



2004 GENERAL ELECTIONS REPORT

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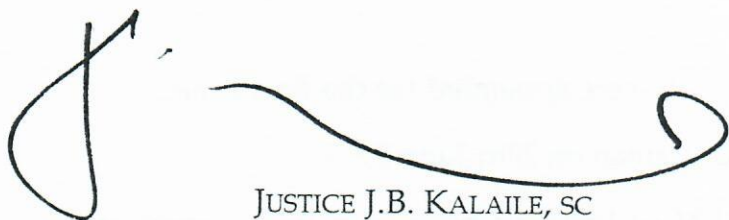
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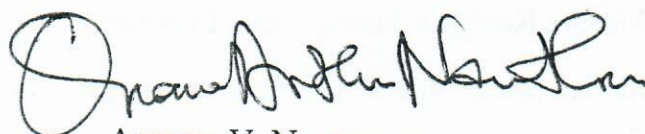
The Malawi Electoral Commission (hereinafter referred to as the Commission) is created under s.75 of the Constitution of the Republic of Malawi (the Constitution) and mandated by it, the Electoral Commission Act 1998 (the EC Act), the Parliamentary and Presidential Elections Act (the PPE Act) and the Local Government Elections Act to manage parliamentary, presidential, local government elections and referenda.

The Commission exercises its powers and functions pursuant to s.76 of the Constitution as read with s.8 of the EC Act.

This is the Commission's report pursuant to s.6 of the EC Act on the May 20, 2004 Parliamentary and Presidential Elections (the Elections). It highlights management, challenges and achievements of the Elections. The report further makes recommendations on the conduct of future elections.



JUSTICE J.B. KALAILE, SC
Chairman



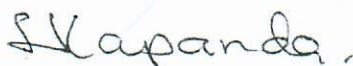
ARTHUR V. NANTHURU
Commissioner



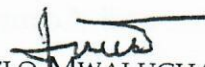
REV. EMMANUEL CHINKWITA PHIRI
Commissioner



MARCO KANJO
Commissioner



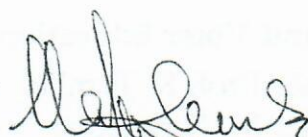
LILIAN KAPANDA-PHIRI
Commissioner



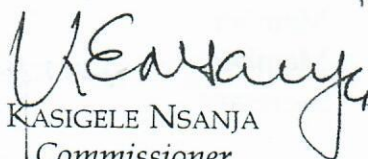
LUSEKELO MWALUGHALI
Commissioner



MONICA NGWEMBE
Commissioner



PROF. KAFWE TEMBO
Commissioner



KASIGELE NSANJA
Commissioner

MANAGEMENT

1.1 The Commission

The current Commission was appointed on 1st September 2002 by President Bakili Muluzi in accordance with s.75 of the Constitution as read with s.4 of the EC Act. For purposes of continuity, most of the commissioners were re-appointed from the previous Commission. Those re-appointed were:-

Mrs. Flora Chirwa
Mr. Marco Kanjo
Mr. Augustine Mtendere
Mr. Arthur Nanthuru
Ms. Monica Ngwembe
Prof. Kafwe Tembo

Messrs Kasigele Nsanja and Lusekelo Mwalughali were appointed for the first time.

Justice James B. Kalaile, sc was re-appointed Chairman on 23rd June 2003.

In November 2003 Commissioners Chirwa and Mtendere were relieved of their duties and replaced by Commissioners Reverend Emmanuel Chinkwita Phiri and Lilian Kapanda Phiri.

1.2 Committees of the Commission

The Commission established the following committees pursuant to s.7 of the EC Act:

1.2.1 Legal Affairs

Commissioner A.V. Nanthuru	—	Chairman
Commissioner Prof. K. Tembo	—	Member
Commissioner K. Nsanja	—	Member
Blandina James (Ms)	—	Secretary

1.2.2 Finance and Administration

Commissioner M. Kanjo	—	Chairman
Commissioner Rev E. Chinkwita Phiri	—	Member
Commissioner K. Nsanja	—	Member
L.W. Kaliwo	—	Secretary

1.2. Civic and Voter Education

Commissioner Prof. K. Tembo	—	Chairman
Commissioner M. Ngwembe	—	Member
Commissioner A.V. Nanthuru	—	Member
T. Nkovole (Ms)	—	Secretary

1.2.4 Campaign Monitoring

Commissioner Rev. E. Chinkwita Phiri	—	Chairman
Commissioner L. Kapanda Phiri	—	Member
Commissioner M. Ngwembe	—	Member
Willie Kalonga	—	Secretary

1.2.5 Research

Commissioner L.G. Mwalughali	– Chairman
Commissioner A. Nanthuru	– Member
Commissioner Prof K. Tembo	– Member
Muhabhi Chisi	– Secretary

1.2.6 Training

Commissioner M. Ngwembe	– Chairperson
Commissioner M. Kanjo	– Member
Commissioner L.G. Mwalughali	– Member
F. Malunga	– Secretary

1.2.7 Logistics and Operations

Commissioner K. Nsanja	– Chairman
Commissioner L. Kapanda Phiri	– Member
Commissioner M. Kanjo	– Member
Harris Potani	– Secretary

1.2.8 Media and Public Relations

Commissioner L. Kapanda Phiri	– Chairperson
Commissioner Rev. E. Chinkwita Phiri	– Member
Commissioner L.G. Mwalughali	– Member
Fegus Lipenga	– Secretary

1.3 The Secretariat

Mr. G.R.E.K. Chimwaza who was appointed under s.12 of the EC Act as Chief Elections Officer headed the Secretariat. Two deputies assisted him: Luke Kaliwo responsible for Finance and Administration and Willie Kalonga responsible for Electoral Services.

The following, who were appointed under s.13 of the EC Act, headed departments of the Commission:

Felix Malunga	– Personnel and Administration
Harris Potani	– Electoral Services
Fegus Lipenga	– Media and Public Relations
Thandie Nkovole	– Civic and Voter Education
Catherine Kazembe	– Finance and Procurement
Muhabhi Chisi	– Information Technology

In April 2004, Mr. Chimwaza was relieved of his responsibilities, while Mr. Kalonga was re-assigned other duties.

Mr. Roosevelt Gondwe, the Clerk of Parliament took over as Chief Elections Officer up to 6th June 2004.

The Commission was also availed with technical expertise as follows:

Mr. Shrestha Shanker a Nepali national was in the procurement section.

Mr. Tony Farnum from Trinidad and Tobago assisted in the Information Technology Department.

Mr. Matthew Whatley from the United Kingdom assisted in Electoral Services while Messrs Toby Ralph from Australia and Tim Neal from the UK were engaged in the Media and Public Relations Department.

The Commission was also availed with the services of Mr. Davie Kandoje, formerly Accountant General as Financial Advisor.

For the implementation of its programmes, the Commission with the exception of Lilongwe, Zomba and Kasungu used District Commissioners (DCs) who were designated Returning Officers in terms of Section 34(2) of the PPE Act. The DCs were assisted by the District Elections Supervisory Team (DEST), a body comprising District Education Manager, Information Officer, Director of Administration, Director of Finance and Director of Planning in the DC's office, Officer-in-Charge of Police and Investigations Officer.

CHAPTER 2

PREPARATIONS

2.1 Budget

Preparations commenced with the initial budget of US\$21 million in April 2003. This was concurrently submitted to the donor community and government. The former analyzed it through a UNDP sourced consultant Mr. Horacio Boneo.

