

**MALAWI:
PRESIDENTIAL AND PARLIAMENTARY ELECTIONS
MAY 2004**

Report
by
Morten Jødal

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Preface

Upon the invitation of the Malawi Electoral Commission (MEC), the European Union established an Election Observation Mission (EU EOM) to observe the 20 May presidential and parliamentary elections in Malawi. The EU EOM was led by Chief Observer Mrs Marieke Sanders-ten Holte from the Netherlands. She is Vice-President of the Development and Cooperation Committee of the European Parliament, and member of the parliamentary assembly of the Africa Caribbean Pacific-European Union (ACP-EU).

The objective of the EU EOM was to make a comprehensive and national analysis of the electoral process, and offer an impartial, balanced and informed assessment of the elections. Furthermore, by presence of the observers, the EOM sought to reduce tensions, minimize instances of fraud, intimidation and violence, and increase confidence to contestants and voters to participate freely.

The EOM's core team was established in Blantyre on 5 April 2004 and consisted of the Chief Observer, a Deputy-Chief Observer, an election/legal expert, a media expert, an LTO coordinator, and an operation expert. On 14 April 22 long-term observers (LTOs) arrived, and on 9 May there arrived a total of 51 short-term observers (STOs). In addition, a delegation of five members of the ACP-EU Joint Parliamentary Assembly was present in Malawi during election day.

Other international organisations that sent observers included the Commonwealth, SADC, EISA, and the African Union.

Domestic observers from 5-6 organisations, in addition to party observers, were active throughout the country. At every polling station they were present with at least 3 observers and in many places as many as 10 domestic observers were present.

On election day EU observers were present in 27 out of 28 districts in the country where they visited more than 880 polling stations.

Two Norwegian LTOs were recruited to the mission by NORDEM: Jan Stølen and Morten Jødal were deployed to Mzimba, and Chikwawa & Nsanje, respectively.

Additionally, the Norwegian Centre for Democratic Support ("Senter for Demokratistøtte") sent five Norwegian STOs to observe on election day. They were: Anne Marie Leirfall (deployed to Mchinji district), Alf Rose Sørsgaarden (Ntchisi district), Lill Marie Ulvær (Salima), Anja Riiser (Mwanza), and Henrik Klette (deployed to Balaka).

This report is based on the EU EOM Statement of Preliminary Conclusions and Findings (Preliminary Statement) and the specific observations of the Norwegian LTO.

The Norwegian Centre for Human Rights/NORDEM

University of Oslo

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1. INTRODUCTION

The EU EOM in Malawi assessed large parts of the electoral process, including the legal and administrative framework, the political environment and campaign, the media conduct as well as the voting, counting and tabulation procedures. Shortly after election day on 20 May, the EOM issued a Preliminary Statement on the conduct of the elections. In August, a final and more comprehensive report will be handed over to the Electoral Commission in Malawi, containing the detailed findings and recommendations of the mission.

In its Preliminary Statement, the EU EOM stated that:

“The 2004 presidential and parliamentary elections were conducted in a generally peaceful environment and provided a wide choice of political contestants. Voters demonstrated awareness and interest in the electoral process”.

However, during the pre-election period, the observers, the opposition and newspapers identified three main problems: Firstly, the voter rolls were inaccurate. Secondly, there was abuse of state resources during the campaign period. Thirdly, the media proved to be heavily biased.

The same problems were also noted by the EOM in its Preliminary Statement and concerning the updating of the voter roll, the EOM noted that the process was unsatisfactory and that it resulted in considerable confusion and lack of confidence among both voters and contestants.

It appeared that the Malawi Electoral Commission (MEC) was unable to solve the above problems. The EOM noted that the MEC did not exercise its full responsibility under the legal framework. It failed to address complaints regarding the voter roll, abuse of state resources and the biased media coverage.

During the pre-election period, most independent candidates the LTOs met expressed a will to join “the winning team” if elected. This demonstrated a weak party affiliation, also because most of the independent candidates had previously represented a party, before deciding to run on their own.

Furthermore, the observers noticed that most of the parliamentary candidates had insufficient campaign funds and were not able to, e.g., print campaign material. Instead, candidates staged public meetings in order to present themselves to the electorate.

The LTOs met several MPs, who claimed that the working climate in parliament was difficult and representatives of both the ruling party and the opposition stated they had problems cooperating with each other.

The LTOs were under the impression that many of the candidates for parliament predominately might have been attracted to politics at the national level in order to obtain a good salary, and the social benefits that came with the position.

Religion played a greater role than previously during these elections. This was partly explained by the religious affiliations of some of the presidential candidates and the pre-election period witnessed both Christian and Muslim NGOs campaigning for ‘their’ candidates.

In its assessment of the pre-election period, the EOM noted that it failed to provide a level playing field for all political contestants due to biased media coverage and abuse of state resources on behalf of the ruling party.

As for the media's role in these elections, the EOM stated that the state controlled electronic media showed substantial bias in favour of the ruling coalition, almost to the exclusion of opposition- and independent candidates. However, it is unclear what the impact this had on the voters since most voters do not have access to neither print nor electronic media anyway.¹

On election day, EU observers positively assessed polling and counting in the vast majority of polling stations visited. Observers reported that the secrecy of vote was properly maintained and that inking of voters was consistently undertaken. Furthermore, party and candidate representatives were present in polling stations throughout the country

In the LTOs' area of responsibility (AoR), election day proceeded very peacefully and the security was taken care of by the police and the army. The logistics were good, and the elections were orderly conducted.

The main problems observed on election day revolved around the inaccuracy of the voter roll. Polling staffs handled the problem in different ways, with some refusing hundreds of transfers² to cast their vote.

Polling was generally completed after six hours of voting. Had the polling stations closed earlier, counting could have taken place in daylight. As it was, the EOM reported that counting took a long time to complete and was undertaken in rooms only lit by candles.

The election results were not obtainable for the LTOs, and they could therefore not check the results at the district level.

