outlines the goals of the proposed reforms and provides descriptive definitions of types of electoral reforms. Section 3 highlights factors that the Task Force considered in making reform recommendations. Sections 4 to 7 present analysis of issues and proposed reforms. Section 4 focuses on reforms for improving political representation, legitimacy and inclusion. Section 5 covers reforms for improving the coherence, integrity and adequacy of the electoral laws. Section 6 focuses on reforms for improving the impartiality, effectiveness and credibility of election administration and management. Section 7 is centered around reforms for enhancing the framework for an informed electorate on electoral matters.

2.0. The goals and types of proposed electoral reforms

The overall goal of the proposed reforms in this paper is to improve the responsiveness of the electoral system and thereby enhance Malawi's democratic development. There are at least four strategic goals of the electoral reforms. These are:

- i. Improve the representation, legitimacy and inclusiveness of the electoral process and electoral outcomes;
- ii. Improve coherence of the laws, rules and regulations governing elections;
- iii. Improve the impartiality, effectiveness, efficiency and credibility of election administration and management;

- iv. Enhance education and access to information to ensure that voters are adequately and appropriately informed about electoral process.

For the purposes of this positions paper, the descriptive definitions of the dimensions are as follows¹:

Table 2: Dimensions or types of electoral reforms recommended in this paper

Dimensions or type of reform	Description of reform
Legal	<ul style="list-style-type: none"> i. Aims at enhancing the coherence, relevance and sufficiency of the legal framework; ii. Involves amendment of the Constitution, electoral law and regulations; iii. Includes institutional reform of Election Management Body such as the Malawi Electoral Commission.
Administrative	<ul style="list-style-type: none"> i. Aims at enhancing the effectiveness, efficiency and sustainability with which the EMB (i.e. MEC) carries out its functions in the electoral process; ii. Involves introduction within the EMB (i.e. MEC) of new ways of discharging its tasks in order to implement its legal responsibilities;
Political	<ul style="list-style-type: none"> i. Aims at improving the quality of democracy or the extent to which democratic values are achieved; ii. Reforms that create important and competing incentives for political parties and candidates; iii. Reforms that require concerted political activities (negotiation, bargaining and cooperation) among (partisan) stakeholders in order to be effected

3.0. Some factors considered by the Task Force in making reform recommendations

In addition to the strategic goals of the reforms outlined above, in providing \ recommendations for reforms, the Task Force considered the following ten basic factors in relation to the proposed reforms:

- i. The value or virtue that the proposed reform seeks to achieve or promote and/or the vice that stakeholders want to avoid;
- ii. Parallel governance reform initiatives on the targeted issue for reform;
- iii. Relevance of the identified problem to the strategic goals for electoral reforms;
- iv. Objectivity and sufficiency of the diagnosis of the issues in terms of cause-effect relationship;
- v. Relevance of the proposed reforms to addressing the identified problem;
- vi. The potential of the proposed reform to create new problems that would affect the credibility of elections or its outcomes;

¹ This typology draws from <http://aceproject.org/ace-en/topics/em/eml/default>; Denmark, David (2003) Electoral Change, Inertia and Campaigns in New Zealand, Party Politics, 9(5):601-618.

- vii. Feasibility of the proposed reforms in terms of financial costs and in terms of dominant attitudes of influential key stakeholders;
- viii. Consistency of proposed reforms across the strategic goals of the electoral reforms agenda;
- ix. Placement or situating the reforms within the electoral cycle;
- x. Alignment with international and regional obligations and standards such as the SADC Principles and Guidelines Governing Democratic Elections and the African Charter on Democracy, Elections and Governance.

4.0 SECTION I: Reforms to enhance political legitimacy, inclusiveness and representativeness in the election of all officials

In looking at reforms that seek to improve political representation, political legitimacy and political inclusion, the Task Force focused mainly on electoral systems reforms. Electoral systems determine how voters express their political preferences and how votes get are translated into parliamentary seats or government posts². Electoral systems also shape the political relationship that exists between voters and their elected representatives and, therefore, shapes how democracy is practiced³. Electoral systems are not just procedures. They have significant consequences because they shape electoral outcomes. For instance, given the same conditions different electoral systems yield different electoral results so much that winners and losers of elections are partly determined by the electoral system that is in use. Furthermore, voter behaviour as well as the political party system are conditioned by electoral systems. Similarly, the nature of partisan politics i.e. whether inter-party politics will be adversarial or accommodative is significantly shaped by the electoral system in use.

There are many types of electoral systems but there are three main ones. These are majoritarian systems, proportional systems and mixed systems. These are briefly described below:

Majoritarian systems:

The basic operating principle is that after votes are counted and summed, the candidate that amasses the most votes is declared a winner of the election. In some cases, winners just have to pool a simple majority of votes while in others a fixed, higher majority is required. Furthermore, in some cases more than one candidate is elected per electoral district (ward or constituency) while in others only one candidate can be declared a winner. Currently, Malawi uses a majoritarian system based on simple majority of votes and only one candidate can be declared as a winner.

Proportional Representation:

The basic operating principle of proportional systems is to translate the proportion of votes cast for a political party to the number of seats allocated to the party in Parliament or Local Government Council.

Mixed system:

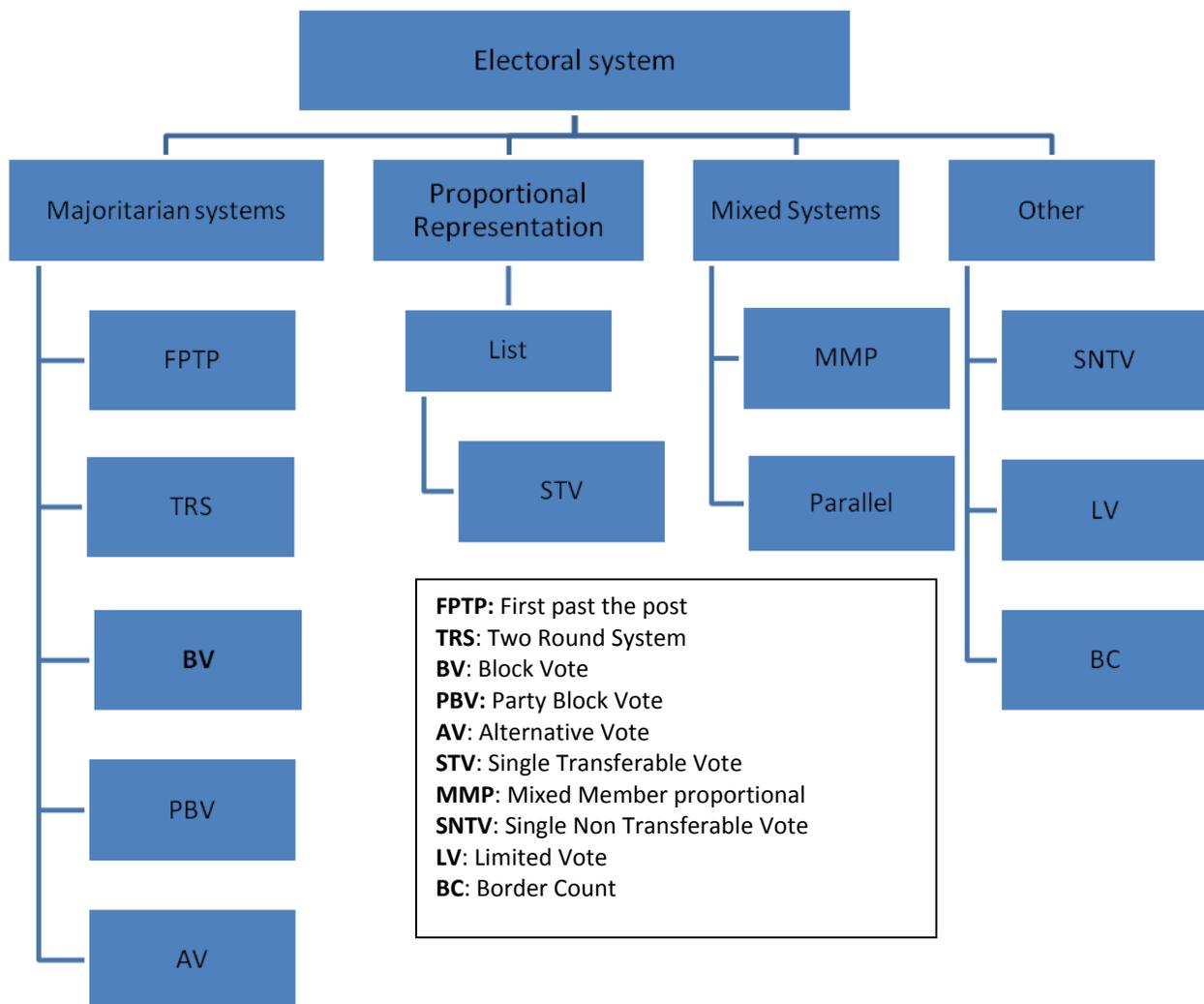
² Nohlen, 1996.

³ Nohlen, 1996, International IDEA, (2005).

The basic principle is that they combine the desired attributes of majoritarian and proportional systems to come up with an electoral system that suits a particular context.

There are three key elements of an electoral system⁴ that are amenable to electoral reforms. The first is *district magnitude*, meaning the number of representatives that are elected in one electoral district; the second is *the electoral formula* by which the winner of the election is determined; and the third is the *ballot structure*, which determines whether the voter votes for a candidate or a party, and whether the voter makes a single choice or expresses a series of preferences. Consequently, within the main types of electoral systems are variants, each with specific implications. Reforms in the case of electoral systems mean a change from one main type of electoral system to another or from one variant to another within the main type. The figure below summarises them.

Figure 1: Types of electoral systems



⁴ International IDEA, (2005)

Key considerations for electoral system reforms

The electoral system reform proposals presented in this section seek to actualize certain democratic principles and ideals that maximize the social and political benefits of electoral competition to any society. These principles and ideals include⁵:

- a. **Transparency** i.e. the system should be clearly defined in law or regulations, and accessible to any interested parties;
- b. **Predictability** i.e. the outcomes of the electoral system should not be random;
- c. **Proportionality** i.e. a candidate or party that wins a certain proportion of the vote should gain an equal proportion of seats, and the system should minimize the number of valid votes that do not elect a representative i.e. wasted votes⁶;
- d. **Simplicity** i.e. the system should be easy to understand for the citizenry, parties, candidates and electoral workers;
- e. **Foster stable political parties** i.e. the system should encourage and foster the development of political parties as a mechanism of political representation;
- f. **Inclusiveness and parity** i.e. the election should allow for universal and equal suffrage, the inclusion of all social groups and offer equitable voting power to each vote); and
- g. **Representation** i.e. the system allows for equitable representation of the citizenry in the elected assembly.

4.1. Presidential election

Under section 80 of the Constitution, the president is directly elected by the people through a First-Past-The-Post (FPTP) election system. The candidate who obtains the majority of the valid votes cast wins the election and he/she subsequently forms government. The word “majority” in the Constitution and the Parliamentary and Presidential Election Act has been interpreted to mean “simple majority” by the courts⁷. The main advantage of this electoral system is its simplicity. To the electorate, the choices that they are presented with are clear as they are able to know in advance not only the party they are voting for but also the actual individual they prefer for the position of president. It is also easy for the electoral management

⁵ For a detailed discussion on these principles, see: International IDEA (2005): *Electoral Systems Design: The New International IDEA Handbook*, Stockholm: IDEA. See also: <https://aceproject.org/ace-en/topics/es/es20> (accessed on 22.05.2015). Inevitably, there are tradeoffs to be made in the process. In some instances, emphasis on one ideal may be made at the expense of the other. Overall, however, the most important consideration that has to be made is the extent to which the particular ideal is supportive of what we aim to achieve with these electoral reforms: improve political representation, political legitimacy and political inclusion.

⁶ A wasted vote is any vote which is not for an elected candidate or, more broadly, a vote that does not help to elect a candidate. The narrower meaning includes only those votes which are for a losing candidate or party. A broader definition includes surplus votes for winning candidates who would have won anyway without the wasted vote (see: http://en.wikipedia.org/wiki/Wasted_vote (accessed on 22.05.2015).