After his analysis, Mr. Boneo recommended to the donors that the Commission be supported only on the election specific and not the capacity building items. He was of the view that a budget of US\$14.6 million would be sufficient for the Elections.¹

Following this recommendation, UNDP invited yet another consultant, Mr. Emmanuel Sakyi, to assist in the preparation of the US\$14.6 million budget. After several meetings, a budget of US\$14.6 million was finally signed. The donors would contribute US\$5.1 million and the Malawi Government US\$9.5 million. However, as realities unfolded on the ground, it became clear that this budget was on the lower side; it was subsequently revised to US\$18.4 million.

2.2 The Legal Framework

The Commission draws its legal mandate from the Constitution, the PPE Act, the LGE Act and the EC Act. It noted some inadequacies in the legal framework and sought amendments and additions to the electoral laws in order to make its operations more effective in the delivery of a free and fair election. For instance it sought to conduct tripartite elections in 2004 to wit that parliamentary, presidential and local government elections would be conducted simultaneously and this necessitated the amendment of s.147 (5) of the Constitution and other laws.

The relevant bills were drafted by the Ministry of Justice and tabled in the National Assembly in December 2003 but were not passed as a result of objections from civil society organizations and some political parties.

2.3. The National Elections Consultative Forum (NECOF)

The Commission established the NECOF as a consultative forum for stakeholders to participate in decision-making. Further NECOF would serve as a conflict management body.

Its membership comprised: -

All registered political parties; the Inspector General of Police, The Army Commander, Directors General of MBC & TVM, Chairperson of CONGOMA, Executive Director of National Intelligence Bureau, PAC, Forum for Dialogue and Peace, Media Council of Malawi, Journalists Association of Malawi, Secretary to the President and Cabinet, Secretary to the Treasury, Secretary for Local Government, Transworld Radio, FM 101, Capital Radio, GTZ Nice, UNDP, USAID, GTZ Democracy, Secretary for Information, Malawi Communications Regulatory Authority (MACRA), University of Malawi, Malawi Human Rights Commission, Malawi Law Society, Anti-Corruption Bureau, Malawi Elections Support Network, National Democratic Institute (NDI), Inkosi Ya Makosi M'mbelwa, Inkosi Ya Makosi Gomani and Paramount Chief Lundu.

¹ See the Boneo Report

2.4 Media Guidelines

In consultation with media houses, political parties, NGOs and other institutions of government, the Commission formulated media guidelines that were aimed at ensuring that full, fair and balanced political coverage is given at all times in news and other broadcast outputs. Media houses and political parties endorsed the guidelines.²

2.5 Multiparty Liaison Committees (MPLCs)

The Commission established MPLCs in 2000 as conflict management bodies at the district level.

The Forum for Dialogue and Peace funded their operations.

MPLCs are chaired by the Returning Officer and draw their membership from registered political parties, the Police, the National Initiative for Civic Education (NICE), the Public Affairs Committee and the National Intelligence Bureau.

In December 2002 – January 2003 the Commission with funding from the Inter-ministerial Committee on Human Rights and Democracy, conducted training in Democracy, Elections and Conflict Management for all of them. This training prepared them to effectively handle electoral and political conflicts.

The Commission's efforts have received international acclaim as the most comprehensive programme at grassroots level on conflict resolution in the SADC region.³

2.6 Code of Conduct for Political Parties and Candidates

The Commission is mandated to prescribe a code of conduct for political parties and candidates⁴. This lays down the rules to promote conditions that are conducive to the conduct of free and fair elections, tolerance for democratic debate and political activity and free expression of individual opinions and beliefs.

In consultation with major political parties, the Commission formulated such a code in November 2002.

The Commission failed to have the final code signed by all political parties. However, no political party raised objections to it⁵.

The Commission, however, failed to enforce the code since it was not incorporated in the electoral rules and regulations.

2.7 Civic and Voter Education Policy

In consultation with stakeholders the Commission formulated the civic and voter education policy. Its purpose is to guide the delivery of civic and voter education programmes to the electorate by accredited civil society organizations.

The policy contained a code of conduct for accredited NGOs to ensure that they would be non-partisan in the delivery of their programmes⁶.

²2002 Media guidelines

³Report of SADC Electoral Commissions Forum

⁴s.61 (2) of PPE Act

⁵Code of Conduct for Political Parties and Candidates 2002

⁶Civic and Voter Education Policy 2003

CHAPTER 3

DEMARCATON OF CONSTITUENCY BOUNDARIES

In terms of s.76 (2)(b) of the Constitution, the Commission is expected to review existing constituency boundaries at intervals of not more than five years. The Commission acknowledged that constituencies in Malawi do not respect the principle of equal representation under the said law and needed to be re-drawn. However, government and donors failed to provide financial support for this.

The Commission refused requests for establishment of new registration centres. It considered that comprehensive demarcation would take care of this. As a result, Malawi still has the 193 constituencies that were last demarcated in 1999. It, however, managed to produce maps depicting all the 193 constituencies⁷.

⁷See Malawi Electoral Commission scenarios of constituency distribution prepared according to weights 2002

CHAPTER 4

VOTER REGISTRATION

The ability to exercise the democratic right to vote is premised primarily on the existence of a comprehensive and inclusive electoral register which is rigorously maintained to ensure as much as possible that each voter is registered once and only once and has been given adequate opportunity to get such registration.

The Commission maintains a permanent voters roll that was first created in 1999 and computerized in 2000. Additions to the roll were made in 2000 for the Local Government Elections and during subsequent by-elections.

Prior to the Elections, the Commission conducted a registration exercise throughout the country with four main objectives:-

- (i) to enable those that were qualified under s.77 of the Constitution to register;
- (ii) to allow the already registered voters verify the availability and correctness of their details in the voters roll;
- (iii) to process transfers, and lastly;
- (iv) to remove names of deceased voters from the voters roll.

The Commission established 3884 registration centres throughout the country.

4.1 Preparations

4.1.1 *Projected Registration Figures*

The Commission consulted the National Statistical Office (NSO) on the projected number of new registrations.

In its determination, the NSO gave a projection of 360,000 new registrations i.e. people who had turned 18 since the Year 2000⁸.

The Commission, however, made a provision for 560,000 new registrants to allow for a safety net on the projection by NSO and did all its planning based on this.

4.1.2 *Registration Materials*

The following materials were procured for registration:

- 4,000 Registration Kits
- 105,000 Films
- 72,000 AA Batteries
- 67,500 Badges (various)
- 1 million Registration Forms
- 1 million Amendments Forms
- 5000 Registration Manuals
- 4500 Registration Stationery Kits
- 5000 Manual for Security Officers
- 1 Million Polythene tubes

4.1.3 *Recruitment and Training of Registration Staff*

The Commission resolved that as far as possible, primary school teachers should carry out registration. Recruitment was delegated to the District Education Managers and Primary Education Advisors (PEAS).

⁸Projections from NSO

The Commission trained PEAs and DESTs at district level. These then trained supervisors in zones and the supervisors in turn trained the registration clerks in the centres. This was a departure from the previous system whereby the Commission trained returning officers who in turn trained DEST members. The DEST went on to train the supervisors and the supervisors the clerks. It was noted that the long cascade resulted in information loss.

4.1.4 *Training of Party Monitors*

The Commission noted that most political parties did not have the capacity to train their monitors. It therefore organized training in zones, for all party monitors on voter registration. Political parties that submitted monitors to be trained were AFORD, MCP, MCODE, NDA, PETRA, PPM and UDF.