2. POLITICAL BACKGROUND

Malawi is the least developed country in Southern Africa. It occupies an area of 118,480 sq. km, and has a population of about 11,7 million people. The country is landlocked, but Lake Malawi covers 20% of the country's territory and provides fishing resources.

Malawi became a British colony in 1891 and was given the name Nyasaland British Protectorate. The population of Malawi was mainly used as work labour in other British colonies.

The liberation movement Nyasaland African Congress (NAC) was established in 1944, with independence as a final goal. The 1950s saw increasing resistance and opposition towards the English. In 1959 NAC was declared illegal and all its leaders arrested. The same year, the new organisation Malawi Congress Party (MCP) was established and took over power when the country was liberated in 1964.

Malawi was a declared one-party-state from 1966 to 1993, with Kamuzu Hastings Banda appointed as 'Life-Time President'. Banda continued the indirect ruling from the British period, focused a lot of the Chewa people, and maintained good relations with the Traditional Authorities.

From 1965 to 1979 Malawi experienced a 6% annual growth in GNP, owing largely to extensive focus on the agricultural sector. The international changes in the raw material prices towards the end of the 1970s heavily affected Malawi, and the country went through an economic crisis in the period 1979-

¹ See also chapter 9.

² The term 'transfer' denotes a voter who has moved from one constituency to another and who wishes to vote in his new constituency.

81. Structural adjustments with the aid of IMF and the World Bank did little to improve the situation, and drought in the beginning of the 1990s even worsened it. Changes were inevitable, and through a referendum in 1993 the Malawian population decided to introduce a multi-party system. In the elections in 1994 Banda lost power to UDF, and Bakili Mulizi became the new president.

Presentation of the most important political parties and candidates

In front of these elections, there were totally 30 registered political parties in Malawi, of which 15 fielded candidates. Two coalitions aiming mainly for the presidential election were established: The *Mgwirizano*-coalition (7 parties), and the *UDF/AFORD/NCD* coalition.

In the last weeks before the elections, the opposition parties had discussions where they tried to put forward one common presidential candidate, but without succeeding. Finally, five candidates contested in the presidential election.

For the parliamentary election, there were a total of 1,277 candidates running. Of these, 382 (30%) ran as independent candidates.

Parties contesting the parliamentary elections

In the list below, only the political parties that won seats in the parliament are presented.³

People's Transformation Movement (PETRA)

The party registered about one and a half year ago and is headed by Kamuzu Chibambo. It was specially founded by a grouping determined to "transform" the people of Malawi from being donor-dependent into becoming self-reliant. During the campaign, the party failed to make much impression.

Malawi Congress Party (MCP)

The party ruled the country since independence in 1964 until the multiparty transition in 1994, all through the leadership of President Banda. Since the death of Banda in 1997, the party has been facing continuous leadership wrangles. Currently, John Tembo is its president. The party contested alone in the 2004 elections.

Alliance For Democracy (AFORD)

The party was one of the two major opposition parties in the 1994 first democratic general elections. It has had a number of working alliances with both the ruling UDF and opposition parties. For these elections, it formed an electoral alliance with the UDF, having left the National Unity government established last year. It is headed by Chakufwa Chihana.

People's Progressive Movement (PPM)

The PPM registered about a year ago and held its first national convention in January 2004. Aleke Banda is its president. Banda was a prominent cabinet minister in the United Democratic Front until he resigned from the party last year. Another prominent member of PPM is Justin Malewezi, who was first Vice-President of Malawi from 1994. For these elections, it was part of the *Mgwirizano* coalition, and A. Banda was the coalition's vice-president.

³ For a complete list of parties, see appendix 3.

Congress for National Unity (CONU)

The party contested in the 1999 general elections. Its president was not contesting in the 2004 elections.

United Democratic Front (UDF)

The UDF has been the ruling party since 1994. Its president is Bakili Muluzi, who was also elected as the national chairman of the party for the next five years. The party's presidential candidate was Bingu wa Mutharika.

Movement for Genuine Democracy (MGODE)

The party was formed about a year ago, as a break-away party from AFORD and contested the elections as a member of the *Mgwirizano* coalition. Sam Kandodo Banda heads the party.

National Democratic Alliance (NDA)

The NDA was formed about three years ago and is headed by Brown Mpinganjira. Mr. Mpinganjira was a very influential member of both the NEC and cabinet before he parted ways with the UDF. The party contested the 2004 elections on its own.

Republican Party (RP)

The Republican Party was formed in January 2004 as a breakaway party from the MCP. Its president is Gwanda Chakwamba, who is also the presidential candidate for the *Mgwirizano* coalition. Mr. Chakwamba was the opposition leader in the 1999 elections against the ruling UDF's Muluzi.

Presidential candidates

Bingu wa Mutharika comes from the southern tea-growing district of Thyolo, stronghold of the ruling UDF. He has nursed ambitions of ruling Malawi since the Banda dictatorship began to unravel in 1993. The former World Bank economist has pledged to stabilise the economy and to develop Malawi.

Gwanda Chakuamba comes from the absolute southern part of Malawi, where he has his stronghold. He has been in politics in Malawi since 1958, where he has been both in power and in prison. In January 2004 he broke out of the MCP, and created his own party: The Republican Party (RP).

John Tembo is the longest serving politician in the Malawi Congress Party (MCP), whose authoritarian regime under Banda spanned 30 years from 1964 to 1994.

Brown Mpinganjira was in government until year 2000, when he was accused of corruption, and consequently thrown out. He was later acquitted in court, and came strongly back as the presidential candidate for the NDA in front of the 2004 elections.

Justin Malewezi was the first Vice-President of Malawi. He was sidelined by the ruling UDF as the party's presidential candidate, and decided to quit the party on 1 January 2004. He later joined forces with the opposition People's Progressive Movement (PPM) where he was elected vice-president. There

he hoped to be elected the front-runner for the *Mgwirizano* Coalition. Things did not quite work out according to the plan, as the coalition chose veteran politician Gwanda Chakuamba to be its presidential candidate. Mr. Malewezi therefore decided to run as an independent candidate.