⁷ Gwanda Chakuamba et al vs Attorney General et al cc no. IB of 1999

body to determine the winner. Furthermore, the system is cost effective as it provides the electorate with an outright winner without taking recourse to the second round.

Despite the merits mentioned above, the current electoral system has disadvantages. The most critical one is that it has the propensity of producing a winner with minority votes thereby raising the question of political legitimacy i.e. the degree to which the winner is accepted by the electorate. Out of the five general elections since the transition to multiparty democracy, three candidates received less than 50 percent of the (popular) vote. As the number of presidential candidates continues to rise, the proportion of the electorate that effectively elect the president will continue to diminish so much that presidential election may lose its meaning for a majority of people and this has the potential of fomenting anti-system movements. The current election system presents an incentive scheme to politicians to deploy 'region-tribe anchor' strategies in mobilizing votes and perpetuate the vices of politics driven by parochial identities of regionalism and tribalism.

Two main proposals for reforms were considered for presidential election. The first was that an absolute majority of fifty percent plus one vote (50% + 1) be required for a candidate to win presidential election. If none of the candidates obtains enough votes in the election, a second election involving the top two candidates in the first round should be held. In short, A Two-Round System (TRS) is proposed for the presidential election. The TRS will ensure that the winning candidate receives a strong popular mandate to govern. It will also significantly reduce the dependence of politicians on region-tribe anchor strategies as they will be compelled to seek broad-based support to reach enough votes and thereby reach out to tribes and regions other than their own. In short, the TRS presents an incentive to promote political unity, cohesion and accommodation in the country in addition to shoring up the legitimacy of the President.

The second proposal was that the party that wins a specified minimum number of seats in Parliament should form government. This would compel political parties to seek votes and constituency seats beyond their region-tribe strongholds and achieve the same results and values as the TRS. However, the proposal would change the country's system of government from a presidential to a parliamentary one and the president would not be directly elected by the people. The proposal would also require other potentially costly and protracted reforms.

In order to enhance political legitimacy, inclusiveness and representativeness in the election of the president it is therefore recommended that the nomination threshold be raised from 10 supporting signatures per district to 1000 supporting signatures in 90 percent of all districts.

Additional Considerations

As an additional consideration TRS with a threshold is another option. The threshold does not necessarily have to be restricted to 50%+1, but can be any percentages that can be considered feasible and agreeable for example 40% and 60%. The recommended reform is consistent with the recommendation of the Constitutional Review Commission that a "President should be elected by absolute majority of the votes cast

to ensure legitimacy”⁸. It is also important to note that this proposal was favoured by all but one registered political parties that participated in the consultative workshops organized by the Centre for Multiparty Democracy (CMD) in 2006 as part of CMD’s efforts that were aimed at preparing political parties to effectively participate in the 2006-2007 National Constitutional Review Process⁹. In addition, adopting TRS would require amending s 80(2) of the Constitution and s 96(5) of the PPEA to reflect absolute majority and clearly spell out the threshold for achieving the absolute majority

However, it is important to acknowledge that TRS poses distinct challenges to conduct a second round election within a short timeframe. This calls for an extra-ordinary capacity and efficiency on the part of institutions such as the judiciary and MEC which capacity cannot presently be assumed. Furthermore, the arrangements for the interim administration of Government would operate for several weeks (and in some instances months) in an uncertain political environment. Experience elsewhere has also shown that the political atmosphere between the first rounds and the run-off can become highly charged if not violent. It would therefore be necessary that investment is made in institutions such as MEC, judiciary, security agencies, among others to ensure that an enabling environment prevails that allows for the holding of free, fair and credible second round of elections. For a country like Malawi, probably another important consideration to be made here is the cost factor. The cost of a second round of polling (estimated at about 25% of the budget for the first round) must, in advance, be factored into election budgeting and planning¹⁰.

4.2. Parliamentary elections

The Malawi National Assembly has 193 constituency seats, elected using the first-past –the post electoral system as provided in section 62 (2) of the Constitution and section 96 (5) of the Parliamentary and Presidential Elections Act and reinforced by the court’s interpretation in the case of *Gwanda Chakuamba, et al*. The candidate who wins the most votes than other candidates is declared a winner.

The system is advantageous for its simplicity as noted in the foregoing section. Furthermore, the system tends to produce winners that are clearly identified with a particular geographical area (a constituency)

⁸ Law Commission Report, 2007(p.75).

⁹ The parties that participated in these consultative workshops included both parliamentary and extra-parliamentary parties. Those that had representation in Parliament at that time were Alliance for Democracy (AFORD), Democratic Progressive Party (DPP), Malawi Congress Party (MCP), People’s Progressive Movement (PPM), People’s Transformation Party (PETRA) and United Democratic Front (UDF). The extra-parliamentary parties that participated included Malawi Democratic Party (MDP), Malawi Democratic Union (MDU), Congress for National Unity (CONU), National Unity party (NUP) and Malawi Forum for National Development (MAFUNDE). While each of the parliamentary parties had their own exclusive sessions involving an average of 20 senior party leaders, all the extra-parliamentary parties were put in one workshop session in which three senior leaders on average participated from each of the parties in question. Of all the parties that participated, it was only the DPP that did not indicate their position on the preferred electoral system for presidential elections as they were to present the proposal at their National Governing Council Meeting. See Henry Chingaipe and Augustine Magolowondo, *Synopsis Report On Electoral Systems And Reforms In Representation: Political Party Consultative Workshops*. Report Prepared For The Netherlands Institute For Multiparty Democracy (NIMD) And The Centre Of Multiparty Democracy (CMD-Malawi). February 2006.

¹⁰ Dunne, (2014).

thereby (potentially) strengthening the accountability and responsiveness of the elected representative since voters are able to assess the performance of individual candidates. The system also allows for independent candidates and therefore enhances the political rights of individual citizens. In a context where party primary elections are characterised by undemocratic practices, the importance of giving a chance to independent candidates cannot be overemphasised.

The single member constituency FPTP system of electing members of parliament has, however, had a number of challenges for political representation, legitimacy and inclusion. The first is the disproportionality between the percentage of votes won by a party and the number of seats the party wins in the National Assembly. For example, in the 2014 general elections, with only 17 per cent of votes cast in parliamentary elections, the Malawi Congress Party (MCP) got up to 26.4 per cent of seats. Similarly, the People's Party (PP) which got 18.1 per cent of votes cast in the same elections secured only 13.5 per cent of the seats in the National Assembly. In other words, the FPTP can contribute to over-representation and political under-representation and therefore fails to accurately represent the strength of voter preferences among political parties¹¹.

The second challenge is that the FPTP has a propensity to elect candidates in parliamentary elections with as low as 20 percent of the valid votes cast in a constituency. Thus, candidates are legally elected but lack widespread political legitimacy thereby affecting the political relationship of political representation between the elected representative and the constituents. The votes of losing candidates are wasted in that they are not represented by anyone in Parliament. This can contribute to systemic disenfranchisement and increases alienation of citizens from the political system¹².

The third challenge is that the system has entrenched 'monetization of politics' since the system puts the candidate in the limelight and compels him or her to engage in extravagant expenditures aimed at keeping votes or winning new ones¹³. However, it has often not been possible for a majority of MPs to keep up with the pressure and demands that are exerted on them by this kind of "person-centred" single member constituency based system. This has partly contributed to the high turnover of parliamentarians in every election with only less than 30 per cent being able to retain their seats across the five general elections.

The fourth challenge is that the FPTP limits capacity to implement affirmative actions for disadvantaged groups such as, women. The 'monetization of electoral politics' disadvantages women many of whom have very limited access to resources and other opportunities. Candidate selection under the system is a zero-sum decision for political parties as the system allows political parties to field only one candidate per

¹¹ For a detailed statistical analysis of the 2014 elections regarding how the FPTP benefited or penalised contesting political parties, see: Dunne, Sean (2014), *Issue Paper: Electoral Systems*, Paper Presented at a National Conference on Electoral Reforms in Malawi, held in Lilongwe, Golden Peacock Hotel, 11th – 12th December 2014. See also Dulani, Boniface (2004), *The Elections Under Scrutiny: Process-Results-Lessons*, in Martin Ott, et al (eds), *The Power of the Vote. Malawi's 2004 Parliamentary and Presidential Elections*. Balaka: Montfort Media.

¹² Chingaibe, 2014 and Dulani 2004.

¹³ Chingaibe, 2014

constituency and the parties have no chance to balance the party ticket. Furthermore, the 'person-centredness' of the system exposes women candidates to verbal abuse in a society that is predominantly patriarchal and many women simply shy away from electoral politics to avoid humiliation. Amongst other factors the FPTP electoral system provides challenges to increase numbers of women in Parliament, their proportion has remained and is currently (17 percent in 2014) below the threshold required by international protocols ratified by Malawi¹⁴.

The fifth challenge is the cost factor. The FPTP requires that where a vacancy occurs, a by-election should be held and these are not cheap. For example, in the run-up to the 2014 tripartite elections, five elections were postponed due to the death of candidates between nomination and the polling day and polling was postponed in two others because of other logistical challenges. By-elections for seven elections (two parliamentary and five Wards) were subsequently conducted in October, 2014 at a cost of approximately MWK 650 million. Furthermore, the cost of elections under FPTP is higher because of the number of unique ballot papers required. Before the 2014 election, the general elections involved (1 Presidential and 193 Parliamentary) unique ballots. In 2014, the number of unique ballots grew exponentially to 656 (1 Presidential, 193 Parliamentary, 462 Wards). In short, the FPTP is a relatively expensive electoral system that may be difficult to sustain over the long run especially as electoral districts are likely to continue increasing in number for parliamentary and local government elections if the FPTP is retained.

Two proposals for reform were considered. The first was adoption of a mixed electoral system, in particular, the Mixed Member Proportional (MMP). Under this system, a proportion of seats in the National Assembly (say 50 percent as is the case in Germany) are filled by FPTP system using single member constituencies. The remaining seats are filled using a proportional party list. Voters cast two votes: one for a candidate in the FPTP election, and the other for a party. Results of the two systems are linked, with seat allocation at the PR level being dependent on what happens in the plurality/majority or other district seats. Any disproportionality arising from the constituency seat results is compensated. The MMP was not favoured because of a number of envisaged challenges of running an election and constituting the National Assembly using two electoral systems in a context of low functional literacy on these issues.

The second proposal was the adoption of a proportional system, in particular, the party list system. Under this system either the entire country is treated as a single constituency, or it is divided up into a number of large multi-member constituencies (MMC). Political parties compile lists of candidates in descending order of preference and the list is presented to the electorate. With the application of closed party lists voters select amongst political parties, not individual candidates. When the votes are counted and summed, political parties are allocated seats in direct proportion to the votes they gain in the election. They fill these seats from their party lists. In some cases, a threshold may be imposed (e.g., 5 percent in Mozambique) to exclude small, possibly extremist, parties from representation.

The MMC was preferred and is recommended for adoption because it has an inherent high potential to improve political representation, legitimacy of political parties and political inclusion. The system also has high potential in the Malawian context to promote the achievement of the ideals highlighted above. It is

¹⁴ Ibid.

recommended that the MMC should be constructed around the present (28) administrative districts as its multi-member electoral constituencies (MMC). In this way, the geographical size of list PR constituencies will be larger than single-member constituencies. The principle idea of this system is to assign multiple seats to one electoral constituency. The actual number of seats per each MMC would objectively be determined based on population variables. It is therefore possible that the actual number of MPs per district may vary from the current number even in the event that the size of the National Assembly remains at 193. Contesting political parties in a given MMC would then be required to present a closed list of candidates based on the number of seats available. A formula will be devised to distribute the seats in the MMC proportionally to political parties and independent candidates if they amass a minimum proportion of votes.

By aligning the MMC with existing boundaries of administrative districts, the system will retain but modify the much needed link between the elected representatives and the electorate in the given district. At the same time this approach will also remove the requirement to redraw constituency boundaries as the geographical area will be fixed, seats will be moved between MMCs based on demographic changes rather than redrawing boundaries.

It is further recommended that the adoption of MMC should be accompanied with legislation that will require political parties to construct their party lists using the formula of gender parity such that for every man on the list, there would be a woman (i.e. the so called zebra formula). This will ensure that the National Assembly has significant gender representation.