4.2 *Actual Registration*

The Commission postponed the exercise three times due to funding problems and delays in amending the law on eligibility for registration⁹. The process, which was initially scheduled for August 2003, was changed to October and then to November 2003 and finally took place in January 2004.

Registration began on 5th January 2004. A supervisor, four clerks and a policeman manned each registration centre. Initially, the exercise was expected to last 14 days i.e. up to 18th January 2004 but due to the problems of insufficient registration materials that the exercise faced, it took 24 days and ended on 28th January 2004.

At the end of the 24 days 1,230,679 new voters were registered. This was however much higher than expected possibly due to registration of the under-aged, double registrations and wrong projections.

312,805 transfers were processed and 109,617 deceased voters were reported and removed from the voters roll. Not many people, however, came for the verification exercise due mainly to lack of interest and inadequate civic and voter education.

4.2.1 *Problems*

The commonest problem in all registration centres was insufficient materials. Items like registration forms and films were supplied to centres based on projections from the NSO and, as noted above, these were not accurate. Furthermore the secretariat ignored the distribution plan approved by the Commission.

4.2.1.1 *Films and Cameras*

The Commission had 15,000 films in stock and purchased 35,000 more. These were enough to capture 500,000 voters.

During the exercise, it became apparent that the films were insufficient. Additional 70,000 films were therefore purchased enough for one million people.

To ensure that voters were not disenfranchised, the Commission ordered that people should have their details taken even without a photograph and that they should come back later to complete registration by having their pictures taken¹⁰.

4.2.1.2 *Duplicate Certificates*

Voters who had lost or torn voter registration certificates were required to get duplicate certificates. However, these were grossly undersupplied in the centres. More duplicate certificates were therefore printed and distributed.

⁹The Commission had sought to amend s.77 of the Constitution so as to make eligible for registration those turning 18 on or before polling day. The Proposed amendment did not pass although such a law would have enabled the Commission to stagger registration and facilitate good planning.

¹⁰Minutes of the Adhoc Commission Meeting held on 24th January 2004

The shortages led to a situation where some registrants were denied enfranchisement and the Commission was urged to extend registration, which it did for 10 days.

4.2.1.3 *Double Registration*

The law provides that voters should register only once¹¹. However, it was observed that there were many double registrations as those who registered previously re-registered once their names were not found in the computerized voters roll. This was a result of inadequate training and poor quality of registration staff as they failed to follow the instructions given on the registration procedure.

Similarly some people who had relocated to new areas found the transfer system cumbersome. As a result they opted to re-register. This again compounded the problem of inadequacy of registration materials.

4.2.1.4 *Honoraria*

The Commission directed that registration supervisors should get an honorarium of K4, 500 and clerks K3, 500. This was to be paid at the end of the exercise.

Some registration supervisors and clerks disagreed with the amount and threatened to boycott the exercise. The Commission increased the honorarium to K9, 000.00 and K7,000.00 for registration supervisors and clerks respectively. The increase was also to cater for the 10 days extension aforementioned. This caused the Commission to exceed the budget.

4.2.2 *Updating of the Voters Roll*

Updating the computerized votes roll began immediately after the close of registration.

The updating was supposed to achieve the following objectives:

- (i) add the new registrants to the computerized voters roll;
- (ii) effect transfers of those voters who applied for transfers;
- (iii) remove names of deceased voters and
- (iv) effect corrections on incorrect records.

In an effort to meet the deadline, the Commission employed 119 temporary data preparation clerks who were working on a 24-hour shift.

The computerization met a number of challenges:

1. continuous power cuts in Blantyre meant that many man-hours were lost. Eventually, a standby generator was provided in April;
2. the Commission's server proved to be too slow for its requirements. It became apparent that if additional computer power was not sourced, computerization would not be completed until June 2004 and there would be no election in May. The Commission responded by contracting out the uploading of data to a South African firm that was able to complete the outstanding work in six days;

It should be noted that the generator and the server were some of the items that were removed from the budget by Mr. Boneo as being "capacity building" and therefore not "election specific"¹²,

3. some forms were erroneously completed in the field and had to be re-done at the IT Centre. This took a lot of time and
4. the actual number of registered voters was much more than projected. More time was then required to complete the exercise.

¹¹s.18 of the PPE Act

¹²Boneo Report

At the end of computerization, the Commission produced an updated voters register of 5,751,218 voters distributed as follows:

North:	808,585
Centre:	2,324,884
South:	2,617,749

4.2.3 *Inspection of the Voters Roll*

The Commission displayed the voter's roll for inspection from 26th to 30th April 2004¹³. Only the manual roll and record cards were displayed as computerization was still going on.

The objective of the exercise was to enable the electorate verify the correctness of the roll and further raise objections if they considered any registrant to be ineligible to vote.

Political Parties and other stakeholders urged the Commission to display the computerized voters roll. In response, the Commission ordered that inspection should go on up to 15th May 2004.

The exercise revealed that the computerized roll had a number of deficiencies:

- (i) some records did not have photographs;
- (ii) not all transfers were effected as some of those who had applied for transfers were not appearing on the voters roll;
- (iii) names of some registered voters were missing on the computerized voters roll;
- (iv) some registered voters appeared in voters roll for centres they did not register at and;
- (v) voter counts in some centres were either reduced or increased.

As a result, the computerized voters roll attracted a lot of criticism. Although the Commission was aware of the limited capacity of its server, it did not have the financial capacity to acquire additional servers.

The Republican Party sued the Commission over the matter and in its judgment the High Court ordered that inspection should go on until 19th May 2004 and the Commission obliged¹⁴.

4.2.4 *Transport*

The Commission was strongly advised by donors against hiring vehicles during registration. Consequently, the Commission heavily relied on vehicles from government departments. However, most departments released their vehicles late and most of them were not road worthy. They ended up in garages and this also handicapped the registration process. Some assemblies such as Chitipa, Rumphi, Neno, Ntchisi, Dowa and Kasungu faced serious transport problems. The Commission provided one vehicle to each of the assemblies but this was inadequate for monitoring and supervision of the exercise in all centres. The Commission was forced to hire extra vehicles from PVHO.

4.2.5 *International and Local Observers for Registration and Inspection*

Pursuant to s.105 of the PPE Act, the Commission extended invitations to international and local observers to observe the electoral process. They observed both the registration and inspection of the voters roll. The international missions were the African Union, the Commonwealth, the Dan Church Aid, the Electoral Institute of Southern Africa, the SADC Parliamentary Forum and the European Union.

¹³s. 31 of the PPE Act requires the Commission to make available copies of voter's registers for inspection by voters, political parties and observers.

¹⁴Republican Party (representing its members and all of Mgwirizano Coalition grouping) vs Malawi Electoral Commission, the United Democratic Front and the Attorney General: Constitution Case No. 5 of 2004.

NOMINATION OF CANDIDATES

5.1 Presidential Election Candidates

The Commission received nomination papers from presidential candidates on 25th and 26th February 2004 from one candidate at a time and at different venues. This was a departure from previous elections where all candidates presented their papers at the same time and venue and where violence used to occur.

At the end of the exercise, six presidential candidates presented their nomination papers and these were:

Mr. Gwanda Chakuamba	—Republican Party
Mr. Justin Malewezi	—Independent
Dr. Bingu wa Mutharika	—United Democratic Front
Mr. Brown Mpinganjira	—National Democratic Alliance
Dr Hetherwick Ntaba	—New Congress for Democracy
Mr. John Tembo	—Malawi Congress Party

Five candidates contested the presidential elections as Dr. Ntaba withdrew before the poll.