3. THE LEGISLATIVE FRAMEWORK

The EOM stated in its Preliminary Statement that the legislation governing the electoral process provided an adequate framework for the conduct of democratic elections. However, according to the EOM, certain key areas of the electoral legislation leave room for improvement, including the rules governing the composition of the MEC and clarification of the role of MEC and Malawi Communications Regulatory Authority (MACRA) competencies regarding regulation of the media during the campaign period.

The legal instruments regulating the election process are:

- The Constitution of Malawi of 18 May 1994
- Malawi Electoral Commission Act No. 11 of 1998
- Parliamentary and Presidential Election Act No. 31 of 1993
- Local Government Election Act No. 24 of 1996
- Communications Act No. 41 of 1996
- Political Parties (Registration and Regulation) Act No. 15 of 1995
- Political Parties Code of Conduct

The Constitution reads that Malawi is a republic with a president, who according to Art. 78, is the head of state and the head of government. An elected first vice-president assists the President in his/her duties.

The parliament, which consists of the National Assembly and the President as head of state, has legislative powers. According to the Constitution, the number of seats in the national assembly should be determined by the MEC. It currently stands at 193.

Administratively, Malawi is divided into three regions (North, Centre and South), 40 Assemblies comprising 28 districts assemblies, the three cities of Lilongwe, Blantyre and Mzuzu, 9 town assemblies and 859 wards. Assemblies and wards are relevant only for local elections.

There are totally 193 constituencies in Malawi. Each constituency elects one MP by simple majority. Similarly, the president of Malawi is elected by simple majority at the national level.

A main observation of the EU EOM was the lack of transparency during the process of aggregation of the results. According the election legislation, the results must immediately be transferred to the MEC in Blantyre. Since results were not displayed at the districts level, the LTOs were not able to crosscheck their findings from election day with the final results provided by the MEC.

4. THE ELECTORAL ADMINISTRATION

The EU EOM noted the following regarding the work of the Malawi Electoral Commission: The legal framework provides the MEC with a mandate to exercise general direction and supervision of the elections. However, the MEC did not exercise its powers and responsibilities in a satisfactory way. In particular, it failed to address complaints filed by political contestants relating primarily to problems with the voter roll, abuse of state resources and biased media coverage. A ruling by the Supreme Court on 18 May confirmed the above and led to widespread mistrust in the body's ability to act independently.

The elections were organized and conducted by the MEC. The structure of the election administration bodies was as follows:

- Malawi Electoral Commission (Chairman and 8 Commissioners)
- 3 regional election offices
- 28 districts election offices (returning officers)
- 193 constituencies in 28 districts (assistant returning officers)
- 3,891 polling centres

The MEC functions within the powers conferred upon it by the Constitution of the Republic of Malawi and its duties and affairs are regulated by provision in the electoral laws. Its responsibilities include to: determine constituency boundaries; revise and alter existing constituencies; consider electoral petitions and complaints; and ensure compliance with the law.

The timeline of the operations was as follows (original plan, before postponement of the elections by two days):

Registration of voters	5-28 January
Nomination of presidential candidates	23 March
Nomination of candidates for the National Assembly	26 February
Beginning of official campaign	20 February
Dissolution of National Assembly	20 March
Recruitment of polling officials	22-27 March
Display of all voter rolls in all centres	12-18 April
Training of presiding officers	26-30 April
Training of polling workers	16-17 May
Campaign silence	Polling day - 48 hours
Polling day	18 May
Counting	18-19 May
Announcement of results	20 May
Publication of results	25 May

Every district in Malawi had a core-team of five people working full time preparing for the elections: This core-team consisted of the district commissioner (simultaneously the returning officer), two election clerks, and two stringers (reporters).

In addition, each district had a District Election Supervision Team (DEST), consisting of eight or nine people working in the District Administration. DEST officials carried out voter education and arranged meetings of the Multi Party Liaison Committee (MPLC).

Composition and appointments of the electoral bodies

The chairman of the MEC shall be a judge, nominated by the Judicial Service Commission. The president of the Republic has the prerogative to appoint the candidate so nominated as the chairman of the electoral commission. The rest of the commissioners are all appointed by the president, subject to the constitution and in consultation with the leaders of the political parties represented in the national assembly.

In forefront of these elections the MEC was comprised of four members from UDF, two members from AFORD and two members from MCP.

In every district in Malawi the districts commissioner (DC) also functioned as the returning officer in the elections. The DCs are appointed by Malawi's minister of local government and are responsible for appointing all the polling staff at the polling centres. In forefront of the 2004 elections, many DCs were relocated.

From what the LTOs observed, the returning officers generally seemed to have a high level of integrity, and they prepared and conducted the elections in a professional manner. There were, however, some accusations from political parties about the opposite but the LTO team did not look further into these matters and there were no formal complaints.

5. VOTER AND CIVIC EDUCATION

The EOM assessed that while most of the voter education provided by civil society organisations was of good quality, there was insufficient focus on e.g. women and the illiterate. In addition, voter education broadcast by state channels MBC and TVM was poor and special programmes relating to this matter were only aired during the last two weeks of the electoral campaign.

Voter education was carried out by different bodies. Training was conducted by the National Initiative for Civic Education (NICE), the Public Affairs Committee (PAC), the Catholic Commission for Justice and Peace (CCJP), Civil Liberties Committee (CILIC), Society and Church (SC), Association of Progressive Women (APW) (represented by men), and the DEST. The NGOs worked with local coordinators and volunteers to educate the electorate.

The NGOs and the DC's office formally cooperated, and in the villages they sometimes operated together in the practical training.