This system has a number of merits. First, PR system addresses the inherent weaknesses of the FPTP that have been outlined above¹⁵. For instance, by 'faithfully' translating votes cast into seats won, the PR would avoid political over-representation and under-representation of political parties; significantly reduce wasted votes thereby making elections more relevant to many voters and avoiding systemic disenfranchisement associated with the current system.

Secondly, because the PR system ensures that every vote counts, it presents an incentive structure that encourages political parties and candidates to campaign beyond the districts in which they are strong or where the results are expected to be close. The centrality of political parties in Malawi's democracy would also be enhanced as this system would strengthen the linkage between the elected representatives and their respective parties. In this regard, the relevance of Section 65 of the Malawi Constitution that regulates the crossing of the floor will have enhanced clarity as elected representatives will have a clearly defined relationship with their respective political parties.

Thirdly, the MMC will also allow for more diverse communities to make up an electorate and therefore encourage candidates and parties to adopt broader issue-based policies that appeal to a range of communities¹⁶. It would make politics more accommodative and less driven by politically divisive identities such as tribe. Another merit of this system is that the electorate in a particular MMC will in essence have

¹⁵ International IDEA 2005.

¹⁶ Dunne, 2014

more than one MP to rely upon. If a constituent is not satisfied with a representative, they will be able to approach another representative from their constituency to take up their issue. Not only will this reduce the pressure on the part of the individual MP, but it will also encourage more accommodative politics particularly between and among MPs from different parties within the same MMC. Collectively, representatives would have an incentive to cooperate as they seek to deliver on their constituency's interests. In this sense, the list MMC system creates an incentive for intra- and inter-party cooperation among elected representatives from the same constituency.

The fourth advantage relates to reduced costs of running elections. In this regard, the introduction of MMC would mean a significant reduction of unique ballots at parliamentary elections level from 193 to 28. Furthermore, with this system, there would be no need for by-elections as any vacancy created would be filled by promoting candidates from the party lists accordingly.

The fifth advantage relates to opportunities for political inclusion of women. In this regard, it is recommended that this new electoral system for parliamentary elections be accompanied by a legally binding affirmative action that will require political parties to give equal chances for women to be elected on their respective party lists. Thus, a "zebra or zipper system" of closed party lists should be required of political parties. This will significantly increase the number of women in the National Assembly¹⁷.

However, there is no electoral system that is perfect and choices between electoral system often entail trade-offs between political values. Thus, there are a number of important considerations that need to be taken into account to mitigate some of the inherent weaknesses of the PR system. For instance, it is important that with the introduction of this system, attention also needs to be given to legal framework governing political parties to ensure that they are internally democratic especially with regard to how the party lists are drawn. Therefore it would be necessary to enhance the capacity of MEC to monitor political party primaries in order to ensure that they adhere to the relevant procedures for compiling of candidates lists and voting. Furthermore, a PR system has the potential of generating a highly fragmented party system due to the fact that in theory, every party that contests has a chance of gaining a seat. In order to deal with this potential risk, it would be important that a reasonable vote threshold is introduced to ensure that only those parties that reach the threshold considered in the distribution of seats. In addition, due to the novelty of the PR system in Malawi, it will be necessary to conduct CVE to explain the new system to the voters, political parties and other stakeholders.

Recommendation: The current 193 single member first-past-the-post (FPTP) elections be replaced by a closed list proportional representation (PR) system at the District level. Multiple MPs will be elected to represent a District.

Recommendation: In line with Malawi's regional AU and SADC obligations a women's gender quota of 50% should be implemented by requiring the party lists to contain a minimum number of female candidates.

¹⁷ For a detailed discussion on measures to increase women participation in elected bodies, see: International IDEA, Inter-Parliamentary Union and Stockholm University (2013), Atlas of Electoral Gender Quotas, Stockholm: International IDEA. A very rich comparative data on quotas is also accessible at <http://www.quotaproject.org/>

Recommendation: the nomination requirements for candidates should be raised from 10 to 250 supporting signatures.

4.3. Additional Considerations.

Section 147(5) of the Malawi Constitution provides for local government elections as part of the general elections. Further details for local government elections are outlined in the Local Government Elections Act and also the Electoral Commission Act especially Section 8(1)(c) that gives powers to the Electoral Commission to demarcate wards and determine number of wards that a particular local authority will have. Composition, functions and responsibilities for local authorities are provided for under the Local Government Act. Local Government councillors are elected using the FPTP electoral system. In many respects, the same merits and demerits of FPTP as discussed under parliamentary elections apply to local government elections.

Two proposals were made. The first was to use the same electoral system as in parliamentary elections. The proposal was motivated by the need to ease administration of general elections so that the Electoral Commission would not be administering two different electoral systems. The second proposal was to maintain the FPTP system.

It is recommended that the FPTP electoral system be maintained for local government elections. The recommendation is made for a number of reasons. To begin with, it is important, to note that Malawi's experience with local government elections under the new democratic dispensation is rather limited as the 2014 local government elections were only the second, since the first local elections were last conducted in 2000. Besides, the 2014 local elections were the first of their kind to be held concurrently with the general elections for members of the National Assembly. Against this background, it is rather too early for a change in the electoral system for local government elections.

Another key consideration is the principle that informs local governance: bringing government close to the people. A councillor who is identified with a ward at a local level serves as a proxy in realising this principle. Besides, it is local authorities that have the responsibilities and constitutional obligation of facilitating local development. For this reason, having councillors that are clearly linked to and identified with a particular geographical area is extremely important and desirable. The FPTP allows for this strong linkage and local representation to be secured.

Maintaining FPTP as a system of electing local councillors will, however, have a number of implications in this reform process. Firstly, in the event that the proposal made earlier regarding the introduction of MMC proportional representation is adopted as an electoral system for parliamentary elections, the basis for determining the number of wards (based on two councillors per constituency) would have to be reconsidered. This is because there will no longer be single member constituencies upon which the number of wards could be based. Secondly, while regular constituency boundary delimitation will no longer be necessary in the case of parliamentary elections, the same will, nonetheless, still be required in the case of

local government elections. Thirdly, the ward boundaries would need to be carefully and systematically reviewed and aligned to administrative districts (which will at the same time serve as MMC) to ensure coherence.

Furthermore, it is important to ensure that a way is found to facilitate election of women candidates to local government councils. In this regard, it is recommended that a number of seats be reserved for women per each local government council. Inevitably, this will mean increasing the number of councilors per district. The specific number of the additional seats will have to be determined by demographic considerations but in conformity with the Gender Equality Act of 2013, it is recommended that 40 percent of seats in any council be reserved for women. As an incentive to encourage political parties to progressively promote women participation, the reserved seats in a given district council will then have to be granted to political parties in proportion to the number of parties' elected representatives (combining district level parliamentary and local government elections results) in the respective district. In turn, the political parties will be encouraged to introduce, democratic, transparent and competitive mechanisms to identify eligible women that may be considered for these reserved seats.

5.0 SECTION II: Reforms to improve the coherency, integrity and adequacy of Malawi's electoral legal framework

This section presents recommendations for reform of electoral laws¹⁸. The majority of recommendations are aimed at enhancing coherence and adequacy of electoral laws in Malawi. The issues covered include consolidation of laws, promulgation of subsidiary legislation, voter and candidates' eligibility, campaign, polling, announcement of results and dispute resolution. Major challenges under each issue are highlighted followed by recommendations for reform.

5.1 Consolidation of laws

There are a number of pieces of legislation that regulate elections in Malawi. These include the following: the Constitution, Political Parties (Rules and Regulations) Act; Local Government Elections Act, Parliamentary and Presidential Elections Act, and Electoral Commission Act.

The Republican Constitution among other things provides for the establishment of the Electoral Commission¹⁹, its composition²⁰ and powers²¹; eligibility criteria for members of parliament²² and presidential candidates²³; the manner for the election of the President and the vice president²⁴; and election of

¹⁸ The paper was originally developed by Mr Justin Dzonzi and presented to the 1st National Conference on Electoral reforms and has been debated and modified at the TWG and ERG.

¹⁹Section 75(1) of the Constitution

²⁰Section 75(1); section 75(2); and section 75(3) of the Constitution

²¹Section 76 of the Constitution

²²Section 51 of the Constitution

²³Section 80(7) of the Constitution

²⁴Section 80 of the Constitution

councilors²⁵. On the other hand, the Electoral Commission Act provides for the legal status of the Electoral Commission²⁶, its functions and powers²⁷; meetings²⁸; management²⁹ and financial provisions³⁰ among other matters. The conduct of actual elections is provided for in the Parliamentary and Presidential Elections Act [PPEA] with respect to the elections of members of parliament and the president. The Local Government Elections Act provides for elections of Councilors.

Currently the diverse regulations are not in sync; to review electoral laws citizens must refer to all the Acts to obtain a clear picture of what the laws may say on a particular issue. It can become a cumbersome and tedious process. Obtaining such large number of documents are not readily accessible to the general public. Scattering the laws into different Acts compounds the problem. This makes it difficult for election officials, candidates, other stakeholders and members of the general public to arrive at the coherent legal positions on an electoral issue.

Historically, the Electoral Commission Act, the PPEA and LGEA used to be one Act of Parliament until they were split in or about 1996 following the 1994 general elections. It is not clear from the available source materials what the reasons were for the splitting of law. However, a simple examination of the PPEA and LGEA shows that the two are duplicates of each other. Both the structure and the provisions of the two Acts are mirror images of the other. Again, an examination of the PPEA discloses that the Act starts from section 15³¹. When one looks at the state of laws before 1996, it is evidently clear that what was subsequently called the Electoral Commission Act was simply part of the then Parliamentary Elections Act.

In view of the above, it is recommended that the electoral laws be consolidated into one Act of Parliament.

The major advantage of consolidation of the laws is that a single source of most electoral laws is accessible and does not require an “inter-Act cross-referencing”. The only exception to this recommendation will be that there is still need to entrench certain provisions on electoral issues in the Constitution. So issues of universal suffrage and independence of the Electoral Commission for example, will need to be left in the Constitution for better protection against political manipulation.³² Furthermore, the Constitution regulates other matters beyond setting principles for elections. The disadvantage of consolidation though, would be that it will be a bulky document that cannot easily be distributed and thus beyond the reach of those that the said laws may

²⁵Section 147(1) of the Constitution

²⁶Section 3 of the Electoral Commission Act

²⁷Section 8 of the Electoral Commission Act

²⁸Section 11 of the Act

²⁹Section 12 of the Act

³⁰Sections 15 to 18 inclusive

³¹This section provides the eligibility criteria for voters in parliamentary and presidential elections

³²This view takes into account the unique status of the Constitution. Sections 4, 5, 10(1), 48(2), 199, 200 provide for the supremacy of the Constitution of all laws and binding to every person or authority. It also provides for stringent restrictions on amendments of its provisions under sections 196 and 197.

affect³³. In view of this, it is recommended that the Constitution and the Electoral Commission Act should remain stand-alone documents.

In addition, although the Constitution requires that a referendum be conducted for certain matters under it, for example, amendment of provisions under Schedule 1 of the Constitution, there is no legislation providing procedures for referendum. It is therefore necessary, to enact legislation on referendum. The referendum law does not necessarily have to be part of the consolidated Elections Act but a stand-alone document just as being proposed for the Electoral Commission Act.

5.2 Subsidiary legislation

The conduct of elections is a process immersed in diverse technical and operational matters which the substantive law may not adequately cater for. A common and useful way is to provide for technical and operational matters in pieces of subsidiary legislation to regulate matters such as the design of Voters' Registers, Voters' Certificates, Voters' Roll, nomination papers, ballot boxes, and ballot papers, among others.

An examination of the ECA, PPEA and LGEA shows that Parliament intended that there should be regulations made under the electoral statutes for the better carrying out of their provisions. For example, section 22 of the ECA provides that the Minister may, on the recommendation of the Commission, make regulations for the better carrying out of the Act. The PPEA and the LGEA repeat this provision in sections 121 and 104 respectively.