5.2 Parliamentary Election Candidates

The Commission received nomination papers from parliamentary election candidates on 26th, 27th, 28th February and 11th March 2004 through its returning officers in all the 28 districts.

At the end of the exercise 1267 candidates, 155 of whom were women presented their nomination forms. Before polling, 30 candidates withdrew from the election.

The major problem that the Commission faced during the process was the issue of candidate symbols. 63 independent candidates submitted symbols that were similar to those of registered political parties or other independent candidates¹⁵. The Commission ordered that such candidates should submit new symbols or forfeit their right to have a symbol.

Some voters filed complaints that some candidates who had been admitted by the Commission to contest the elections were not qualified for various reasons such as:

- lack of academic qualifications;
- they were serving members of local assemblies and
- they were serving civil servants

The Commission investigated and where the allegation was substantiated it disqualified the candidate. Three candidates were disqualified for lack of required academic qualifications and being serving civil servants.

Some political parties changed candidates well after closure of the nomination. This had a negative impact on printing of ballot papers.

¹⁵S. 37 (2) (e) of the PPE Act requires that symbols be distinctive. By implication this means that that no two contestants should have similar symbols.

CHAPTER 6

OFFICIAL CAMPAIGN

Political parties and candidates have the right to campaign in order to market their agenda and policies to the electorate¹⁶. Official campaign for both parliamentary and presidential candidates is conducted two months prior to the elections date¹⁷. The official campaign for the Elections commenced on 18th March 2004.

As mentioned earlier, the Commission had no legal mandate to enforce the code of conduct. However there is ample protection afforded by Malawi's constitutional framework¹⁸.

The campaign was largely free from violence except for a few incidences that were reported in Mangochi, Ntcheu, Mulanje, Kasungu, Mzimba, Karonga and Rumphi.

All incidents of violence were reported to MPLCs and subsequently to police for appropriate action.

6.1 Complaints

The Commission received a number of complaints from stakeholders during campaign and the major ones are as follows:

6.1.1 *Use of public resources for campaign*

The commonest complaint was the abuse of incumbency by the UDF. The Commission received reports and complaints that the State President, cabinet ministers and other UDF officials were using government resources for campaign purposes, contrary to s.193 (4) of the Constitution. An examination of this section shows that the power to enforce this provision vests in the Public Service Commission and not the Electoral Commission.

The complainants expected the Commission to restrain the UDF from the practice. As the law stands, the position of the Commission was that the Public Service Commission is the proper body to deal with this particular problem. However the Commission advised the aggrieved parties to seek redress with the courts, other constitutional bodies with general jurisdiction such as the Human Rights Commission or the Ombudsman pursuant to section 41 of the Constitution¹⁹. That way the playing field would be leveled and the Commission would fulfill its mandate to deliver a free and fair election. The Commission also invited the SPC to address NECOF on the issues²⁰. The Commission noted that most aggrieved parties wanted it to deal with their legal problems rather than commence court proceedings on their own.

The Republican Party sued the Commission on the matter and in its judgment, the High Court and the Supreme Court of Appeal declared that the Commission was wrong to refer the complaint to the Office of the President and Cabinet and this amounted to delegation of duty. It is submitted that the Commission's mediating role in that respect should be explicitly spelled out in the laws.

¹⁶Ss. 40 (1) (b) of the Constitution makes it a human right to "campaign for a political party or cause".

¹⁷s. 57 of PPE Act

¹⁸s. 4 provides for equal protection under the law. Clearly state institutions are under constitutional duty to provide such equal protection without fear or favour.

¹⁹s. 15 (2) of the Constitution also empowers any sufficiently interested person to seek redress from the courts, the Ombudsman, the Human Rights Commission and other organs of government for the protection of human rights generally. It is argued that political parties should test this avenue as well. The commission holds all constitutional bodies in high esteem and would want to know their opinions.

²⁰NECOF meeting at Mangochi - he said there was no legal impediment to access to media and abuse should not be there.

6.1.2 *Coverage by the Public Media*

The two public media houses, MBC and TVM came under heavy criticism for their failure to provide equal coverage to all contesting parties in the Elections²¹.

The National Democratic Alliance (NDA) sued the Commission on the matter and the court ruled in favour of the media houses and the Commission. This was won on a technicality and not on the available evidence.

However the Commission acknowledged that there was a problem and did monitor the coverage and published results of the same. It further advised complainants to direct their grievances to MACRA.

The position of the Commission regarding government-controlled media is that electoral management bodies cannot control them. There are established and specialized media commissions for this purpose in all democracies²² and for Malawi this is MACRA, which is established under s.3 of the Communications Act.

6.1.3 *Snatching of Voters Registration Certificates*

The Commission received several complaints that some political parties and candidates were either recording voters' registration certificate details or snatching the same from voters.

The Commission observed that there was nothing in the law that would stop an interested party from recording voters' registration certificate details but that outright snatching of voter certificates constitutes an offence²³.

The Commission condemned the practice in press releases and advised the general public to report any incident of voter certificate snatching to the nearest Police Station.

In addition, the Commission requested the Police to carry out investigations on the matter. In its findings, the Police did not find evidence of certificate snatching but observed that the issue involved independent candidates, UDF, NDA, and Republican Party officials who were keen to find out their popularity in the constituencies by conducting surveys.

²¹s. 63 of PPE Act requires MBC to give equal coverage in its news to all political parties.

²²Media and Elections in South Africa: A case study presented at Mt. Soche Hotel 2003; Principles for Election Management, Monitoring and Observation in the SADC region - EISA booklet. The documents are to the effect that media regulations should be contained in the laws governing a specialized body responsible for regulating media other than electoral laws.

²³s. 24 (4) of PPE Act

CHAPTER 7

POLLING

Malawi has a constitutionally fixed polling day²⁴. The Elections were scheduled to take place on Tuesday 18th May 2004.

Prior to this date, the Republican Party went to Court to seek, inter alia, a postponement of the Elections to a later date. The court ruled that the Elections should be held any day between 20th and 25th May 2004²⁵. The Commission complied by ordering that the Elections should take place on Thursday 20th May 2004 in all polling stations.

7.1 Preparations for the Polls

7.1.1 *Purchase of Polling Materials*

The Commission procured the following materials for the polls:

9000	Polling kits
9000	Polling stationery kits (Presidential)
9000	Polling stationery kits (Parliamentary)
16448	Voting booths
7500	Rechargeable lanterns
8500	Lanterns
100,000	R20 Sun Batteries
120,000 x 50ml	bottles of Indelible Ink
63300	pieces of Election Regalia
7,345,000	ballot papers for the presidential election
7,345,000	ballot papers for the parliamentary election

7.1.2 *Transportation*

In previous elections the Commission had relied on hired vehicles. However government sourced all the 850 vehicles that were required for the Elections. The President directed that government ministries, departments and parastatal organizations should release vehicles to the Commission. There was a big improvement during polling over registration.

The Commission used 120 trucks that were made available by the Malawi Defence Force to distribute and retrieve materials in the districts. In addition, the Malawi Defence Force and the Police provided aircraft to distribute and retrieve materials to areas that were not accessible by road.

7.1.3 *Communication Facilities*

The Commission serviced all fax machines for the returning officers, purchased new ones for those offices that did not have any and made a financial contribution to clear outstanding telephone bills for DCs. The Commission also installed wireless communication systems in some assemblies. By the polling day, all assemblies had fax machines that were functional.