However, there seemed to have been less, and insufficient voter education in these elections than in previous ones. All organisations reported that their budgets were tight, and they could therefore not devote as much attention to the elections this time. Although traditional leaders were trained to disseminate the essential information, the desired trickle-down effect did not take place. Most voters did not receive any instructions at all.

6. VOTER REGISTRATION

The EOM reported that the voter registration process was widely regarded as unsatisfactory by election stakeholders. After initial registration problems, the final voter roll was published on 9 May. However, it contained nearly a million fewer names than the figure previously given by the MEC.

Following the publication of the voter list, the *Mgwirizano* coalition lodged a complaint with the High Court, which ruled that the list be displayed for public inspection for verification purposes from 14 to 19 May. This resulted in the MEC delaying the elections until 20 May.

However, little information reached the public regarding the public display of the voter list. Consequently, the MEC allowed registered voters, whose names was not on the updated voter roll, to vote on the basis of the 1999 voter roll or voter registration cards.

7. CANDIDATE REGISTRATION

The registration of the candidates by the MEC had already taken place some time before the arrival of the EU EOM. Seemingly, the process took place without major problems.

The MEC decided on 26 February 2004 as the date for the receipt of nomination papers for candidates for the National Assembly, and 23 March for the presidential candidates. However, all the candidates for president submitted their registration papers on 25 February, well ahead of the deadline.

Each parliamentary candidate had to pay a non-refundable fee of MK 5,000 and every presidential candidate MK 50,000.

The interesting phase of the candidate registration took place during the primary elections (nominations). In many places, this process was not transparent, free or fair, and several complaints were voiced during the LTOs' meetings with the candidates. The high number of independent candidates was a result of candidates not accepting defeat in the primary elections, as well as high interest in taking part in politics in Malawi. Nearly all the independent candidates had lost in the primary elections, especially those initially representing UDF, but they still wanted a seat in parliament.

8. THE ELECTION CAMPAIGN

In its Preliminary Statement, the EOM reported that political parties and presidential candidates campaigned throughout the country. The campaigns of the ruling party and the *Mgwirizano* coalition were the most visible, while campaigns of other parties lacked the same level of visibility. Generally, few campaign posters were seen around the country.

The EOM noted furthermore that parliamentary candidates were mainly active in the constituency in which they were standing, but that their resources were limited. In general campaigns seemed to be based more on personalities than issues.

Throughout the pre-election period the atmosphere remained calm, although a number of isolated incidents were reported. In addition, there was tension between the ruling party and former UDF members who were running as independent candidates.

According to the Constitution, every person in Malawi has the freedom of association, freedom of expression, the right to form, join, participate in the activities of and recruit members for a political party, to campaign for a political party, to participate in peaceful political activities, to freely make political choices and to stand for election for public office.

Moreover, all political parties are guaranteed the rights to campaign, to have its campaign propaganda reported on radio news broadcasts of Malawi Broadcasting Corporation (MBC) and in any newspaper in Malawi, and is to be treated equally with other political parties by every public officer, entity or authority to conduct their campaign freely.

Every political party may appeal for and receive voluntary contributions from any individual or non-governmental organisation or other private organisation in or outside Malawi. The use of state resources by the incumbent parties during the campaign was alleged by most interlocutors, but is not prohibited by the Electoral Act and the Code of Conduct. Nevertheless, the use of state resources is contrary to the fundamental principles of the Constitution and basic rules of campaign practice.

The LTOs' overall impression of the election campaign was that it was mostly peaceful.

Since the media played a minor role in the LTOs' AoR, not much effort was put into the conduct of rallies and political campaigning was highly standardized. All the candidates carried out exactly the same type of campaigning. They held rallies that lasted for 3-4 hours. The meetings included singing and dancing, short appeals from party-members, a prayer, and finally a speech given by the candidate. The political content seemed to be of minor importance, while the way of acting and performing sometimes brought the audience into frenzy. Castigating and disparaging of competitors was a popular practice and it was reported that candidates would simply declare that their competitors had withdrawn. The practise was often criticised and in some cases village leaders complained about the lack of decency and well behaviour.

Some of the political parties organised their rallies through *Local Area Committees*, which were to be found in nearly every village. Others based their activities on a small group of activists, travelling around in the constituency.

The role of the Traditional Authorities (TA) was poorly understood by the observers. The connection between the TA and the political authorities and how it influences on the electorate is unclear.

All opposition candidates complained that their UDF competitors had more money and campaigning material than themselves. They pointed out this disparity and alleged it was due to abuse of public money.

Various sources reported to the LTOs that the governing parties intimidated voters by scrutinizing voters certificates and noting down the numbers of the respective certificates. Although this had no practical relevance for the voting process, many felt intimidated. They might have been told that their voting preferences could be traced by this procedure. Two of the UDF-candidates admitted to have recorded the certificate numbers. They had reportedly done so in order to "have an idea of their supporters, and provide them with T-shirts and other materials".

When stating political priorities, the parliamentary candidates usually mentioned the following fields: Drilling for water and better water supply; education; health; safe food; communication; activation of the youth (to avoid criminal acts), improvement of the infrastructure; and cheaper fertilizers. Candidates were, however, not good at explaining to the electorate how they planned to achieve their goals, and only a few candidates the LTOs met had any concrete proposals in this sense.

During the pre-election period the LTOs met several independent candidates. Most of them expressed a wish to “join the winning team” in parliament if elected. The tendency towards candidates leaving their party and becoming independent candidates, and the massive movement from the Malawi Congress Party (MCP) to the Republican Party (RP) clearly demonstrated a very weak party affiliation in Malawi. In reality, there are no political parties in the country such as many of the traditional parties known in Western Europe. Rather, there are strong individual candidates and political leaders gathering support.

The LTOs noticed that most of the candidates running for parliament had poor economy, without the means to produce printed material and present themselves to the voters in any other way than meeting them in rallies. Some of the candidates also ran out of funds towards the end of the campaigning period, the exception being some of the United Democratic Front (UDF) candidates. For the funding of this party, there seemed to have been a mixture of private funds, party money, state money, and foreign donations, which enabled them to present themselves to the electorate. The RP, the National Democratic Alliance (NDA) and MCP also provided some funds for their candidates.