With the exception of section 104 of the LGEA, both section 22 and section 121 of the ECA and PPEA place the duty for the formulation of the regulations on the minister on the recommendation of the Electoral Commission. One may assume therefore that the absence of such regulations is because of the Commission's failure to come up with the same. In so far as the strict letter of the law is concerned, there is provision for the promulgation of subsidiary legislation in Malawi, although such power is mostly given to the minister.³⁴

The above notwithstanding, it is worth noting that the ECA, PPEA and LGEA place the duty to make subsidiary legislation on the minister. This raises the question whether the conduct of elections in Malawi falls under any ministry. While it is easy to understand the wording of ss.22, 121 and 104 of the ECA, PPEA and LGEA respectively, it is important to keep in mind that MEC is not answerable to any ministry³⁵ and as

³³As argued by Lon Fuller in his lectures at Yale Law School, a law should be promulgated such that those subject to it might know the standards to which they are being held. Thus accessibility of laws to all people is critical for there to be an effective legal system

³⁴Section 58 of the Constitution as read with Standing Order 161 Of the Malawi Parliament Adopted by the House on 22nd May 2003

³⁵Section 6 of the Electoral Commission Act clearly provides that "[E]very individual member and employee of the Commission shall perform the functions and exercise the powers provided for in this Act independently of the direction or interference of (a) any public office; (b) any organ of the Government; (c) any political party; (d) any candidate; and

such the practical implementation of these provisions may not be possible. Partly, this may explain why there are no regulations made under any of the electoral laws in Malawi up to now.

It is therefore recommended that the Electoral Commission should have the mandate to promulgate subsidiary legislation³⁶. The major advantage of this shift include the speedy implementation of the Gazetting process and also that the independence of MEC would greatly be enhanced. Possible disadvantages would include the potential of abuse of the mandate by MEC and the need for wider consultation that could prolong the process. It may also be problematic to manage laws that are in conflict with other laws and regulations.

It is therefore recommended that the electoral laws should be amended to empower MEC to make subsidiary legislation. However such regulations should ensure transparency, consultation and gazetting of the rules with specific timeframes. The Regulations made and published by the Electoral Commission should be open to challenge by stakeholders but such challenge should take place and be resolved at least three months before a general election. This rule is necessary to prevent disgruntled stakeholders from disrupting the elections. It is further recommended that all existing codes of conduct should be turned into regulations to ensure their enforceability.

5.3 Voter eligibility

An examination of the electoral laws in Malawi shows that there are contradictions on the eligibility criteria of voters in elections in Malawi. These contradictions have become more pronounced following the adoption of tripartite elections in 2014. For instance, Section 77 (1) of the Constitution provides for eligibility of all persons who are citizens or are resident in the country for at least seven years; have attained age 18; were born in the country, unless they have been declared mentally incompetent or are under sentence of death imposed by the courts. This, in part contradicts sections 15 and 6 of the PPEA and LGEA on eligibility to register as a voter. Section 15 of the PPEA states that every citizen of Malawi residing in Malawi and who, on or before the polling day, shall have attained the age of eighteen years shall be eligible to register as a voter in an election. Unlike section 77(1) of the Constitution, section 15 of the PPEA confines the right to register and vote in parliamentary and presidential elections to citizens of Malawi who are also resident in Malawi. The same applies to section 6 of the LGEA states which that “any person residing in Malawi and who, on or before the polling day, shall have attained the age of eighteen years shall be eligible to register as a voter in an election.” This provision may imply that every person resident in Malawi whether he is or is not a citizen is entitled to register and vote in local government elections. So whereas section 77(1) of the Constitution opens up the right ‘all persons’, section 77(2) of the same Constitution limits the right to citizens and residents who have resided in Malawi for at least seven years.

(e) any person whatsoever or organization whatsoever; Provided that for the purpose only of accountability the Commission shall be answerable, and report directly, to the President on the overall fulfilment of the functions and powers of the Commission. (Emphasis by bolding supplied)

³⁶This is a common practice in other commonwealth countries. In South Africa for instance, **section 23** of the Electoral Commission Act (Act no. 51 of 1996) gives the Electoral Commission power to make regulations.

Using the eligibility criteria set out in the above sections, it is clear that some voters who may qualify for registration under section 77 of the Constitution may not qualify to do so under sections 15 and 6 of the PPEA and LGEA. It is clear under section 15 of the PPEA that the election of the president and parliamentarians is the exclusive purview of the resident citizens of Malawi. This means that if the laws were to be followed to the letter in a tripartite electoral set-up, MEC should conduct separate registration of voters in parliamentary and presidential elections and local government elections in order to ensure that only eligible voters are allowed to vote. Observer groups reported that during the May 20, 2014 tripartite elections some voters who did not qualify to vote in parliamentary and presidential elections were allowed to vote contrary to section 15 of the PPEA.

The Special Law Commission on the Review of the Constitution also pointed out the inconsistency between section 77(2) of the Constitution and section 15 of the PPEA with respect to the time when the right to register as a voter accrues. In their report, it was noted that under the Constitution, an eligible voter is the one who is 18 years old on the date of registration whereas under section 15 of the PPEA, an eligible voter includes a person who on the date of registration is 17 years old but who by the polling day will be 18 years old. Despite there being support for the provisions of section 15 of the PPEA, the Commission recommended that section 15 be amended and aligned to section 77(2)³⁷.

The recommendation by the Law Commission is in line with the Constitutional provision that any act or law inconsistent with the Constitution shall to the extent of that inconsistency be declared invalid (s 5). However, international best practice on elections as far the voter eligibility criteria is concerned is that voting age is determined at the polling day and not at the date of registration as is the case under s 15 of the PPEA. The recommendation therefore is that s77 of the Constitution be amended to allow voting age to be determined on the date of polling and not on registration. Since s 77 is under schedule 1, its amendment may require a referendum. However, it can be argued that it falls under the exception since it does not change the substance or effects of the Constitution and as such the procedure under s 196(3) of the Constitution requiring 2/3 majority to amend a provision under schedule 1, should be applied. In addition, the registration of voters should be linked to registration of persons for the National Identity cards and this can substantially cut costs and avoid duplication of efforts. The law can also prescribe the electronic voting procedures that would be used in future.

5.4 Candidates eligibility criteria

Electoral laws provide for different eligibility criteria for presidential, parliamentary and local government candidates. The provisions in question are s. 51(1)(a) of the Constitution for members of Parliament and 80(6)(a) of the Constitution for the President and section 27 of the LGEA for councilors. Section (80)(6)(a) of the Constitution states only a Malawi citizen by birth or descent can stand for the office president or vice president. This means that a citizen by naturalization is not eligible to stand for the office of president or vice president. Section 51(1)(a) on the other hand opens the eligibility to stand as a member of parliament to every Malawian citizen irrespective of the citizenship category. It follows therefore that naturalized Malawian

³⁷ See the Draft Report of the Special Law Commission on the Review of the Constitution page 66, last paragraph.

citizens are eligible to stand for parliamentary elections. Contrastingly, section 27 of the LGEA opens up the eligibility to stand for local government elections to every person resident in Malawi. Under this section, citizenship is not a prerequisite for eligibility but such candidate should be one who does not owe allegiance to a foreign country.

Provisions of these sections, electoral laws impose different eligibility criteria on the different levels of political office. These provisions should be harmonized by making the requirement of citizenship uniform. If this proposal was to be accepted by Malawians and the laws amended accordingly, it would mean that the right to contest for the presidency, parliamentary seat or local government seat would be limited to Malawian citizens only.

Drawing from lessons elsewhere, there is precedent to distinguish the eligibility criteria for the office of president and other lower political offices. Owing to the centrality of the presidency to any country's political governance, only certain categories of citizens are eligible to contest for that office. Zambia has a similar provision in its Constitution which bars naturalized citizens from contesting for the office of president³⁸. The USA³⁹ and many other countries have similar provisions.

The rationale behind this requirement is that the office of president requires utmost allegiance to the country and as such a person who was a citizen of another country may not be fully loyal to the country of choice. Again, owing to conflicting national interests, it is not difficult for one country to influence the policies of another by sponsoring naturalized citizens to stand for the office of President. The case of Alberto Fujimori of Peru who fled to Japan in an attempt to escape a corruption scandal 2000 is a pertinent lesson. The question remains whether Malawi would want to extend this limitation all the way down to local government elections? Deciding this question needs careful weighing of the benefits of opening up the eligibility against the mischief that would result if we ended up with people who hold foreign allegiance occupying the political offices. The best practice internationally is to restrict candidatures for the office of the presidency to natural born citizens⁴⁰, whilst MPs and councilors to anyone falling into any of the categories of citizenship in Malawi. It is thus recommended that the law should remain as it is so that there are strict citizenship requirements with regard to presidential candidates but the rule is relaxed for local government candidates so that any one resident in Malawi will be eligible to stand.

A second issue under candidate eligibility is the required number of signatures of registered voters that endorse the candidature of an interested person. The main observation is that the current required number i.e. ten signatures is rather too low and contributes to the increasing number of candidates and scales up the cost of elections. It is recommended that the number of required signatures be increased to one thousand

³⁸Section 34(3)(a) of the Constitution of the Republic of Zambia in as far as is relevant provides thus: A person shall be qualified to be a candidate for election as President if --(a) he is a citizen of Zambia; (b) both his parents are Zambians by birth or descent;

³⁹ section 1 of Article II of the Constitution of the United States of America

⁴⁰As has been shown by the quoted legal provisions from elsewhere

(1000) for presidential candidates, between one hundred and two hundred and fifty (100-250) for MPs and fifty (50) for councilors and that multiple endorsements are checked.

5.5 Campaign

Electoral laws also regulate the conduct of campaign for parliamentary, presidential and local government elections by candidates and political parties. The issues that emerge include extension of the campaign period, proposal to ban vote buying during campaign which is closely linked to campaign financing and enforcement of rules against campaign related violence and abuse especially as it affects women.

5.5.1. Extend campaign period

The official campaign period is regulated by the law. Under section 57 of the PPEA, the law states that the period of campaigning in public by every political party under Part V of the Act shall be a period of two months closing forty eight hours before the opening of the poll on the first polling day. Section 41 of the LGEA contains similar provisions. These provisions would either mean the that political parties are not allowed to campaign outside the two-month period, that independent candidates are not allowed to campaign at all or they are not affected by this provision and that MEC can only regulate the electioneering activities of political parties during this period only and not any other time⁴¹.

However, practice has been contrary to these provisions. Political campaign or electioneering – the organized effort made to influence the preference of the electorate in making a political choice during elections – has always taken place outside the prescribed two months period. It is customary for ruling parties to constantly tout their success compared to the previous regimes while also creating the impression that the opposition political parties are not better alternatives. Similarly, opposition parties continuously capitalize on the failures and weaknesses of ruling parties. They constantly bombard the electorate with a barrage of everything that has gone wrong due to bad policies or lack of social, political and economic acumen in the governing party etc⁴². It is therefore not difficult to deduce from practice that the limitations set in sections 57 and 41 of the PPEA and LGEA respectively, are recognized more for being persistently and habitually breached.

There are two recommendations on this issue and these are that Malawi abandon the notion of official campaign period so that political parties and politicians enjoy the freedom to campaign or in any way canvass for support whenever they want and that there should be a law regulating campaign throughout the electoral cycle. The recommendation on extended campaign period may be considered as sanctioning an illegality. The challenge for an extended campaign period is that there will be no official period for campaigning during which the code of conducts on defamatory language would apply and this may

⁴¹Of course one must keep in mind the provisions of section 66A of the PPEA, an amendment introduced to the law in 2013 which extends the applicability of Part V of the Act to independent candidates *mutatis mutandis*. One wonders though why the provisions of section 66A were not simply fused in section 57 so that its scope is plainly clear from the word go.

⁴²Also noted by NICE in its Preliminary Report to the 2014 Tripartite Elections, at p.5.

perpetuate conflicts between incumbent and aspirants. In addition, considering the link between campaign and abuse of resources, an extended campaign has the propensity to perpetuate abuse of resources. Therefore, the more reasonable option is the enacting of a law regulating campaign throughout the electoral cycle. This option will entail that MEC would have to continuously monitor and regulate the conduct of political parties and candidates wherever necessary take disciplinary action against errant parties and candidates. Although this may be costly, and may mean more work for MEC, regulating campaign is necessary to preserve and uphold the integrity of the electoral process.