7.1.4 *Recruitment and Training of Polling Staff*

The Commission through DEST recruited civil servants, most of whom were teachers to conduct the polls in the 7,556 stations that it established.

Commission staff and selected trainers who were outsourced from the Ministry of Education conducted the training of presiding officers directly. The presiding officers trained the other poll workers in their stations.

²⁴s. 67 (i) of the Constitution. It is one of the achievements of the Commission as the current s. 67 was proposed by it in July 1998.

²⁵Republican Party (representing its members and all of Mgwirizano coalition grouping) vs. Malawi Electoral Commission, the United Democratic Front and the Attorney General: Constitution Case No. 5 of 2004.

7.1.5 *Training of Party Monitors*

The Commission provided training to party and candidate monitors on the polling and counting processes. It trained DEST members at regional level who trained the monitors at constituency level. However, some monitors declined to attend the training because allowances were not provided.

7.2 *Actual Polling*

Polling commenced at 6:00 am in most centres. A supervisor and six poll clerks manned each station. The Army and the Police provided security. However, some centres like Catholic Institute Primary School in Blantyre opened later than 6:00 am due to misunderstandings between some party monitors and electoral staff.

Representatives of political parties, independent candidates and civil society monitored the Elections.

7.3 *The Voters Roll*

The Commission provided a computerized roll, a manual register and record cards for every polling station. Voters whose names were not on the computerized roll were allowed to vote if their names appeared either on the manual roll or the record cards.

The voters' roll however had some errors. This was because it was released very close to the polling day and there was insufficient time for the electorate to verify their particulars. Furthermore, any queries would have required additional time to be processed at the IT centre and there had been no time to field-test the system.

7.4 *Ballot Papers*

The Commission supplied sufficient ballot papers in all stations. Polling staff was advised to cross out details of withdrawn candidates on the ballot paper and explain to the voters not to vote for such candidates²⁶.

7.5 *Postponed Elections*

The Commission received reports on the polling day concerning some anomalies on the ballot papers as follows: -

7.5.1 *Blantyre City East Constituency*

An independent candidate was missing from the ballot paper.

7.5.2 *Mangochi Lutende Constituency*

Photograph of one candidate appeared twice on the ballot paper.

7.5.3 *Lilongwe East Constituency*

Photographs of two candidates were transposed.

The Commission ordered that parliamentary elections in the three constituencies should not take place.

7.5.4 *Ntcheu South Constituency*

The Commission postponed the parliamentary election at this constituency after Mr. Stanley Billiat, an independent candidate, obtained an injunction against the said election taking place. The Commission had rejected Mr. Billiat's nomination on the ground that he was still serving in the civil service.

²⁶This was in line with s. 46 (4) (b) of PPE Act.

7.5.5 *Mzimba South East Constituency*

The Commission postponed the parliamentary election in Mzimba South East Constituency after the High Court had ordered the Commission to admit one candidate Mr. Mzima whose nomination had been rejected on the ground that he did not possess a full M.S.C.E or its equivalent.

7.5.6 *Mzimba North Constituency*

Elections in Mzimba North Constituency were postponed following the death of the Peoples Progressive Movement candidate, Mrs. Billie Mkandawire²⁷.

²⁷s. 47 of PPE Act is to the effect that the death of a candidate means that the election should be stopped

CHAPTER 8

COUNTING OF VOTES

Counting of votes commenced soon after the closure of the polls, at 6:00 pm in all the polling stations. The polling staff counted in the presence of candidate monitors, civil society and international observers.

Returning officers received results from the stations and collated them according to constituencies.

Completed result sheets per constituency were sent by fax to the Commission's tally centre.

8.1 The Tally Centre

The Commission established a tally centre at Chichiri International Conference Centre where it determined complaints, received, collated and announced results.

All the contesting political parties, accredited NGOs, international observers and the media were invited to observe the process.

A total of fifteen fax machines were installed for the receipt of the results from districts. However, results from the districts delayed and only started flowing in on Friday 21st May 2004.

The Commission verified all faxes sent and signed for by returning officers and only proceeded to process them once confirmation was obtained on their origination. Faxes that were not signed for or had arithmetical errors were sent back for correction.

There was a general complaint regarding lack of transparency at the tally centre during the tabulation of results. The UNDP sponsored project entitled "Strengthening Electoral Administration in Malawi" which is further discussed in paragraph 12.5 of this Report will address that complaint once completed.

8.2 Determination of Election Results

Before the announcement of the results, the Commission analysed all complaints that were submitted to it. Some contestants who were not satisfied with the Commission's determination filed petitions with the High Court²⁸. Complaints continued to reach the Commission after determination of results and the responsibility to determine them was delegated to the Legal Affairs Committee²⁹. However, most of the complaints were based on conjecture rather than evidence.

8.2.1 Presidential Elections

The Commission announced the following results in the presidential election:

Dr Bingu wa Mutharika	1,195, 586
Mr. John Tembo	937,965
Mr. Gwanda Chakuamba	836,118
Mr. Brown Mpinganjira	286,320
Mr. Justin Malewezi	67,812

Following these results the Commission declared Dr. Bingu wa Mutharika, presidential candidate for the UDF winner of the poll.

This result was announced on the 23rd May 2004 and was based on summary sheets from returning officers (MEC 061). Some of these had arithmetical errors. The Commission corrected them by going through all the results sheets (MEC065) station by station. Presiding officers compiled these. This resulted in the change in figures of the results for all candidates and answers the complaint about the discrepancies between the announced and gazetted figures.

²⁸See list of court cases.

²⁹s. 9 of the PPE Act allows such delegation.

The order of results obtained by the Commission was supported by results collated by parallel tally centres that were established by political parties and Civil Society Organizations³⁰.

Complete results of the presidential election are contained in Appendix 1.

8.2.2 *Parliamentary Elections*

The Commission declared results in the 184 constituencies where parliamentary elections had taken place. Of the 15 political parties that contested, 9 managed to get seats as follows:

MCP	57
UDF	48
Independents	40
Republican	15
NDA	8
AFORD	6
PPM	6
MGOE	3
PETRA	1
CONU	1

The detailed results of the Elections as determined by the Commission are contained in 'The Malawi Government Gazette no. 2758 : Vol. XLI No. 34 of 16th July 2004.

CHAPTER 9

THE MEDIA

The media played two roles of voter information and facilitation of campaign.

9.1 Voter Information

The media played a vital role in informing the electorate programmes of the Commission and procedures for various phases of the electoral process.

The Commission worked with the following radio stations: MBC, Capital Radio, Power 101 FM, Transworld Radio, Radio Maria, Radio Islam, MIJ, Radio Alinafe and TVM.

While the private radio stations formulated their own programmes, MBC, the public broadcaster, worked closely with the Commission in producing their programmes. In both cases, the Commission provided guidelines for such programmes. However, MBC breached s.63 of the PPE Act, by failing to report on radio news broadcasts campaign propaganda from all contesting political parties³¹.

The print media also disseminated voter information. Almost all papers dedicated a page once a week to civic and voter education.

9.2 Facilitating Campaign: Coverage of Political Parties

The second and equally important role the media played was in providing coverage to political parties and independent candidates who utilized the media in various ways to convey their messages to the electorate and advertise their campaign meetings.

The Commission purchased airtime of 45 minutes from MBC radio 1 for every party that contested the presidential election.

To ensure that media houses had information on election activities, the Commission engaged 60 part time stringers who were deployed in all the districts.