All members of parliament (MPs), including ministers, and parliamentary candidates the LTOs met with emphasized the difficult political climate in parliament. MPs in opposition expressed difficulties in cooperating with the ruling party. They also claimed it was difficult to obtain results for their own constituencies. On the other hand, UDF representatives criticised opposition MPs for not cooperating with them in parliament: “*MPs in opposition are not interested in obtaining results for their own constituencies, because that would prove the efficiency of the ruling party*” (sic).

Previously, religion did not play an important role in politics in Malawi, although the Church was heavily involved in the process leading up to the referendum in 1993. This is now slowly changing. In the 2004 elections, some of the Christian churches and priests actively encouraged people to vote for the opposition, although officially they were neutral and unbiased. Christian NGOs (e.g. PAC) did the same, although they were accredited for observing the elections. Similarly, some of the Muslim societies silently campaigned for UDF. The background of these positions was partly determined by the religious affiliations of some of the presidential candidates: Gwanda Chakuamba is a Seventh-Day Adventist, and was therefore supported by the Christians, while Bakili Muluzi and the new vice-president candidate of the UDF are Muslim.

9. THE MEDIA

The EOM noticed that the electoral campaign was extensively covered by both electronic and print media, and that private newspapers and radio stations showed a variety of political tendencies. However, despite legal provisions⁴ requiring neutrality, balance and equitable reporting by the media during the election period, the state controlled electronic media showed substantial bias in favour of UDF/AFORD/NCD and its presidential candidate.

According to the findings of the EU EOM media monitoring, the Malawi Broadcasting Corporation (MBC 1) allocated 97.7% of its election coverage to UDF/AFORD/NCD between 16 April and 17 May, while Television of Malawi (TVM) allocated 79.5% of its election coverage to

⁴ i.e. the Presidential and Parliamentary Elections Act and the Communications Act.

UDF/AFORD/NCD. On both state controlled stations, all of this coverage was either neutral or positive in tone.

Unclear attribution of responsibilities to the MEC and MACRA in regulating the media during the campaign period led to a gap in addressing this aspect of the electoral process. Since this was not clarified before the start of the campaign period and both bodies stated that it was the responsibility of the other, it resulted in neither body taking action to address the biased coverage by the electronic state controlled media.

Private radio stations monitored by the EU EOM provided reasonably balanced coverage of the campaign, with all parties included in their broadcasts. Some stations, however, such as MIJ, devoted a more negative tone to the UDF presidential candidate than other contestants.

The print media monitored by the EU EOM generally provided good coverage to all contestants with an equal amount of space devoted to parties and candidates. However, the two daily newspapers, *The Daily Times* and *The Nation*, exhibited a negative tone and questionable neutrality when referring to the ruling coalition, and especially its presidential candidate.

In the observers' AoR (Lower Shire Valley), as well as most other places in the countryside, there were no local media outlets. At the DC's office, there were two "stringers" (i.e. journalists), producing news from the political campaigning in the district for all medias. In Nsanje District, only *The Chronicle* could be bought once a week, and only a total of 60+60 copies were available in Bangula and Nsanje, respectively.

The population's access to TV-broadcasts is close to zero, and due to poverty even the radio has a very low number of listeners – maybe less than 10%. Hardly any people read newspapers, due to both illiteracy and very limited availability. The LTOs therefore concluded that the print and electronic media has very little influence on the electorate in villages or elsewhere in the countryside.⁵ For rural inhabitants, personal knowledge and direct contact with the candidates, and general knowledge of their qualifications is probably much more important than information channelled through the media. People tend to vote for the candidate coming from the same area. Moreover, the influence of the Traditional Authorities on voters seems to be more crucial than that of the media.

10. OBSERVATION ON POLLING DAY

In its Preliminary Statement, the EU EOM positively summed up election day and congratulated the electoral administration, party/candidate representatives and domestic observers for contributing to a peaceful and transparent election day.

EU observers positively evaluated voting and counting in the vast majority of polling centres visited. However, problems with the voter roll were apparent in around one third of the centres. In spite of this, voters remained calm and behaved orderly.

The problems the LTOs saw on the election day were all related to the voter rolls (VR). They were not satisfactory, due to transfers not being on the lists, missing names, misspellings and wrong names,

⁵ More than 70 % of the population of Malawi live in rural areas.

wrong or missing pictures, and the inclusion of names of deceased people. The polling staffs were not well prepared for these inaccuracies, and handled the problems differently. In one polling centre, hundreds of transfers were not allowed to vote, and in many places they did not record the names of those who voted whose names were not found on the voter list.

The elections were generally over at noon after six hours of polling. During the last 3-4 opening hours (from 14:00) very few voters showed up. Although voter turnout was less than 50 percent, the LTOs believe that polling stations could have closed at 16:00. Even at polling centres with a turnout of 65 percent, extremely few voters came during the last two hours. These could easily have been squeezed in during a ten-hour session. Finalizing earlier would have made it possible to do most of the counting in daylight.

Election-day procedures

On election day, there were two separate elections; one for parliament and one for the post of president.

The following practises took place on election day:

- Polling stations opened at 06:00 and closed at 18:00;
- Ballot boxes were shown to be empty to the public, and then sealed;
- Voters presented their voter certificates, and were checked and ticked in the voter roll. For these elections, voters not having a voter certificate were allowed to vote in case they were found on the VR. Similarly, voters were allowed to vote if they presented a voter card issued for the polling station, even though they were not found on the VR;
- Separate fingers were inked before casting each of the two ballots;
- Party observers and domestic observers were present in the polling centre during election day, as well as security personnel (police and military);
- The secrecy of the vote had to be respected;
- Counting took place directly after closing of the polling station, and the results were displayed;
- Several forms (protocols) were filled in, and all were signed by party agents and observers;
- The results from the polling stations were directly submitted to the returning officer for aggregation of the results; and
- The aggregated results at the districts level were not displayed and were immediately submitted to the MEC in Blantyre.