5.5.2. Vote buying during campaign

The use of hand-outs during campaign by political parties as a campaign tool has been a widespread tactic since the transition to multiparty democracy in Malawi. Those privileged with access to considerable public resources, 'ruling' parties and those in office can dangle various hand-outs to the electorate in exchange for their support. The hand-outs have ranged to include: cash, truck-loads of maize, fertilizer coupons, branded materials, bicycles, motor-bikes, chickens, cows, houses, etc.

Currently, the electoral laws say nothing on the use of hand-outs during campaign. This means that there is nothing illegal about the use of hand-outs as an electioneering strategy. It is not clear whether the silence of the law is a result of tacit acceptance of hand-outs as a legitimate means of garnering political support or conflict of interest on the part of the politicians who are mandated to enact the laws but who also stand to gain from this practice.

The above notwithstanding, national and international observer groups have voiced strong condemnation of the use of hand-outs during the 2014 campaign⁴³. Diverse Civil Society organizations have from time to time voiced their concerns and reservations over this practice as well. While the practice has its proponents there is equally strong voice of dissent against it. However, it is evident that the use of hand-outs has exacerbated the abuse and plunder of public resources by ruling parties⁴⁴ and also entrenched the practices of patrimonial politicking. . In particular, there is considerable public opinion that the use of hand-outs as a campaign tool prevents the flourishing of issue-based electoral politics as hand-outs divert people's attention from the substance of the party's message and that the culture of handouts work to the disadvantage of candidates and political parties with limited resources and therefore find the field for electoral politics to be unlevelled⁴⁵. This has deeper crippling effects on campaign activities by female candidates who generally lack the financial muscle⁴⁶. Experience from previous elections shows that in some cases the hand-outs have been serious sources of conflict and incidents of outright violence as party supporters scramble for the freebies.

⁴³European Union Electoral Observer Mission to the 2014 Malawi Tripartite Elections also noted the problem, at p.19

⁴⁴For instance, the Report on Fraud and Mismanagement of Malawi Government Finances (popularly known as the Cash-gate report) released by the National Audit Office on 25 September 2014 indicate that the chief suspects had close links with the former ruling party, at p.61

⁴⁵Final Report of the National Conference on Electoral Reforms held on 13 February, 2015 made similar suggestions, at p.21

⁴⁶ See the SADC Gender Protocol 2014 Barometer: Malawi

On the basis of the foregoing observations, the Task Force takes the view that hand-outs should be banned as a campaign or electioneering tool. However, effective enforcement of the ban will require that an operational definition of a political hand-out is agreed to. It also requires that a system of sanctions is put in place, preferably through subsidiary legislation, under the electoral law.

It is therefore recommended that legislation should be passed banning political handouts in all its forms⁴⁷. The challenge is to define hand-out as an offence considering certain gray areas such as distinguishing delivering development and campaigning or party visibility materials and handouts. In that regard in defining the offence emphasis should be placed on the purpose or ultimate goal of a particular act or omission i.e. vote buying. The proposal is that there should be an offence of vote buying under election law. Another option is to amend section 3 of the Corrupt Practices Act to define corrupt practice to include vote buying.

5.6 Polling

In section 67(1) the Constitution clearly stipulates the period as to when elections are conducted. There are calls from the public that elections should be held sometime in September and not in May as is currently the case. There is also a proposal to change the time of closing the voting from 6pm to 4pm or 10 continuous day time hours to allow time to start counting when the day is clear with natural light. The advantages of this arrangement include abundant food in many households thus partly addressing the issue of handouts and also that counting of the votes can begin during the day and not at night as is the case currently⁴⁸. The current arrangement is problematic in Malawi because most voters are busy in the field during this period, during the rainy season many roads are impassable, providing increased logistical problems.

It is therefore recommended that, given our poor road network in most parts of Malawi, elections should be held in September or thereabout for the reasons espoused. However, there are other consequences of shifting the polling date that have to be considered for instance constitutional amendments to extend the date for dissolution of parliament (s 67 (1) Constitution).

5.7 Announcement of results

Elections are a very tense affair. The manner in which results are announced may entail preservation of peace or trigger serious civil strife. It is essential to handle the announcement of results with utmost care and precision. If the results are announced too quickly before the Electoral Commission has had sufficient time to attend to all pertinent electoral disputes, people may begin to suspect that the results were predetermined. Conversely, delaying the announcement of the results when it is public knowledge that all the results have been submitted to MEC and the national result has been determined will equally attract speculations that the results are being doctored. The lessons of electoral-related violence in Kenya in 2007 and Zimbabwe in 2008 due to suspicious delays in announcing the elections results must serve as a reminder when attempting to designate appropriate timeframes for elections results to be announced.

⁴⁷Merloe, P. (2008) Promoting Legal Frameworks for Democratic Elections: An NDI Guide for Developing Election Laws and Law Commentaries Washington: National Democratic Institute for International Affairs (checklist at p.73)

⁴⁸As provided under section 92 of the PPEA

Under Malawi's electoral laws the announcement of official results is governed by section 99 with respect to parliamentary and presidential elections and section 83 in the case of local government elections. According to these provisions the national elections results must be published within eight days from the last polling day and in any event not later than forty-eight hours from the conclusion of the determination. Mathematically this means that under the PPEA and LGEA, MEC must determine and announce the final results before the expiry of 8 days from the last polling day. In the event that MEC manages to determine the national result much earlier, the law requires it to announce the results not later than forty-eight hours after the determination.

This issue was also considered by the Special Law Commission on the Review of the Constitution in 2007.⁴⁹ The Commission noted that it had been suggested by some stakeholders that the law should provide for a minimum of seven days before the announcement of results to allow for more time for polling stations to submit their findings. The Commission did not take a clear position on the matter since it was considered as statutory and therefore would be reconsidered when PPEA would be reviewed.

In Malawi the practice has been that votes are counted right at the polling station. Subject to minor exceptions the tallying of votes is usually completed at the polling stations by the following morning. This means that all the results would be out by then without exception. Delays in computing the results start from the determination of the district result and eventually the national result. In the past four elections, Malawi never experienced any serious delays in the determination of results which would warrant extending the period for announcing the final result.

The prescribed minimum timeframes for announcing results have worked previously where candidates were fewer and no serious challenges have been experienced. However, this exerts pressure on MEC to process results within the prescribed time even where there are glaring irregularities⁵⁰. Perhaps in future computerized voting will help address some of the delays and reduce suspicions.

It is recommended that based on the challenges experienced during the 2014 tripartite elections, the announcement of results should be staggered. Results of the presidential election should be announced first within 7 days from the last day of polling, followed by parliamentary results within 14 days from the last day of polling and local government results within 21 days from the last day of polling. Another option is to have results announced within 7 days for the presidential results and 14 days for the parliamentary and LGE results. An additional option is to announce all results (president, parliament and local) within 10 days.

It is further recommended that the PPEA should be amended to take into account potential irregularities in the voting process, counting and tallying of results that may delay determination and certification of results and thereby delay announcement of results beyond the stipulated timeframe. A mechanism should be

⁴⁹ Report of the Special Law Commission on the Review of the Constitution, 2007, Page 68

⁵⁰Ulemu Msungama v Electoral Commission and Namasasu Miscellaneous Electoral case no 64 of 2014 is a case in point

devised that would allow a one-off extension of the period when the results must be announced. This is important because a slightly delayed correct and fair electoral result is preferable to a quick, inaccurate and unfair result. It is therefore suggested that the Electoral Commission should have the right to apply to court and make a case on why the High Court should allow it to extend the period⁵¹.

5.8. Handover and Inauguration

Since the advent of multiparty elections in Malawi, the speed at which the president-elect is sworn into office is noticeable. This practice can affect the proper transition of power from one president to another. The misconception is that once a person has been sworn-in as president of this country, no electoral commission or court would undo his/her presidency. The swearing in of the president or vice president is governed by section 81(3) of the Constitution which prescribes a period of at least 30 days within which a president shall be sworn in.

In practice, presidents in Malawi have been sworn in at most within three days from the date the Electoral Commission announces the results. During the 2007 Constitutional Review process this was also the subject of review by the Special Law Commission. The Commission, having heard various representations and having studied comparative literature recommended that section 81(3) be amended by introducing a minimum of seven days before a president-elect can be sworn in⁵². If implemented, the amendment would have ensured that no president-elect would assume office before the expiry of at least 7 days from date he or she was elected. However, this proposal was never applied and as things stand section 81(3) remains in its original form. The 7 days is in line with the period for filing an election petition and as such, the recommended period for inauguration should be after 7 days within 30 days.

5.9. Dispute resolution

The electoral laws does not provide for dispute resolution except through the formal court process⁵³. However, the ordinary courts are generally costly, slow and inaccessible to many people in Malawi. It is recommended that under the Electoral Commission Act regulations provide for and govern Alternative Dispute Resolution. It is further recommended that additional provision should be introduced for a special **Tribunal** to handle election issues across the country⁵⁴ but such a tribunal shall not remove the right of other ordinary courts with jurisdiction to hear electoral matters. The Tribunal should have its own rules and procedure and in order to expedite matters, the Practice Direction on Election Matters by the Chief Justice should be translated into law. The tribunal's operational timeline should be from the nomination period and one month from the inauguration of the president.

⁵¹This may entail amending section 99 of the PPEA

⁵²See the Draft Report of the Special Law Commission on the Review of the Constitution 2007 on page 75, last but two paragraphs.

⁵³Section 8(1)(m) of the ECA does not specifically mention resolution of disputes

⁵⁴Final Report of the National Conference on Electoral Reforms held on 13 February, 2015 made similar suggestions, at p.40

6.0 SECTION III: Reforms to improve the impartiality, effectiveness and credibility of election administration and management

The quality of the electoral administration and management has a direct impact on the way in which elections and their outcomes are regarded and accepted by voters, parties, media, and observers. Building independent, professional, and competent Electoral Management Bodies (EMBs) has been recognized as a critical foundation of transparent, credible, legitimate and democratic elections. Electoral Management Bodies serve the purpose of promoting confidence-building among competing parties and trust between the public and the government⁵⁵. As such the electoral management body must be seen to be impartial, independent and capable of performing its functions.

In Malawi electoral administration and management is overseen by the Electoral Commission (EC) since 1999. The Electoral Commission is mandated by the Constitution⁵⁶ and the Electoral Commission Act to supervise and direct the general conduct of any election and to take necessary measures for the conduct of democratic elections. Specifically, the Electoral Commission is responsible for determining constituency boundaries subject to confirmation by the National Assembly; determining who is eligible to vote; receiving and validating the nominations of candidates; conducting polling, counting the votes; tabulating the votes, releasing the results; determining electoral petitions and complaints related to the conduct of elections; and such other functions as prescribed by the Constitution and an Act of Parliament. The vision of the Malawi Electoral Commission is to be a professional organization that delivers credible elections in accordance with national laws and international best practice to strengthen genuine democracy and peace in Malawi. Its mission is to professionally deliver credible, transparent, inclusive, efficient, and cost effective elections to promote and entrench democratic values and peace in Malawi.

However, the history of elections in Malawi demonstrates the Electoral Commission has had challenges to deliver on its mandates but these have not been systematically addressed over the years. A number of concerns regarding the quality of electoral administration and management in Malawi have been raised by political parties, civil society organizations, the general public, the Electoral Commission itself, various observer reports and other stakeholders. The concerns have mainly bordered on the structural organization of the EC; the independence and accountability of the EC; the composition of the EC as well as the procedures regarding the appointment of the chair and commissioners; the management and capacity of the secretariat to professionally and effectively deliver on its mandates and efficiently handle electoral operations and logistics. For example, the Electoral Commission operational plan of 2002 noted that “in 1999 the Commission did not perform very well in the management of elections as transparency, accountability, trust and efficiency were under question.”⁵⁷ In 2004, the Commonwealth Secretariat Observer Mission noted that the Electoral Commission did not fully discharge its obligations even though it had known for five years that it had to organise an election in 2004.⁵⁸ The Report of the Law Commission No. 18 on the Review of the Constitution gazetted on 21st September 2007 also indicated that submissions received by the

⁵⁵ UNDP (2000), Electoral Management Bodies as Institutions of Governance. 5th Discussion Paper on Governance.