The Commission established a media-monitoring unit to monitor the performance of radio stations and the print media on their coverage of the Elections and published results of such monitoring.

It is the view of the Commission that Capital Radio was the most balanced of all the radio stations. The Daily Times provided the most balanced news of all the print media.

The performance of the public media was worrisome in that both MBC and TVM failed to provide balanced coverage. They dedicated more time to the UDF and totally ignored the opposition parties despite the fact that s.63 of the PPE Act mandates them to give equal coverage³².

³¹This law creates a duty for MBC to give equal coverage to all political parties in its news broadcasts during the official campaign period.

³²See the 10th Report by the Media Monitoring Unit which outlines guidelines for assessing the success or otherwise of broadcast editors output.

CHAPTER 10

CIVIC AND VOTER EDUCATION

Civic and voter education is pivotal in the development of an environment within which free and fair elections may take place. An informed citizenry forms a sound basis of a democratic state. The citizenry must be made aware of its rights and responsibilities if it is to participate fully in such a democratic society.

The Commission accredited twenty civil society organizations to conduct civic and voter education³³.

Out of the twenty, only fourteen managed to get funding and at a very late stage and this affected implementation of the civic and voter education activities. The Commission then embarked on its own programmes in order to supplement those by the accredited NGOs. Another problem was that some of those that were funded in good time spent the money on partisan conduct.

10.1 Activities Undertaken

The activities that the Commission undertook to fill in the gaps created by the failure of the accredited NGOs included distribution of promotional materials, beaming of a documentary on elections, prison outreach campaigns, radio programmes, drama outreach campaigns, and public meetings in all traditional authority headquarters.

10.1.1 *Distribution of Civic and Voter Education Materials*

10.1.1.1 *Posters and Brochures*

Over three million brochures, one hundred thousand posters, two hundred and fifty voter education training manuals in the Chichewa, Chitumbuka and English languages were distributed. The materials contained messages on monitoring, campaign and voting procedures and were distributed to all contesting political parties, accredited NGOs, media houses, District Commissioner's offices, Primary Education Advisors, independent candidates, and communities.

Special materials were produced and distributed to people with disabilities such as the blind and the physically challenged.

Due to late funding, distribution of the voter education materials commenced in January 2004 and finished in May 2004.

10.1.1.2 *Stickers*

70,000 round and square stickers were produced and distributed to political parties accredited NGOs, media houses, mini bus operators, public places, government offices and communities.

10.1.1.3 *Banners*

Seventy banners were produced and displayed in all the districts in the country. Two additional banners were produced and displayed for the tally centre at Chichiri International Conference Centre Hall in Blantyre.

10.1.2 *Documentary on Elections*

The Commission, with the technical assistance from the Ministry of Information, beamed a documentary demonstrating the voting process in Chitipa, Karonga, Rumphi, Lilongwe, Dedza, Nkhosakota, Ntcheu, Salima, Dowa, Ntchisi, Kasungu, Mangochi and Blantyre.

³³See List of Accredited NGOs.

10.1.3 Prison Outreach Campaign

The prison outreach campaign took place during registration, campaign and voting. Teams comprising commissioners, secretariat staff, and DCECCs mobilized prisoners to register and vote.

During this period, the commission distributed 20 radio cassettes and 17,000 audiocassettes containing manifestos of parties that sponsored presidential candidates i.e United Democratic Front (UDF), Republican Party, NDA MCP and independent candidate Justin Malewezi to prisons and the general public. However, the radios were distributed late, as donors did not release the money in time.

10.1.4 Radio and TV Programmes

Numerous Radio and Television Programmes in form of panel discussions, talk shows, comedies, jingles, songs, interviews, and poems were aired on MBC Radio 1 and Television Malawi.

10.1.5 Drama Groups

Eighteen drama groups were engaged to mobilize and disseminate information on campaign and voting³⁴.

10.1.6 Public Meetings

In April and May 2004, the Commission, District Elections Supervisory Team/District Civic Education Coordinating Committees, conducted public meetings at Traditional Authority Headquarters in all the districts. The aim was to sensitize the electorate on voting procedures. Participants to the public meetings were Traditional Authorities, Group Village Headmen, Village Headmen, members of Area Development Committees and the general public.

10.2 Monitoring

The Commission monitored the activities of the accredited NGOs through media reports, spot checks, and reports by the District Civic Education Coordinating Committees members. It was discovered that the accredited organizations did very little civic education on the ground. Instead they spent most of their time politicking. The Commission should move away from this mode of conducting civic and voter education as these NGOs always have vested interests.

³⁴The drama groups were Solomonian Peacocks (Zomba), Kasupe (Mwaza/Neno), Taoloka (Machinga), Chithope and Azizi (Machinga), Zakaria and MwamboArts Theatre (Mulanje), Wanna Do Ensemble (Mangochi), Mhon & Magagula (Chiradzulu) and Dygo Cultural Troupe Drama (Blantyre), Zikomo Cultural Troupe (Ntchisi), Chiyambi Boys Drama Groupe (Mchinji), Licam (Dowa), Reformation Theatre (Dedza), Astrovaganza (Nkhata Bay), Katoto Mvalenji (Mzimba) and Chikolopa (Karonga).

CHAPTER 11

OVERALL COST OF THE ELECTIONS

The Commission's initial budget was US\$21million. It reluctantly agreed on the budget of US\$14.6 million after noting that negotiations for a workable budget were taking too long and donors remained solipsistic and insisted on their original position as advised by Mr Boneo.

The implementation of the budget proved the Commission right, as most of the items that Mr. Boneo had considered unnecessary were re-incorporated. These were purchase of computers, premises that house the IT Centre, payment of allowances to the police and district staff, training of political party monitors and production of constituency maps.

As a result, the cost of the Elections went up.

The budget was also affected when the Commission revised the honoraria for registration staff by 100%.

The other cause of the budget variance was the purchase of materials that were not budgeted for:

- 70,000 more films

- More duplicate certificates

- More polling stations were created. This led to an increase in all polling materials purchased.

The budget did not make any provision for hiring of vehicles. However, the Commission was forced to hire vehicles during registration when government was not able to provide the same. This expenditure had a net effect of exceeding the budget ceiling.

11.1 Budget Implementation

The government of Malawi met its commitment although belatedly through regular funding to the Commission. Initially the funding was on a cash flow basis but this was changed later when government adopted an activity based funding strategy. In this case the Commission submitted monthly plans and their attendant costs to government, which would then release the required funds.

The donors on the other hand supported the budget by making direct payments to suppliers of goods and services. The arrangement removed the burden of financial accountability from the Commission but created delays in processing payments to suppliers.

11.2 Problems

11.2.1 Delayed Funding

The initial funding from Treasury for the Elections was expected at the beginning of May but this never came until end of August 2003. Subsequent funding did not follow the cash flow forecast that had been sent earlier. Submission of activity-based requests was made on time but was not given immediate attention. This created implementation problems for some activities in the election calendar.

Funding from Forum for Dialogue and Peace for MPLC meetings started later than planned. This forced the Commission to use resources meant for other programmes to fund MPLC meetings. This impacted negatively on the implementation of the affected programmes.

11.2.2 *Lack of Control over Donor Funds*

The Commission had no control over funds managed by UNDP and GTZ.

The GTZ, which had committed itself to fund programmes for voter education and media and public relations, did not live up to its commitment. It withheld funds earmarked for local government elections without consideration for higher than budgeted for expenditure.