Election Day Observation Day Report from LTO Morten Jødal

General information

The Lower Shire Valley, comprising the two districts Nsanje and Chikwawa, was a stronghold of the presidential candidate Gwanda Chakuamba, who is from Nsanje. Until 2004 he was a member of the Malawi Congress Party (MCP), but then lost the nomination as the party's presidential candidate. Consequently, he created his own party, the Republican Party (RP). When this happened, MCP fell totally apart in the Lower Shire. In 1999, MCP won three parliamentary seats in Chikwawa (50%) and five (100%) in Nsanje. They were all lost in 2004 elections.

In the two districts, five political parties (MCP, PPM, NDA, RP & UDF) and ten independent candidates ran in the parliamentary elections. The total number of candidates was 30 in Chikwawa and

18 in Nsanje. Most of the independent candidates had previously lost the primaries, especially those initially representing the UDF. This way, the former ruling party lost seats and power. However, some of the independent candidates were still members of UDF.

Observations of polling and aggregation of results

The findings of the LTOs in the districts of Nsanje and Chikwawa regarding election day were in line with the overall findings and conclusions of the EU EOM. In those districts election day proceeded very peacefully, and the security was taken care of by the police and the army. The logistics were good, and the elections were orderly conducted. The polling staffs were dedicated and fulfilled their duties. There were also plenty of domestic observers present at every single polling station.

As mentioned previously, aggregated results were not available at the district level since they were not publicly displayed but sent directly to the MEC. This lack of transparency made it impossible for LTOs to cross check the results with those of the MEC.

Results of the elections⁶

During the elections in 1994 and 1999 the country was divided in three political regions. AFORD had its stronghold in north, MCP in the middle region, and UDF in south. After the 2004 elections in this picture dramatically changed. AFORD lost most of its seats, and was nearly wiped out of parliament. MCP became stronger and massively won in the middle belt while UDF and RP did well in the south. UDF was the loser during the 2004 elections.

There is no doubt that the opposition would have won the presidential election, had they been able to unify behind one single candidate.

11. THE REVIEW OF COMPLAINTS PROCESS

According to the EOM, the Malawi Electoral Commission (MEC) did not exercise its full responsibility under the Constitution and the Parliamentary and Presidential Elections Act, failing in particular to address complaints filed by political parties and candidates concerning the voter roll, the abuse of state resources and biased media coverage.

A positive contribution to the development of democracy in Malawi was the way the High Court and Supreme Court dealt with electoral complaints in a timely and independent manner. In some areas Multi-Party Liaison Committees provided a useful forum for addressing problems in the campaign period.

The following procedures apply regarding the complaints process: Any complaint submitted in writing alleging any irregularity at any stage, if not satisfactorily resolved at a lower level of authority, shall be examined and decided on by the MEC, and where the irregularity is confirmed, the Commission shall take necessary action to correct the irregularity and the effects thereof.

⁶ For more detailed results, see appendix 2

The Commission shall endeavour to determine every complaint or appeal relating to registration of voters before the polling day and remedy any confirmed irregularity.

The decision by the Commission can be appealed to the High Court by the way of petition supported by affidavits of evidence clearly specifying the declaration the High Court is requested to make.

At the district level, complaints and disputes were handled by the MPLC. The MPLC had in total 4-5 meetings in Chikwawa, and probably 2-3 in Nsanje. During their sessions, they mainly discussed problems that arose between the Traditional Authorities and the political candidates. Other disputes were about the registration of numbers on the voter certificates, which mostly seemed to have taken place in the beginning of the election campaign.

12. COMMENTS ON THE ELECTION OBSERVATION MISSION

To better understand the cultural and socio-economic background for the elections, the LTOs believe that every EOM core team should include a country expert.

This LTO would recommend higher number of LTOs. There are already many domestic and other organisations observing election day so with limited resources increasing the number LTOs could be more useful to the EOM.

This LTO believes that election observation missions focus too much on technical measures, such as analysing the media in a context where the print and electronic media possibly has very little influence on most voters' behaviour.

This LTOs would have appreciated more information from the core team about the overall situation and the EOM's findings during the mission period.

APPENDICES

1. EU EOM Statement of Preliminary Conclusions and Findings
2. Presidential and parliamentary election results
3. List over registered parties and representation

Appendix 1

**European Union Election Observation Mission to Malawi 2004****Peacefully conducted elections with a wide choice of political contestants marred by serious shortcomings in the electoral process****Blantyre, 22 May 2004**

The European Union Election Observation Mission (EU EOM) has been present in Malawi since 5 April to observe the presidential and parliamentary elections, originally scheduled for 18 May 2004, but postponed until 20 May 2004. The EU EOM came to Malawi at the invitation of the Malawi Electoral Commission (MEC) and after the conclusion of a Memorandum of Understanding between the Government of Malawi and the European Commission covering its presence in Malawi.

The Mission is led by Chief Observer Mrs Marieke Sanders-ten Holte from the Netherlands, Member of the European Parliament, Vice President of its Development and Cooperation Committee, who headed a core team of five experts that are present in country for a total of eight weeks. A total of 22 Long-Term Observers (LTOs) were deployed throughout the country for six weeks and 51 Short-Term Observers (STOs) joined the mission to observe voting, counting and the tabulation of results. A total of 79 observers from 13 Member States of the European Union and Norway were therefore present in country. A delegation of five members of the Africa Caribbean Pacific-European Union (ACP-EU) Joint Parliamentary Assembly, headed by Mrs Karin Junker and Mr. Ephriam Kamuntu, was also present in the country over the election day period and shares the conclusions of this preliminary statement.