⁵⁶ Section 75 and 76

⁵⁷ MEC's operational plan of the Commission of 2002

⁵⁸ Commonwealth Secretariat Final Report of 2004 Elections

Law Commission during preliminary consultations suggested that most Malawians are not satisfied with the way elections have been managed in the past. The submissions put the blame squarely on the Electoral Commission and the argument was that the Electoral Commission is, in a large measure, inherently not capable of managing the electoral process competently⁵⁹. The European Union Mission observer report of 2009 also noted that the EC's lack of adequate management as well as operational and logistical structures was evident in the handling of the 2009 elections⁶⁰. Similar concerns were also raised in the 2014 tripartite elections. The 2014 European Union Mission observer report indicated that "MEC did not succeed to complete organizational and logistical preparations on time for Election Day and showed a lack of structural capacity in conducting some key operations of the electoral process, in particular the distribution of election material to polling station level".⁶¹ The Electoral Commission's own strategic plan (2013-2017) also acknowledges that as a result of these challenges most stakeholders have neither the confidence nor the trust in MEC in respect of its operations, management of resources, and its independence⁶². In order to improve the impartiality, effectiveness, and credibility of election administration and management in Malawi it is imperative that the following areas should be given serious attention in the electoral reform process.

6.1 Institutional set up and organization

The Commissioners constitute the governing body and are responsible for providing strategic leadership and management oversight over MEC. The Commissioners are assisted by a Secretariat headed by the Chief Elections Officer who is appointed and answerable to the Commissioners. The secretariat is organized into two divisions, namely Electoral Services as well as Finance and Administration. Each division is administered by a Deputy Chief Electoral Officer, who reports to the CEO, and is supported by seven Directors and specialized departments, including electoral services, civic and voter education, media and public relations, information and communication technology, finance, administration and human resources. At the regional level, the secretariat in Blantyre is supported by regional offices in the regional capitals of Blantyre, Lilongwe, and Mzuzu and their role is to coordinate and facilitate the delivery of electoral administration in the regions but they remain technically and administratively accountable to the secretariat. At the district level, the Secretariat is assisted by District Election Clerks who are permanent staff located at the District Commissioner's offices in all the twenty eight districts of Malawi.

A key challenge is that there is lack of clear understanding of the distinct roles of the Secretariat and Commissioners and this has generally led to internal governance issues and ineffective work practices as well as a culture of mistrust between the commissioners and secretariat. One of the reasons for this is the Commissioners orientation or training has mainly focused on elections management with limited attention on corporate governance. There is need for clearly spelt out distinctions on the roles and responsibilities between the commissioners and the secretariat. The roles and responsibilities have to be made known to both parties and be published so that the principle of transparency and accountability is enhanced.

⁵⁹ Report of the Law Commission on the Review of the Constitution, No. 18, August, 2007.

⁶⁰ European Union Mission Observation Report- Malawi 2009

⁶¹ European Union Mission Observation Final Report- Malawi 2014

⁶² Malawi Electoral Commission Strategic Plan (2013-2017)

Secondly, inexistent election administration physical structures at the district and constituency levels have posed considerable organizational and logistical challenges for facilitating electoral processes⁶³. On the other hand, the dependence on District Councils to host district election processes creates dual loyalty on the part of District Commissioners who are appointed by the Minister of Local Government and lack of autonomy on the part of the District Elections Clerks to manage the electoral processes effectively⁶⁴. The EC has taken a proactive approach and in its 2013-2017 strategic plan it seeks to enhance the capacity of District staff by detaching the District Elections Office from the Council offices, raising the required qualifications and competencies of a District Elections Officer and providing requisite resources for District Elections Officer. This is an important element of institutional reform to strengthen district level electoral processes but the main challenge is that there has not been a thorough assessment of the full implications of devolving to the district offices including the functions and the precise nature of structures that should obtain at the district level to enhance the effectiveness and credibility of district electoral level processes.

It is recommended that to enhance good governance practices, there should be clear distinction of roles between the Secretariat and the Commissioners to avoid overlaps. The Secretariat should ensure that each new set of Commissioners is oriented on corporate governance and delineation of roles. It is further recommended that the MEC should conduct an organizational and functional review to determine the precise nature of effective organizational structures at the secretariat, regional, and district level, the functions that can be devolved and the political as well as financial implications of strengthening district level electoral processes.

6.2. Independence and Accountability of the Electoral Commission

The independence of the Electoral Commission has been questioned in the way the Commissioners constituting the policy making body are appointed and on the way it gets its funding⁶⁵. Article 76(4) of the Constitution guarantees MEC's independence and autonomy in its functioning and decision making process from any direction or control of any person or authority. This implies that MEC is an independent body which shall perform its functions and exercise its powers independently of any public office, any organ of government, any political party and any candidate or any person or organization (MEC, 2013). However, the Electoral Commission Act in Section 6(1) makes the Commission to be answerable and to report directly to the President on the overall fulfillment of the functions and powers of the Commission. This compromises the independence of the Electoral Commission and enables limited checks and balance. For example the unilateral closure of MEC in 2010 by the President exposed its vulnerability and eroded the substance of independence of the EC⁶⁶.

⁶³ European Union Elections Observer Mission Report, 2014.

⁶⁴ Malawi Electoral Commission Strategic Plan (2013-2017).

⁶⁵ Patel (2014): Election Management Reforms in Malawi. Towards a Reform Agenda, paper presented at a MESN workshop on Electoral Reforms, 11-12 December, 2014.

⁶⁶ Patel (2014): Election Management Reforms in Malawi. Towards a Reform Agenda, paper presented at a MESN workshop on Electoral Reforms, 11-12 December, 2014.

The EC's strategic plan also noted that independence of the MEC has, at times however, been brought into question because of the nature of its resource base. Section 15(3) of the Electoral Commission Act states the funds of the Commission shall consist of such sums as shall be appropriated by Parliament, from assets as well as donations. It also states that the Electoral Commission shall control its own funds, but in practice MEC has relied largely on funding from Government and development partners. The challenge is that over the years funding from both government and development partners has been unpredictable. Even though a budget is approved by Parliament, monthly disbursements are not predictable and this has affected the effectiveness with which the electoral body is able to implement electoral programmes. Funding is also usually assured when a major election is being conducted but not in-between elections and this affects the timely preparedness of the Electoral Commission.

To enhance independence and accountability of the Electoral Commission, the following reforms are recommended:

- i. The Electoral Commissions Act should be amended so that MEC should be accountable to the National Assembly and report on its activities and the performance of its functions to the National Assembly. This is the practice in other countries such as South Africa and Australia.
- ii. The accountability of MEC to the National Assembly should be supported by the creation of a Standing Committee of Parliament. In this case the Electoral Commission will be working closely with the Standing Committee in Parliament in providing advice and submitting reports at least once every six months. In countries where this is practiced it has helped to ensure the independence of the Electoral Commission from government direction, which always risks being politically partisan⁶⁷.
- iii. To ensure financial and operational independence, a protected account for elections should be established where resources can accumulate over time and be drawn only for purposes of financing election operations when they are due.

6.3. Composition of the Electoral Commission

The Composition of the Electoral Commission as stipulated in section 75 (1) of the Constitution consists of a Chairman and such other members, not being less than six, appointed in accordance with an Act of Parliament. The membership is drawn from nominations from political parties. The advantages of this arrangement is that inclusion of individuals nominated by political parties themselves ensures buy in, acceptance of election results and post-election stability; it promotes electoral participation of members from different political parties including opposition, brings political experience to bear on the management of elections, and ensures that there is a link with critical electoral stakeholders⁶⁸.

The current practice limits representation to political party representatives. This can be viewed as discriminatory against independent MPs, and the procedures do not provide an entrance route for new

⁶⁷ UNDP (2000), Electoral Management Bodies as Institutions of Governance. 5th Discussion Paper on Governance.

⁶⁸ International Institute for Democracy and Electoral Assistance (2006): Electoral Management Design: The International IDEA Handbook.

political parties that acquire seats in Parliament midstream through by-elections⁶⁹. Impartiality is usually a challenge as Commissioners may be subjected to political pressure and they tend to tow the party line to please the party leaders rather than pursuit of national public interest. EMB unity may suffer due to public disputes between political parties making decision-making by consensus difficult. There are also no specific gender equality provisions guiding the inclusion of men and women so much that gender considerations in the composition of the Electoral Commission has largely depended on the good will and decision of the President as the appointing authority. Except for the Commission that managed the 2009 election which had gender parity, all the other Commissions have had female representation lower than parity.

Two options have been proposed on how best to constitute the Electoral Commission. The first option is for a **Non-partisan Gender Balanced Expert Commission**. Such a Commission is made up of a politically non-aligned gender balanced team that is appointed on the basis of their professional skills, often including eminent public figures renowned for political neutrality. The proposal is that membership of the Electoral Commission should be composed of experts in various fields including law, political science, finance and accounting, procurement, human resources management, logistics and operations management as well as information technology who may be capable of executing the functions of the Electoral Commission in a competent and impartial manner. This requires that the members must not have been active in party politics in the recent past, and must not be political party members while serving as members of the EC. The advantages of this option are that: professional, eminent, impartial, and neutral membership promotes the credibility & profile of the EC; the professionalism of members enables expert knowledge to influence the running of the EC and the members are likely to reject political pressures. This option is also consistent with practice in the region, in countries such as South Africa, Zambia and Uganda. The disadvantages are that the professional experts may not always be aware of relevant political factors they may not have good links with critical electoral stakeholders the best professional experts may not be willing to serve and it may also be difficult to find true “non-partisan” members.

The second proposal is for a **Combined/Mixed Gender Balanced Commission**. This is a mixed membership gender balanced Commission that is representative of society including members nominated by political parties, civil society representatives and politically non-aligned professional members, all of them with relevant skills, expertise to oversee and guide implementation of large scale administrative and logistical undertakings. The advantages of this option are that it promotes balance between political, civil society, and professional technical considerations; expert members may counterbalance any attempt at partisan actions; the Commission has links with critical electoral stakeholders, is transparent to political participants, civil society actors, and has some professional credibility. This is the option proposed by the Law Commission and preferred by most delegates that attended the Second National Constitution Conference. The challenges are that political and professional expert elements may have different agendas and the commission may experience competitive leaking of information between the various categories of members.

⁶⁹ Report of the Law Commission on the Review of the Constitution, No. 18, August, 2007.

It is **recommended** that a **Non-partisan Gender Balanced Expert Commission** that is representative of society including members nominated by political parties, civil society representatives and politically non-aligned professional members be considered for Malawi. Elections are a political exercise and this option has the advantage of political buy-in, integrity, and trust with the public.

6.4. The Headship of the Electoral Commission

Strong leadership of electoral bodies is particularly important and individuals of high moral stature can play a crucial role in ensuring credible electoral administration as they are often better able to involve all the parties in the electoral process⁷⁰. The Constitution under section 75 (1) provides that the Chairperson of the Electoral Commission shall be a Judge nominated by the Judicial Service Commission.

Submissions received by the Law Commission suggested that the position of the head of the Commission should not be the preserve of Judges. The Law Commission in 2007 observed that the post of Chairperson of the Electoral Commission requires a person who is perceived by the public as independent, impartial and of high integrity. The advantages of this is Judges are perceived to be independent, impartial, and of high integrity. By virtue of their training and experience, judges are also perceived to be capable of analyzing and isolating facts and determining complex issues. They also have the relevant legal knowledge to deal with disputes.

It has been argued that the appointment of Judges to head the EC contradicts the spirit of section 75 (2) of the Constitution which disqualifies any person holding public office from being a member of the EC and the current procedure excludes other equally competent Malawians holding appropriate qualifications in other disciplines⁷¹.

It is **recommended** that the Headship of the EC should be open to competent Malawians from different professions with relevant expertise and leadership qualities including retired Judges. The advantage is that it will enable retired judges as well as other equally highly competent and impartial Malawians of integrity to be selected for the position. This is also consistent with regional practice the post of the Chairperson of electoral bodies in South Africa, Uganda and Zambia is not reserved exclusively for Judges.