11.3. **Overall Activity Cost of Elections**

The general election cost the Malawi Government US\$13,963,519 while donors contributed US\$5,756,629³⁵ (a total of US\$19,720,148).

CHAPTER 12

CONCLUSIONS AND RECOMMENDATIONS

In spite of the inadequate and untimely support that it received, the Commission persevered from criticism and managed to deliver the Elections and must therefore be congratulated rather than vilified. A number of lessons were learnt from the exercise that will assist in preparing for future elections.

The Commission is mindful of the fact that change is indispensable to any social organization and that it is not immune to such changes if it is to retain its relevance. Major reforms in the electoral process, therefore, need to be undertaken as follows:

12.1 Planning

Time management is crucial for the Commission. It failed to meet most of its deadlines during the Elections due to government's and donor's inability to release money in time and this should not happen again. The Commission developed a strategic plan for 2001 - 2004 and this was a step in the right direction. It spread activities in such a way that the Elections would not overstretch the human, material and financial resources of the Commission and government.

Unfortunately, the plan was not implemented according to schedule due to financial constraints. This resulted in various organizational and logistical problems. It is necessary for the Commission to develop a comprehensive plan of action for the coming local government elections. Serious efforts should be made to fund the programmes in accordance with the strategic plan.

12.2 Funding

The electoral laws give the Commission a wide mandate in ensuring the delivery of free and fair elections. Some of the powers conferred on it by the laws include: organization of elections, registering voters and maintaining a voters' roll and demarcation of constituency boundaries

In order to perform the above functions efficiently, the Commission requires sufficient funding. The principal source of funding is the government. However, during the Elections, the Commission complained of inadequacy of funds and delay in the release of the same. The situation was pathetic particularly between elections.

The Commission planned to commence the activities leading to the Elections as far back as 2002 with demarcation of constituencies and to carry out registration in August 2003. None of these programmes was supported and the Commission only commenced registration in January 2004, four months before the Elections.

A panacea for this problem is the provision of standing funds or annual budgetary allocation to be paid into the Consolidated Fund in anticipation of future elections. This will no doubt give the Commission the financial autonomy it deserves and enable it to implement programmes in time and independently of any external influence.

Another source of funding has been donors. However, the responsibility to fund elections should gradually be passed on to government and donors should have no say in the selection of Malawi's leaders as they encroach on her sovereignty.

As was observed, there was no accountability on the part of donors. Both UNDP and GTZ did not provide financial reports on the performance of the accounts they were managing. This made accounting for elections difficult.

12.3 Review of Electoral System

The electoral system has never been debated in Malawi. It is proposed that the government and donors provide funds for such a national debate as to whether Malawi should maintain the current first past the post system or adopt a proportional representation one. The Konrad Adenauer Foundation has already funded the Commission to this end. It might also be necessary to enact laws that encourage women to participate in elections³⁶.

12.4 Legal Framework

Although the electoral laws need to be reviewed to incorporate best practices in the conduct of free and fair elections, they are generally good. The problem is that they were not always followed and respected to the letter. In some cases, there was arbitrariness in their interpretation. There is need therefore, to respect both the letter and the spirit of the law.

Issues of incumbency, role of and accessibility to the public media, use of civil servants during elections etc are crucial to the management of a free and fair election. The legal framework needs to be specific and make provision for penalties for violation of the electoral laws and empower the Commission to penalize such offenders.

The weaknesses in the Constitution and the electoral laws in general were discovered and attempts were made to rectify them through appropriate amendments and additions. Unfortunately, the amendments were not passed. Now that a new parliament has been put in place, all hands must be on the deck to ensure that all the necessary reviews are carried out.

Additionally, the Commission needs to develop rules and regulations that will support the electoral laws. The Code of Conduct for Political Parties and Candidates, Code of Conduct for Accredited NGOs and the Code of Conduct for International Observers should become part of the regulations. The Commission has the capacity to do the review on its own but for purposes of neutrality it is proposed to request such an independent body as the Law Commission to undertake the responsibility.

The second worrisome area is the regulation of government controlled public media. In our opinion, the practical and sensible solution lies in making the appointments of chairpersons and board members of MACRA vest in the Public Appointments Committee of Parliament rather than a minister.

The third key problem is abuse of incumbency. There are, in our opinion, several measures, which can be introduced to resolve the problem. The first obvious measure would be to amend s.193 of the Constitution so as to make the power to prosecute errant civil servants and political parties vest in the Commission and not the Civil Service Commission.

With regard to government ministers, the power to regulate usage of public resources such as vehicles can also be enforced if the Code of Conduct for Political Parties is made part of regulations under the Parliamentary and Presidential Elections Act³⁷.

12.5 The Voters Register

The Commission needs to have a credible voters register that can be updated once at the end of every year. This is to allow people who have attained 18 years within the year to be registered.

The register must be ready at latest three months to the Election Day. The revision of the voters roll should ensure that non-existent voters have been removed.

³⁶s. 13 (a) of the Constitution has already laid the foundation for gender equality. Under proportional representation it would be possible to reserve seats in the National Assembly for women. The SADC Declaration on Gender Equality and Development challenges all SADC member countries to have at least 30% representation by women in politics and other decision-making positions. It is hoped that Malawi will meet this challenge in the near future.

The easiest way of realizing this register is the use of an electronic voters roll. Malawi maintains such a voters roll, which was first created in 2000. In the Elections, the electronic voters roll had problems that resulted from the computerization process. As a result it was criticized as unreliable.

A good electronic voters roll must ensure that it does not contain ineligible persons, be able to eliminate double registrations and to specifically tie a voter to one registration centre.

Funds permitting the current electronic voters roll should therefore be discarded and a new register created.

The Commission has obtained the support of the UNDP to fund a project entitled "Strengthening Electoral Administration in Malawi". The purpose of the project is to develop the Geographical Information System (GIS) at ward, constituency and regional level, to provide strong back-up systems for database handling, storage and retrieval systems and improved access by the electorate and other key stakeholders to electoral information to ensure the smooth conduct of free, fair and accessible elections in the medium and long term.

At about the same time, DFID and the Commission are currently discussing a project proposal entitled "Malawi Electoral Commission - The Way Forward - A Working Paper", the objective of which is to feed into the processes which the Commission has undertaken to review some of the issues raised during the Elections and to recommend and develop practical and workable solutions bearing in mind the resources available to it.

12.6 Employment of District Election Officers

The electoral laws mandate the Commission to use civil servants in the management of elections. The rationale for this is that elections are a one off activity and the engagement of civil servants reduces the cost of running them.

Government might consider the Commission's recommendation to have offices of District Election Officers in all the districts.

District Election Officers will be responsible for continuous civic education, continuous voter registration, maintenance of the voters roll, coordinating demarcation projects and conducting elections in the districts and will be answerable to the Commission and the Commission only.

12.7 Civic And Voter Education

Civic and voter education should be continuous and not limited to an electoral process. It is imperative that the Commission employs the bio-political strategies that will produce a subject citizenry that is responsive to elections³⁸.

The education system, the government extension system should also play a central role of providing education for democracy to school pupils, chiefs and the general public.

Since voter education is part of civic education, the Commission may identify partners to assist in this endeavor.

12.8 Null and Void Votes

All the commendable work of the Commission, political parties, the media as well as other partners cannot count if at the polling station, a voter is unable to cast his/her vote correctly.

³⁸For the treatment of bio politics and subjectivity see generally the opus of Michel Foucault. For the purposes of this report, however, the Commission had recourse to Danaheer et al (2000: xiv), Hardt and Negri (2000: 22-41) and Fitzpatrick (1992: 118-142). This is a discussion of how juridical systems point toward the "material condition that defines their purchase on social reality". (Hardt and Negri, 2000: 22).