PRELIMINARY CONCLUSIONS

- **The 2004 presidential and parliamentary elections were conducted in a generally peaceful environment and provided a wide choice of political contestants. Voters demonstrated awareness and interest in the electoral process.**
- **On election day, voting and counting were assessed positively in the vast majority of polling stations visited by EU observers. Party and candidate representatives and domestic observers were present in polling stations throughout the country. The**

secrecy of the vote was properly maintained and inking of voters undertaken in virtually all polling stations visited.

- The EU EOM wishes to congratulate election officials, party and candidate representatives and domestic observers for their dedication and contribution to a peaceful and transparent election day. The EU observers were impressed by the patience and orderly behaviour of the public throughout the day, even though problems with the voter roll were apparent in around one third of polling stations observed.
- Another positive contribution to the development of democracy in Malawi was the way the High Court and Supreme Court dealt with electoral complaints in a timely and independent manner. In some areas Multi-Party Liaison Committees provided a useful forum for addressing problems in the campaign period and civil society played a greater role than in the past in voter education and election monitoring.
- However, the pre-election period failed to provide a level playing field for all political contestants. Throughout the campaign period the state controlled electronic media showed substantial bias in favour of the ruling coalition in its news coverage, almost to the exclusion of opposition parties and independent candidates. There was widespread and overt distribution of money to voters and abuse of state resources by the ruling party, including the use of government vehicles and human resources.
- The Malawi Electoral Commission (MEC) did not exercise its full responsibility under the Constitution and the Parliamentary and Presidential Elections Act, failing in particular to address complaints filed by political parties and candidates concerning the voter roll, the abuse of state resources and biased media coverage. This contributed to widespread mistrust in the MEC's ability to act independently.
- The process of updating the voter roll was unsatisfactory and resulted in considerable confusion and lack of confidence amongst voters and other stakeholders in the electoral process. Following a ruling of the Supreme Court, verification only took place between 14-19 May and resulted in the elections being delayed for two days. Nevertheless, during this period, the voter roll was still not easily accessible to eligible voters.
- In an encouraging development, more women stood as candidates than in the past, and women were well represented in the election administration. However, much more needs to be done in terms of civic education to involve more women in the process and acquire equal representation in public office.
- Civil society organisations played a significant role in election observation and the delivery of voter education. While much of the voter education was of a good quality,

coverage was not sufficient and greater attention could have been paid to women, the illiterate and vulnerable groups.

- **Tabulation of results is still ongoing and the final results of the elections are still to be declared by the MEC. The EU EOM will continue to observe this process and in the coming months will issue a final report, which will contain detailed recommendations for further improvement of the electoral process.**

PRELIMINARY FINDINGS

Constitutional and Legal Framework

The Constitution, the Parliamentary and Presidential Elections Act and other legislation regulating the electoral process provide an adequate framework for the conduct of democratic elections. However, the legislative framework could be improved in a number of key areas, including the rules governing the composition of the MEC and clarification of the role of MEC and Malawi Communications Regulatory Authority (MACRA) competencies relating to regulation of the media during the campaign period. Political will is needed to implement these changes. The legislative framework would also benefit from the introduction of provisions to require transparency in the declaration of campaign funds from private sources.

A welcome aspect of the elections was the performance of the High Court and Supreme Court, which dealt with electoral complaints in a timely and independent manner.

Electoral Administration

Under the Constitution and the Parliamentary and Presidential Elections Act, the MEC is provided with a mandate to exercise general direction and supervision over the conduct of elections. However, the MEC did not exercise its powers and responsibilities in a satisfactory way, failing in particular, to address complaints filed by political contestants relating primarily to problems with the voter roll, abuse of state resources and biased media coverage. This was confirmed by a ruling of the Supreme Court on 18 May and contributed to a widespread mistrust in its ability to act independently.

The voter registration process was widely regarded as unsatisfactory by election stakeholders. Following problems during the registration period in January 2004, the MEC was unable to process all of the registration data in time for the April verification period and subsequently missed a number of its own deadlines for the publication of the voter roll. When the final version was published on 9 May, it contained nearly a million fewer names than the figure provided previously by the MEC. This resulted in widespread concern among election stakeholders and a complaint being filed at the High Court by the Mgwirizano Coalition.

The High Court ruled that the voter roll be displayed for verification purposes from 14 to 19 May which led the MEC to delay the elections until 20 May. However, this period was not widely advertised and the voter roll was not consistently available and easily accessible to eligible voters throughout the country. To cope with the shortcomings in the updated version of the voter roll, the MEC decided to allow registered voters whose names did not appear on the last version of the roll to vote, providing they could be identified using the 1999 voter roll or voter registration cards.

Pre-election environment

Political parties and presidential candidates campaigned throughout the country. While the campaigns of the ruling party and the Mgwirizano coalition were the most evident and included numerous rallies, the campaigns of other parties lacked visibility. Parliamentary candidates were generally active in the constituency in which they were standing, but their resources were limited. Few posters were to be seen around the country. In general campaigns seemed to be based more on personalities than issues.

Throughout the pre-election period the atmosphere remained calm, although a number of isolated incidents were reported. In addition there was tension between the ruling party and former United Democratic Front (UDF) members who were running as independent candidates.

The newly introduced Multi-Party Liaison Committees proved to be a useful forum for settling election related disputes at the local level in some areas, although independent candidates were not always invited to attend.

There was widespread abuse of state resources by the ruling party throughout the campaign period, including the use of government vehicles and human resources. This undermined the democratic process and resulted in the lack of a level playing field for political contestants.

Distribution of money at rallies, particularly those of the UDF, was widespread and on several occasions (including Blantyre Kabala, Lilongwe South West, Lilongwe North East, Salima and Mangochi) it was directly witnessed by EU observers. Such a practice is unacceptable in a democratic election.