6.5. Procedures regarding the appointment of the Chairperson and Commissioners

Section 4 of the Electoral Commission Act provides that the President should appoint suitably qualified persons to be members of the Electoral Commission in consultation with the leaders of political parties represented in the National Assembly.

There is no clarity on the definition of the consultation concept. As a result consultation has been applied in a diverse manner and subjected to potential manipulation by sitting Presidents. The qualifications and criteria for appointment of commissioners are not clearly defined and the Electoral Commission Act only requires the President to appoint '*suitably qualified persons*'. The question is what constitutes a suitably

⁷⁰ UNDP, 2000.

⁷¹ Report of the Law Commission on the Review of the Constitution, No. 18, August, 2007

qualified person may vary from Commission to Commission. Consequently members may not have the appropriate skills and professional experience to provide effective policy guidance and oversight over electoral processes and staff. Standard practice obtaining in Parastatal Boards in Malawi is that the relevant Act of Parliament stipulates the relevant academic qualifications, experience, and expertise that guide the selection of Board members. In addition the Commissioners appointed by the President are seen with suspicion by the opposition parties making it difficult for the Electoral Commission to be perceived as an impartial player when putting forward recommendations.

Section 75 of the Electoral Commission Act does not specify the actual number of Commissioners but only provides for a minimum number of six members without providing for the maximum membership number. Previous experience has shown that the numbers have varied and it is possible for the appointing authority to exaggerate the membership. Leaving this to the appointing authority creates room for possible abuse of appointing powers thus compromising the effective functioning of an institution⁷². Experience from several African countries has shown that the number of Commissioners varies from a minimum of three to a maximum of seven. For example, Lesotho has three members; Namibia, Sierra Leone, South Africa and Zambia have five members each while Zimbabwe, Botswana, Ghana, Tanzania, and Uganda have seven members.

To enhance the impartiality, competence, credibility and effectiveness of the Electoral Commission a transparent process of selecting and appointing Electoral Commissioners is recommended as follows:

- i. There should be a minimum of five Commissioners and a maximum of seven Commissioners including the chairperson and they should serve on a full time basis;
- ii. Membership should be composed of Malawians of integrity possessing expertise in various fields in line with the mandate of the Electoral Commission. Thus Commissioners should have a minimum qualification of a Bachelor's degree and should be selected having regard to expertise and practical experience in such fields as Law, Political Science, Public Administration, Finance and Accounting, Human Resources Management, Logistics and Operations Management and Information and Communication Technology.
- iii. An open and transparent procedure that was proposed by the Law Commission during the 2007 Constitutional Review Process, similar to the one being used in the selection of Human Rights Commissioners but with some modifications, should be adopted for the recruitment of Electoral Commissioners.
- iv. The assessment panel for the recruitment of Electoral Commissioners should comprise of competent and credible individuals including the Law Commissioner, Chairperson of the Civil Service Commission, Chairperson of the Malawi Human Rights Commission; a Judge of the High Court nominated by the Judicial Service Commission; a representative of the University of Malawi to be nominated by the Vice-Chancellor; a representative of Civil Society Organizations nominated by the Council for Non-governmental Organisations and a representative of a reputable auditing firm.

⁷² Ibid.

- v. The assessment panel should be responsible for inviting applications and assessing applications for the office of member of the Commission from the general public and political parties and making recommendations to the President, whenever a vacancy occurs in the membership of the Commission.
- vi. 40 percent of the Commissioners should be women. The Malawi Gender Equality Act (2013) requires that an appointing or recruiting authority in the public service shall appoint no less than forty percent (40%) and no more than sixty per cent (60%) of either sex in any department in the public service.
- vii. The selected names should then be forwarded to the President for a formal appointment.
- viii. The appointment of Chief Elections Officer could be among the commissioners and this will be advantageous in that he/she will be flexible to present both the secretariat and the commission with impartiality and on the equal footing.

These recommendations are based on increasing public confidence when there is a transparent mechanism and procedure for selecting and appointing Electoral Commissioners and when the electoral legislation clearly defines the required qualifications, expertise, and experience for the post.

6.6 Tenure of commissioners, continuity, and institutional memory

The duration and term of office has an impact on the performance of the Commission. The term of office needs to be reviewed to guard against the development of entrenched interests and ensure a constant renewal of ideas and perspectives into the management of elections. This needs to be balanced with the need to ensure continuity and institutional memory. Election Management Bodies in many African countries have specified the term of office for Commissioners. For example, four years renewable in Angola; five years renewable in Mauritius, Mozambique and Namibia; six years in Lesotho; seven years renewable term in South Africa, Uganda and Zambia; in Botswana 10 years for two successive terms of parliament.

In Malawi section 75 (3) of the Electoral Commissions Act provides a member shall cease to be a member of the Electoral Commission at the expiry of four years from the date of appointment unless reappointed to a four year term. The challenge is that the four year term does not match with the five year term provided for the President, Members of Parliament, and even the Chief Elections Officer. There are also no specific provisions for ensuring continuity and institutional memory. As a result continuity of the operations of the Electoral Commission is not assured and there is also no guarantee of re-appointment of commissioners to ensure new commissioners benefit from previous experience and enhance institutional memory.

The following is recommended:

- i. The tenure of Commissioners in MEC should be a period of five years, renewable for a further one term so that a Commissioner can serve a maximum of two terms in his or her life. A new term of Commissioners should commence quite early in the electoral cycle (the electoral review phase after a general election).

- ii. To ensure continuity of the operations of the Commission, it is recommended that the office of Vice-Chairperson of the Commission be created
- iii. Where the office of the Chairperson of the Commission becomes vacant by virtue of section 75 of the Constitution, the Deputy Chairperson shall Act as Chairman in the interim while awaiting the President to appoint a Chairperson.
- iv. Where both the office of the Chairperson and Deputy Chairperson are vacant, the members of the Commission shall elect among themselves one person to act as Chairperson
- v. A minimum of two and maximum of three Commissioners should be re-appointed for the next term of office.

6.7. Management and Operational Capacity of the Secretariat

Both historical trends and specific case studies indicate that better prospects for credible and transparent elections exist where electoral management bodies are not only independent of the executive branch, but where they can rely on the effectiveness of permanent professional staff⁷³. In Malawi, there is consistency in reports since the early 2000s on the Electoral Commission as an organisation which exposed the secretariat's limited capacity to deliver effectively (Patel, 2014).

During the conduct of the 2014 tripartite elections, serious management challenges were noted such as the compilation of voter's register, inadequate delivery of electoral materials to polling stations and the delayed tallying of results, which has undermined MEC's reputation and credibility. Issues that have been raised relates weak administration, low levels of professionalism of management and staff, interpersonal conflicts, an ineffective chain of command, lack of team work and perceived partisanship.⁷⁴ Without a competent and professional Secretariat, achieving an effective and credible electoral administration may be a huge challenge in Malawi.

The MEC strategic plan identify lack of a coherent human resource development plan; ineffective handling of disciplinary issues and complaints, improper grading of staff, lack of job descriptions and lack of consistent performance management and reward systems as some of the key factors (MEC, 2013). Lack of accurate job descriptions has an impact on the quality of job advertisements which in turn affects the recruitment and selection process.

The rules, qualifications, competencies, and criteria for appointment of Chief Elections Officer and other senior staff are not clearly defined in the Electoral Commission Act or any other MEC policy document. The Electoral Commission Act only requires the Commission to appoint a suitably qualified person to serve as Chief Elections Officer. Previously the recruitment of the Chief Elections Officer has been subcontracted to external consulting companies but this is no longer the case. Without clear criteria and rules, such processes are prone to political influence and manipulation. This is a major challenge because it has a bearing on the quality and competence of key management staff who have the task of driving the implementation of key activities of the electoral process and advising the commissioners.

⁷³ UNDP (2000), Electoral Management Bodies as Institutions of Governance. 5th Discussion Paper on Governance.

⁷⁴ Consultant's report for the strategic plan of 2007, P.9

Due to limited funding after an election there has been limited attention to building organizational capacity for large scale logistics and operations management. MEC has had a history of technical assistance provided by UNDP but the technical assistance does not seem to have been deliberately tailored and negotiated to meet the skill gap of the Commission, and there are no mechanisms for ensuring skills transfer and limited evaluation for learning lessons.

It is recommended that recruitment of the Chief Elections Officer (CEO) should be based on criteria ensuring qualification, competence and the required qualifications and experience should be explicitly stated either in the Electoral Commissions Act or subsidiary legislation. Similarly, policies and procedures governing the recruitment of other key management staff should have clearly stated rules, required qualifications, experience and competencies. It is further recommended that future technical assistance to the Electoral Commission should be tailored and negotiated so that it is in tandem with the MEC's skill gaps and should also be evaluated to generate an action plan for improvement.

6.8. Constituency and ward demarcations

The Constitutional provisions in Section 76 (2) (b) require that the Electoral Commission should review existing constituencies and wards at intervals of not more than five years and to alter them in accordance with the principles laid down in the same section. The MEC is mandated and obliged by the Constitution in Section 76 (2) to determine constituency boundaries on the basis of approximately equal numbers of voters eligible to register, subject to population density, ease of communication, geographical features and existing administrative areas. In addition section 8(1) (c) of the Electoral Commissions Act provides powers to the Electoral Commission to undertake and supervise the demarcation of wards for purposes of Local Government Elections. The demarcation of constituencies has not taken place since 1998 while delimitation of wards was undertaken in 2011 in preparation for local government election. This is an area that has been noted as a key area of concern which has regularly been raised by stakeholders and observers, which need review and overhaul to increase transparency and credibility of the process. The ECA amendments that followed the 2010 Local Government Act amendments prescribed specific numbers of wards in urban councils with two councils per constituency in the rural councils.

There are indications that the principle of dividing the country into constituencies with approximately equal number of voters has been violated. For example the number of registered voters varied between 6,933 (Likoma Island) and 126,996 (Lilongwe City Central). These wide variations show how the principle of dividing the country into constituencies with approximately equal number of voters has been clearly violated.

The 2010 ECA amendments resulted in the reduction of the number of wards and made the wards bigger than they were before. Having councilors that are clearly linked to and identified with a particular geographical area is extremely important. Effective Local Government systems require that their elected representatives live within the community and are able to visit them without hindrance. The consequence is that huge wards combined with an absence of reliable means of transport for councilors imply that communities remain detached from their representatives and development projects are likely to suffer due to inadequate supervision. The other consequence is that some councils are either sliced up by constituency

boundary lines or wholly covered by constituencies which run from District to Urban Councils. The challenge with this arrangement is that Members of Parliament (MPs) elected from these constituencies have dual allegiance to both the District and Urban Councils. This situation therefore prevents urban concerns from being given due attention.

The provision that every district has two wards for each parliamentary constituency has negative implications for small districts such as Likoma, Mwanza, Neno and Balaka which have few constituencies and therefore fewer councillors. The implication is that Council committees suffer membership inadequacies. The reduced numbers will lead to a leadership vacancy in some districts such as Likoma so that by the fifth year, no councillor will be eligible to contest for any leadership position.

Creating wards by explicitly attaching them to Parliamentary constituencies hierarchically causes councillors to fall under MPs. This undermines the independence and powers of councillors and provides creates room for enhancing already existing conflicts between Councillors and Members of Parliament.

The guidelines for demarcation of constituencies in the Constitution are not supported by provisions in the PPE Act and the LGE Acts to support the process and there is limited liaison between Town planning, Director of Local Government and other authorities dealing with boundaries.

The following are recommendations:

- i. In view of the recommendation to adopt MMC for parliamentary elections, there will no longer be need for constituency demarcation. The existing district boundaries will be used on a permanent basis. It is the number of seats allocated to the district that will become variable based on demographic factors.
- ii. The Relevant sections of the ECA Act and the Local Government Act should be amended to repeal the changes that were made in 2010 so that wards are not subordinated to the Constituency and the Commission can determine the appropriate number of wards.
- iii. A law should be introduced that should prevent overlapping of Town, District, Municipal and City boundaries so that the composition of local government councils is straight forward and sensible.
- iv. MEC should coordinate various authorities dealing with boundaries so that they interface and review issues of the boundaries in Malawi.