The number of null and void votes in the presidential election was 89,764 representing 2.63% of the total votes cast and in the Parliamentary election the number was 167,376 representing 5.03% of total votes cast. Although this compares favourably in the SADC region, the Commission should not get complacent.

The Commission needs to carry out a survey on the cause of null and void votes. The results of such a survey will assist the production of future voter education programmes.

12.9 Voter Apathy

The previous elections were characterized by record turnouts. In 1994, the voter turn out was 93.1% while in 1999, the turn out was 93.76% of the registered voters.

During the 2000 Local Government election, the voter turnout went as low as 14%. In the Elections, the voter turn out was 64.58%.

Several reasons have been advanced to explain the apathy including inadequate civic and voter education.

The lifeblood of a democratic society is the participation of the citizenry. The Commission needs to conduct research on the causes of voter apathy. Otherwise civic and voter education programmes will not be addressing real issues.

12.10 Capacity Building

Some of the problems experienced during the Elections could be attributed to the capacity building of the Commission as funding virtually dries up during the period between elections.

The Commission is still in its nascent stage and needs to be supported. Areas that require immediate attention are:

- * adequate vehicles to replace the existing fleet;
- * sufficient computerization of the IT Centre and regional offices;
- * training;
- * a Geographical Information Systems (GIS);
- * construction of office buildings and warehouses for the Head office, Regional offices and District offices;
- * funding for the demarcation of constituencies and production of the voter national ID card

12.11 Display of qualifications of candidates

The Commission has over the past elections and by-elections, received complaints relating to the qualifications of some candidates. In this regard, the Commission should display the qualifications of each of the candidates contesting an election. That will allow voters to raise objections against the candidature of any person well in advance.

12.12 The Appointment of Returning Officers per Constituency

The Commission appoints a Returning Officer for all constituencies in a particular district. This is a cost saving mechanism but it causes a lot of delays in processing election results.

To avoid these unnecessary delays and to achieve efficiency, the Commission will in future elections consider appointing one Returning Officer per constituency. This is already provided for in the electoral laws³⁹.

³⁹s. 34 (2) of the PPE Act.

12.13 The Electronic Voting Machine

In the Elections, the Commission bought 7.6 million ballot papers and 3,383,277 people voted. Over 50% of the ballot papers were wasted. In the Year 2000 Local Government Elections, the Commission bought 6 million ballot papers yet only 14% (840,000) people voted. Over 5 million ballot papers were wasted.

Government might consider funding the purchase of the Electronic Voting Machine (EVM). According to contemporary literature, Brazil has the best EVMs. The introduction of an EVM will get rid of the use of ballot papers and ballot boxes. The case for EVMs is therefore strong.

12.14 Recruitment and Training of Election Staff

Over the years the Commission has recruited and trained election staff on an adhoc basis. As a result, the Commission does not have a data bank of election staff in the field. The competency of election staff cannot be guaranteed. For purposes of retention of knowledge and skills, the Commission should endeavor to create such a data bank.

Election management on the ground is done in the vernacular and yet all manuals and instructions are in English. This has a bearing on the performance of some electoral personnel who fail to implement instructions.

The Commission should either recruit people with high academic qualifications with demonstrated ability to implement instructions or should as much as possible use vernacular languages both in the manuals and delivery of training.

Two full days should be dedicated to training of election workers. Electoral personnel need to know the theory behind every process before they can implement it. Theory and practice in training should therefore compliment each other and will enable the Commission to achieve proper elections.

12.15 Full time Commissioners

Government should consider the appointment of a few full time commissioners, as is the case in South Africa, Ghana, and Zambia. In most SADC countries, at least two commissioners work on a full time basis to provide constant policy direction to the secretariat.

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OFFICIAL NATIONAL PRESIDENTIAL ELECTIONS RESULTS BY DISTRICT AS AT 20TH MAY, 2004

DISTRICT	Gwanda Chakumbha RP	Justin Chimera Malewezi INDEPENDENT	Brown James Mpinganjira NDA	Dr. Bingu Wa Mutharika UDF	John Zenasi Ungapake Tembo MCP	Valid Votes cast	Null & Void	Total Votes Cast	Registered Voters	Percentage Turn out
NORTHERN REGION										
Chitipa	32002	737	5228	12858	1664	52489	755	53244	87267	61.01
Karonga	63919	722	2152	14359	1305	82457	868	83325	128143	65.03
Rumphi	36451	454	1036	15123	779	53843	753	54596	92250	59.18
Nkhata-Bay	46417	340	2019	9593	866	59235	797	60032	109866	54.64
Mzimba	194051	2962	7285	40027	12554	256879	3264	260143	381554	68.18
Likoma	699	25	752	1461	608	3545	27	3572	4794	74.51
CENTRAL REGION										
Kasungu	25189	1979	7262	31126	114131	179687	3842	183529	298349	61.51
Nkhosakota	11731	1319	3203	35683	30617	82553	2100	84653	134766	62.81
Ntchisi	1450	19297	691	8638	28149	58225	1456	59681	97359	61.30
Dowa	4309	1602	2104	22491	115523	146029	3714	149743	241061	62.12
Salima	3316	1677	2925	24064	44891	97763	3361	91124	142520	63.89
Mchinji	2944	1168	2605	26771	74176	107664	2401	110065	192926	57.05
Lilongwe	37660	4395	11194	69701	336303	459253	10746	469999	743522	63.21
Dedza	3089	1788	2448	31661	118809	157795	4583	162378	270477	60.03
Ntcheu	8919	3174	9289	48502	25694	95578	3433	99011	204542	48.41
SOUTHERN REGION										
Mangochi	10902	4412	12062	156426	6487	190289	8231	198520	309436	64.16
Balaka	8192	1796	8309	56204	2292	76793	2770	79563	146626	54.26
Machinga	6855	2198	9504	106369	2523	127449	5484	132933	213162	62.36
Zomba	31591	4774	25267	103979	2988	168599	4821	173420	320128	54.17
Chitadzulu	15523	2024	16397	47236	1566	82746	2927	85673	146417	58.51
Blantyre	111077	2731	25394	88328	7535	235065	4745	239810	482584	49.69
Mwanza	6205	346	2720	6198	1241	16710	442	17152	32195	53.28
Thyolo	25968	2054	22727	82471	1627	134847	4347	139194	259859	53.57
Phalombe	2459	1217	29699	37433	875	71683	3135	74818	134843	55.49
Mulanje	6092	2400	66769	52049	1816	129126	4221	133347	219859	60.65
Chikwawa	79561	1192	3299	30121	1528	115701	3516	119217	195146	61.09
Nsanje	51602	609	820	18099	629	71759	2494	74253	118775	62.52
Neno	7945	420	3160	7715	799	20039	531	20570	43502	47.29
GRAND TOTAL	836118	67812	286320	1195586	937965	3323801	89764	3413565	5752028	59.35
Percentage of Individual Votes against										
Total Votes	24.49	1.99	8.39	35.02	27.48		2.63			
Percentage of Individual Votes against										
Valid Votes	25.16	2.04	8.61	35.97	28.22		2.70			
Percentage of Individual Votes against										
Registered Voters	14.54	1.18	4.98	20.79	16.31		1.56			

MALAWI ELECTORAL COMMISSION PRESIDENTIAL SUMMARY RESULTS FOR 2004 ELECTIONS