Media

The electoral campaign was extensively covered by both electronic and print media, with private newspapers and radio stations showing a variety of political tendencies. However, despite provisions in the Presidential and Parliamentary Elections Act and the Communications Act requiring neutrality, balance and equitable reporting by the media during an election period, the state controlled electronic media showed substantial bias in favour of UDF/AFORD/NCD and its presidential candidate.

EU EOM monitoring of the media showed that between 16 April and 17 May, the Malawi Broadcasting Corporation (MBC 1) allocated 97.7% of its election coverage to UDF/AFORD/NCD

and Television of Malawi (TVM) allocated 79.5% of its election coverage to UDF/AFORD/NCD. On both state controlled stations, all of this coverage was either neutral or positive in tone.

Voter education broadcast by MBC and TVM was poor and special programmes relating to this matter were only aired during the last two weeks of the electoral campaign.

Unclear attribution of responsibilities to the MEC and MACRA in regulating the media during the campaign period led to a gap in addressing this aspect of the electoral process. Since this was not clarified before the start of the campaign period and both bodies stated that it was the responsibility of the other, it resulted in neither body taking action to address the biased coverage by the electronic state controlled media.

Private radio stations monitored by the EU EOM provided reasonably balanced coverage of the campaign, with all parties included in their broadcasts. Some, however, such as MIJ, devoted a more negative tone to the UDF presidential candidate than other contestants.

The print media monitored by the EU EOM generally provided good coverage to all contestants with an equitable amount of space devoted to parties and candidates. However, the two daily newspapers, The Daily Times and The Nation, showed a negative tone and questionable neutrality when referring to the ruling coalition, and especially its presidential candidate.

Women's Participation in the Electoral Process

In an encouraging development, more women stood as candidates than in the past and women were given greater attention by the media. It is hoped that this will result in greater representation by women in the new parliament. Women were well represented in the election administration and civil society groups involved in the elections. However, much more needs to be done to involve more women in the electoral process and acquire equal representation in public office. In the outgoing parliament, only 8.8% (17 out of 193 MPs) were women and in local government, only 8.6% (75 out of 870 councilors) are women, well below the Southern African Development Community (SADC) target of 30%.

Civil Society

Civil society organisations played a significant role in the delivery of voter education, primarily through the National Institute for Civic Education (NICE), Public Affairs Committee (PAC) and the Catholic Committee for Justice and Peace (CCJP). While much of the voter education provided by these organizations was of a good quality, there was insufficient focus on women, the illiterate, vulnerable groups and it failed to reach eligible voters in some isolated rural areas.

A total of 21 civil society organisations were also involved in observation of the elections, under the umbrella of the Malawi Electoral Support Network, which reportedly deployed 11,000 observers on election day.

Election Day

On election day EU observers were present in 27 of the 28 districts of the country. In almost all polling stations visited by EU observers, party and candidate representatives and domestic observers from civil society were present.

Although many polling stations did not open on time, this was due to minor organizational problems. In 80% of polling stations visited, EU observers assessed the conduct of voting positively and reported that polling station officials performed their duties in a professional and independent manner. Indelible ink was applied in all polling stations visited by EU observers, although unfortunately ink stains resulted in some ballots being spoilt. The secrecy of the ballot was well maintained in virtually all polling stations visited. However, in over a third of polling stations visited by EU observers, problems with the voter roll were apparent.

Counting took place in a positive atmosphere in almost all of the polling stations visited by EU observers. In many cases, however, it took a long time to complete and was undertaken in rooms barely lit by candles, which caused unacceptable hardship for the people concerned. Some minor irregularities were reported. Party and candidate representatives were provided with a copy of the results in 80% of polling stations where counts were observed.

The EU EOM will continue to observe the tabulation and announcement of results as well as the adjudication by the MEC and the courts of any election complaints. The final assessment of these elections will depend, in part, on an evaluation of these aspects of the electoral process. A comprehensive final report, including recommendations for improving the electoral process, will be presented to the authorities by the Chief Observer at the beginning of August.

Appendix 2

PRESIDENTIAL ELECTION RESULTS**Total number of votes**

Dr. BINGU wa MUTHARIKA (UDF)	1,119,788
GWANDA CHAKUAMBA (Mgwirizano)	846,457
JOHN TEMBO (MCP)	802,302
BROWN MPINGANJIRA (NDA)	272,172
JUSTIN MALEWEZI (Independent)	78,892
TOTAL	3,119,611

PARLIAMENTARY ELECTION RESULTS**(Seats in Parliament)**

MCP	59
UDF	49
INDEPENDENT	38
RP	16
NDA	8
PPM	7
AFORD	6
MGODE	3
PETRA	1
CONU	1
Total	188

Appendix 3

REGISTERED POLITICAL PARTIES AND REPRESENTATION

PARTY	NUMBER OF CANDIDATES
1. New Dawn For Africa	0
2. Malawi Forum for Unity and Development (MAFUNDE)	21
3. Pamodzi Freedom Party	0
4. National Democratic Alliance (NDA)	187
5. People's Transformation Party (PETRA)	18
6. People's Popular Front (PPF)	2
7. People's Progressive Movement (PPM)	112
8. National Independence Party	0
9. Congress for National Unity (CONU)	2
10. National Solidarity Movement (NSM)	1
11. United Party	0
12. Malawi Democratic Union	0
13. National Patriotic Front	0
14. Mass Movement for the Young Generation	0
15. Sapitwa National Democratic Party	0
16. Congress for the Second Republic	0
17. Malawi Labor Party	0
18. People's Democratic Party	0
19. Malawi Freedom Party	0
20. United Front for Multiparty Democracy	0
21. United Democratic Front (UDF)	164
22. National United Party (NUP)	9
23. Malawi National Democratic Party	0
24. Malawi Congress Party (MCP)	174
25. Malawi Democratic Party (MDP)	10
26. Social Democratic Party	0

27. Alliance For Democracy (AFORD)	40
28. Movement for Genuine Democracy	22
29. Republican Party (RP)	110
30. New Congress for Democracy (NCD)	23