6.9. Logistical and Operations Management

The MEC strategic plan noted that while electoral operations during polling are conducted in a fairly professional manner, results transmission, complaints handling and announcement of results require review, due to lack of trust in results transmission and perceived inadequacy in handling complaints. Furthermore, the voters' roll in its current form cannot be considered to be accurate.

6.9.1. Voter Registration

The Electoral Commission's Act Section 8 (d) and the Parliamentary & Presidential Elections Act, Part 111 define the role of Electoral Commission in the registration process law elaborates the role and functions of the EC in the process of voter registration. The Electoral Commission has been using the Optimal Mark

Recognition (OMR) system during the registration process of voters. This is a manual registration process which is paper-based.

There are two most serious challenges with the system. The first is that the margin of error or room for manipulation of the manual system of voter registration is high. Secondly, the registration process is littered with inefficiencies leading to very limited time for voter verification exercise. Even though MEC announced the adoption of biometric voter registration system there was strong resistance from stakeholders on the basis of limited time, capacity and resources leading to the abandonment of the idea and continuation of the Optimal Mark Recognition (OMR) system.

The following recommendations are made in relation to the management of voter registration:

- i. During the inter-election period MEC should focus on raising stakeholder awareness on the value and implementation of a Biometric voter registration system process and mobilizing resources for its implementation
- ii. Continuous registration should be given priority as the Malawi Constitution already makes voter registration to be continuous. Continuous registration is considered to be the single most important cost-cutting measure (UNDP, 2000). Given the huge costs involved in undertaking voter registration operations for the first time, permanent registers that can be updated periodically will prove cost-effective in the long run.
- iii. In between elections, the Electoral Commission focus on updating voter lists, developing regulations and procedures, organize by-elections and training of key staff.

6.9.2. Operational logistics

Managing polling Day logistics to ensure timely and adequate arrival of polling material is critical for successful elections. Distribution of material to polling centers has been hampered by inadequate vehicles. Apparently MEC requested for vehicles from government for the 2014 elections instead of assigning to government the task of delivering the material. This seems to have caused problems in delivering the material on time which further delayed the entire polling process and gave further room for poor assessment of the entire 2014 tripartite elections.

In the 2014 tripartite elections MEC did not succeed to complete organizational and logistical preparations on time for Election Day and showed a lack of structural capacity in conducting some key operations of the electoral process, in particular the distribution of election material to polling station level.⁷⁵

The transfer of polling day material, including ballot boxes and ballot papers from polling stations to tally centres and storage facilities seemed to be poorly planned and disorganized in a number of locations. The sensitive material was not secured at all times and many ballot boxes remained unsealed. Due to inadequate storage arrangements, the contents of some sealed ballot boxes were damaged by rain, and due to poor security provisions, the integrity of the ballots for a potential recount was questioned by some

⁷⁵ EU Election Observer Mission Report, 2014

stakeholders. The location of MEC headquarters may also have had an impact on effective logistical arrangements.

The first recommendation is that MEC should relocate to Lilongwe which is centrally located and hence logistically convenient. This move would improve efficiency and effectiveness in collaborating with other government departments which have their headquarters in Lilongwe. Secondly, MEC's portfolio and capacity on logistics and operations management should be enhanced.

7.0 SECTION IV: Reforms to improve civic competence of citizens on electoral matters

Civic and voter education are central to a successful delivery of an inclusive and credible electoral process. This is the case because civic and voter education mobilizes citizens and empowers them to participate effectively in the electoral process. At the core of civic education are the values and principles of transparency, participation, responsiveness, accountability, empowerment and equity. Since civic education is beyond the scope of any particular election cycle, the Election Management Body (EMB) is usually one of the several actors/partners engaged in these efforts. In previous elections observations have been made about elements of principles and practice of civic and voter education in the electoral process which require addressing to enhance the civic competence of citizens on electoral matters. Addressing the observed problems require both legal and administrative reforms which are presented in this section.

7.1. Mandate of Malawi Electoral Commission (MEC) on Civic and Voter Education (CVE)

The Electoral Commission is specifically mandated “to promote public awareness of electoral matters through media and other appropriate and effective means and to conduct civic and voter education on such matters”⁷⁶. Although a responsibility for CVE rests with the Electoral Commission, political parties and civil society organizations (CSOs), the media and other groups play significant roles in the delivery of CVE and do so under the general direction and supervision of the Commission.

However, it has been noted that the mandate of MEC on civic and voter education is unnecessarily wide. CVE as cast in the mandate conflates three conceptual elements, namely voter information (VI)⁷⁷, voter education (VE)⁷⁸ and Civic education (CE)⁷⁹. The Electoral Commission is and should be directly

⁷⁶ Section 8(j) of the EC Act

⁷⁷ **Voter Information** refers to the factual information of an election that enables voters to participate in the process. The topics are closely tied to the operational activities of a particular election. Design of voter information is the duty of an EMB however dissemination of information can be done through various channels and actors such as CSOs, electoral contestants and political parties

⁷⁸ **Voter education** is limited to education and information relating to the electoral process. It seeks to ensure the informed participation of citizens and engage them in the electoral process by explaining the what, how and why of elections.

⁷⁹ **Civic education** is a very broad continuous process that covers a lot of subjects or topics such as effective participation in democratic and development processes at both local and international levels. It is not directly tied to the electoral cycle and is usually carried in schools, universities and communities through CSOs and other specialized agencies working with government partners

responsible for VI and VE and should play a collaborative role in the general civic education which under current arrangements falls in the mandate of the National Initiative for Civic Education.

It is recommended that the law (section 8(j) of the EC Act) should be amended to take away the conflation and limit the mandate of the Electoral Commission primarily to VI and VE. It is further recommended that MEC should develop partnerships with other organizations responsible for CVE through which elements of VI and VE can be mainstreamed. Similarly, it is recommended that Civics be re-introduced in school curricula and that MEC should make relevant contributions. It is further recommended that the provision of VI and VE should be consistent with the electoral cycle approach.

7.2. Accreditation of VI and VE providers

For the implementation of section 8(j) of the EC Act, MEC implements an accreditation process for CSOs. Stakeholders have observed that the accreditation process is often delayed and is not in sync with the electoral cycle approach. Furthermore, the MEC does not carry out a due diligence process to ascertain the existence and delivery capacity of the organizations. Consequently, some areas are not reached with important voter information and voter education messages. Furthermore, the criteria for accreditation is perceived to be rather weak and prone to abuse so much that it is not linked with funding the CSOs that have been accredited.

It is recommended that under section 8(j) MEC should be mandated to promulgate regulations governing VI and VE. The regulations should require that accreditation of CSOs for the delivery of VI and VE must be done at least 24 months before an election. This will ensure that bogus organizations are left out as they often become active close to or during the election year. This will also provide enough time for MEC to carry out a 'due diligence process' on the organizations. It is further recommended that CONGOMA and key CSO networks working on elections and governance must be involved in vetting applications for accreditation and that 'demonstrated capacity' of the CSOs should be a key criterion for accreditation.

7.3. Funding for VI and VE

In Malawi funding for Civic and Voter Education is done through Malawi Electoral Commission (MEC) and directly to the accredited service providers through bilateral agreements that are entered into between development partners and the service providers. In some instances this has created problems in terms of coordination in the delivery of CVE. In 2009 elections CVE was funded through a Basket Fund. However, it was taken out in 2014 in preference for the bilateral agreements following concerns about non-compliance and lack of accountability by funded service providers.

In previous elections especially in 1994 and 1999 accredited service providers got adequate support from development partners to carry out Civic and Voter Education but recently that support has drastically dwindled. Funders have given various reasons to this situation and most of them border on concerns with non-accountability by service providers. Since the formation of National Initiative for Civic Education (NICE) Trust, substantial amount of resources have also been directed to this Public Trust and civil society organizations have expressed reservations about this arrangement. After accreditation CSOs are

encouraged to engage development partners on their own. In most instances MEC has very limited, if any, influence on which organizations have to receive funding.

In addition to the foregoing, there is a big problem of delayed funding for voter information and voter education and is not consistent with the electoral cycle approach.

It is **recommended** that Government must ensure that MEC gets timely and adequate resources for VI and VE and that MEC should develop a mechanism through which it financially enables its accredited CSOs for the propagation of VI and VE.

7.4. Mapping CSOs for VI and VE

Mapping for CVE is done by the MEC after organizations have been accredited regardless of whether the organizations have secured funding or not. The challenge has been that a significant number of the accredited and mapped organizations do not secure funding. Consequently, they do not deliver the VI and VE to their assigned constituencies.

It is recommended that detailed mapping of accredited service providers at district level has to be done during the accreditation phase and should be reviewed after a clear position on funding has been confirmed.

7.5. Standardized content for VI and VE and timely production of IECs

Stakeholders have observed lack of standardized IEC materials and the inaccessibility of the IEC materials because of predominant use of English in the materials. Furthermore, the release of materials is often delayed and is therefore hurriedly presented to the communities by the accredited service providers due to time constraints and lack of capacity to understand and deliver the materials to the targeted audience.

It is recommended that MEC must develop adequate and user friendly materials at least 12 months before an election. Materials must be translated in various local languages and distributed widely through community structures. It is further recommended that MEC should hold in-depth timely capacity building for accredited service providers to competently deliver voter education and voter information through standardized materials and trainings.

In order to coordinate and deliver civic and voter education, government through its relevant agencies, should develop a National Civic Education Policy.

7.6. Monitoring and reporting requirements for VI and VE providers

All accredited service providers are required to report on their CVE activities to MEC on monthly basis. The reports are supposed to be certified by either District Assemblies or T/As. Post-election review reports indicate that most accredited service providers do not done their work. Some did not even show up. However, MEC has not been able to systematically detect these problems during implementation because of lack of an efficient monitoring system. In other instances T/As have been demanding signing-on fees. In other instances most accredited service providers that got funding were only committed to report to

development partners funding them and not MEC. In addition the Commission does not assess the performance of CSOs that are accredited after the elections.

It is recommended that MEC should develop a reporting mechanism through which accredited CSOs that receive funding from donors directly for VI and VE should provide reports to MEC. Furthermore, a mechanism should be devised for sharing information between MEC and development partners that are funding accredited service providers.

7.7. Media

An observed key challenge has been the inability of the MEC to enforce equitable access to the public broadcaster by all political parties and candidates. The argument has been that the MEC does not have mandate to regulate the media but the general public has simply passed the verdict that MEC has been incompetent at ensuring that there is a level playing field for political parties and candidates in terms of access to the public broadcaster.

It is recommended that MEC should engage MACRA to impress upon service providers such as radio stations, mobile operators, etc to allocate time and resources for CVE and that MACRA should be empowered by electoral law to enforce equitable access to and coverage by the MBC of political parties and candidates.

7.8. Code of conduct for accredited service providers for VI and VE providers

Section 8 (1) (j) of the MEC Act gives MEC mandate to provide civic and voter education through the media and other appropriate and effective means. The challenges faced by MEC after accrediting CVE providers in past elections have included partisan tendencies by accredited service providers, lack of transparency and accountability to MEC by accredited service providers and non - performance of service providers. The MEC and stakeholders have attempted to address these practices by requiring CVE providers to sign a code of conduct that prohibits these practices. However, the most critical challenge has been enforcement of the Code of Conduct. Secondly there has been a conflict of roles among accredited CSOs that also conduct electoral advocacy such as gender parity campaign in favour of women candidates. These organizations are deemed partisan and thus in conflict with the code of conduct as promoted by MEC.

It is recommended that instead of relying on codes of conduct which are not enforceable and rely on the goodwill of stakeholders to comply, MEC should establish subsidiary legislation that is enforceable to regulate the delivery of Voter Education and Voter Information by its accredited providers.

8.0 Conclusion

This paper has identified four strategic goals for electoral reforms in Malawi. The goals have been distilled from a multitude of demands and proposals for electoral reforms that Malawians have expressed in the aftermath of the 2014 tripartite elections as well as the previous general elections. Problematic issues under each strategic goal have been identified and analyzed and reform options for each issue have been highlighted. More importantly, recommendations for reforms have been made for each problematic issue. It

is hoped that this paper will go a long way in facilitating more focused, targeted and structured conversations and engagement among stakeholders and help in concretizing reform actions aimed at improving the process and outcomes of elections in Malawi.

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