



OBSERVATION OF THE 2014 **MALAWI** TRIPARTITE ELECTIONS

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1.0 Introduction

On 20th May, 2014, Malawian voters turned out in huge numbers to participate in the first ever tripartite elections to elect a president, 193 members of parliament and 462 ward councillors awarding them the responsibility of governing their state affairs for the next five years.

Malawi electoral process is governed by the Constitution, the Electoral Commission Act, the Parliamentary & Presidential Act and the Local Government Elections Act. For the past 4 multi-party elections since the end of Hastings Banda one man rule in 1994, Malawians have been electing only the president and the members of parliament in a single election. However this was not the case for the 2014 general elections which saw voters electing the president, members of parliament and councillor concurrently. Such tripartite election was as a result of the amendment of the constitution in 2012 by parliament. In the same year Malawi Electoral Commission (MEC) was tasked by parliament to spearhead the harmonization of Electoral Laws to allow for the effective and efficient conduct of tripartite Elections.

Since the introduction of the Multi- party election in 1994, Malawians have only been able to elect councillors once, which were done in 2001. The term of the councillors elected in 2001 ended in 2005 creating a huge vacuum especially in the democratic election of such councillors since there were no legal provisions available apart from the unpopular Local Government and Electoral law amendments.

The management of elections in Malawi is conducted by an electoral commission clearly defined in chapter VII sections 75 to 77 of the Constitution of Malawi. In addition, the 1998 Electoral Commission Act, the 1993 Presidential and Parliamentary elections Act, and the 1998 Local Government Act define the mandate, powers and functions of the Malawi Electoral Commission (MEC) as well as the electoral process. The structure of the MEC as spelled out in the Electoral Commission Act comprises of a chairperson, who has to be a judge and such other members not being less than six. The Commissioners are supported by a MEC secretariat headed by the Chief Elections Officer and has a number of committees.

The 2014 Malawian election was highly contested with voters choosing for the president from 12 candidates compared to 9 candidates during the 2009 general elections. According to the Malawi Electoral Commission (MEC), there were 7,470,806 registered voters, the number having been scaled downwards by 66,742 voters from the initial 7,537,548 due to arithmetical errors in the compilation of the voter register. Voter registration for the 2014 tripartite election was conducted a fresh by MEC implying that those who had been registered previously had to re-register.

Election observation is considered to be an integral part in the determination and enhancing the credibility and transparency of the electoral processes. As such, MEC awards accreditation to individuals/groups from the African Commission, United Nations, Commonwealth, non-governmental organizations in foreign countries, foreign governments and individuals from the local organizations. Concordantly, the Kenya Human Rights Commission submitted its application for the observation of the 2014 Malawi election process. To this end, KHRC was awarded accreditation to monitor the electoral process.

2.0 Methodology

Kenya Human Rights Commission employs a long term election observation approach that effectively interrogates all the three election phases namely pre polling, polling and post polling phase. During the 2014 Malawi electioneering period KHRC utilised its *Electoral governance assessment framework* that entails the following key processes.

PRE-POLLING STAGE	POLLING STAGE	POST-POLLING STAGE
1) Civic and voter education	1) Opening of polling	1) Ballot counting and verification
2) Distribution of electoral boundaries	2) Verification of the integrity of polling material	2) Tally announcement and results transmission
3) Registration of voters	3) Voter identification	3) Vote tabulation
4) Political formations and nominations (parties, coalitions or independent candidacy)	4) Ballot casting	4) Dispute resolution
5) Campaigns	5) Closure of polling	5) Transition and handover

In the pre-polling stage, KHRC undertook initial visits to Malawi in October 2013 and held strategic partnership meetings with 5 organizations/institutions namely: Malawi National Association of the Deaf (MANAD), the Malawi Electoral Commission, the Women and Law in Southern Africa Research and Educational trust (WLSA), Centre for Human Rights and Rehabilitation (CHRR) and the Malawi Elections Support Network (MESN).

With regard to the polling phase, KHRC's observers visited Malawi Electoral Commission (MEC) offices in Blantyre and met various MEC officers including the Chief Election Officer. KHRC also used the opportunity to evaluate the preparedness of MEC as well as monitor the general electoral environment. Further, the KHRC collected information on the Election Day procedures that included opening of the polling station, voting, closing of the polling station etc.

In the post-polling stage, KHRC observers visited 1 polling station and observed vote counting procedures and the transmission of the result. After the counting procedures, KHRC observers' visited the national tallying centre located at Chichiri International conference centre (COMESA) hall to observe the tabulation of votes. With regards to other post polling procedures such as dispute resolution and transition and handover, KHRC closely monitored authoritative online media as well collected information from a domestic election observer groups in Malawi.

3.0 Observation Findings

3.1 Pre-polling stage

During the pre-polling stage KHRC observers collected information on the boundaries delimitation, voter education, political campaigns, party nomination and voter registration and noted the following:

3.1.1 Boundaries delimitation

The Malawi Electoral Commission (MEC) is mandated by the Constitution¹ to review constituencies and wards at intervals of not more than five years and change them based on the principles outlined by the Constitution. However, this has not been conducted since 1998. In 2010, the number of wards per district was reduced through an amendment of the Electoral commission Act. Malawi has 28 districts, 4 cities and 2 Municipalities that are governed by councillors. Based on the amendment, each parliamentary constituency was to consist of 2 wards except for the cases of Blantyre, Lilongwe, Mzuzu and Zomba cities; large cities namely: Blantyre and Lilongwe were to consist of 30 wards while smaller cities such as Mzuzu and Zomba were to have 15 and 10 wards respectively. Consequently, the rest of the districts were poorly represented considering that they only had 2 councillors representing the

¹ Article 76 (2)(b)

entire district. The amendment had some challenges especially those relating to the basis of determining the wards. The rationale of determining wards based on parliamentary constituency meant that the councillors will be under the Members of Parliament which undermined the independence and local representational role of the councillors that been enjoyed in the past.

3.1.2 Voter registration

The Malawi electoral commission is mandated by the Electoral Commission Act² to register voters and come up with a voter register. During the 2014 electioneering period, the Commission organized the voter registration exercise in nine phases of 14 days each. The registration exercise was conducted from 22nd July to 18th December 2013; the period was later extended to 4th January 2014 due to shortage of registration equipment.

The voter registration process during the 2014 electioneering period was well organized and faced less challenges compared to the previous electioneering periods. In order to curb the challenges that were previously experienced with regards to the maintenance of a credible voters' register, the electoral commission had proposed to utilize the Electronic Biometric Voter Registration System (EBVRS). The system involved the use of biometric technologies that utilized computers, fingerprint scanners and digital cameras to capture the bio data of the voter at the registration point. With EBVRS in place, the electoral commission sought to curb the issues of multiple registration, and timely and effective verification of voters' details. However the electronic voter registration with the use of EBVRS was never implemented due to technical and capacity challenges. Consequently, the electoral commission employed the manual registration of voters.

At the end of the registration exercise, the electoral commission was able to register 7,537, 548 voters representing 94.1% of the projected total of 8,009,734 voters ; and 16% above the 2009 electioneering period, and 11.2% above the 2010 registration for the failed local government elections. However, some political analysts disputed the figures claiming that the voting age in Malawi was lower than what the figures suggested. The conclusion was that the Electoral commission may have registered Malawians who had not attained the age of 18 years old.

After the completion of the voter registration process, the Electoral commission opened up the voter register for verification. Voters were able for the first time use mobile phone

² Section 16 (d)(e)

technology as well internet to verify their details up to three times³. After the completion of the verification exercise, the electoral commission announced that due to arithmetic errors the number of the registered voters had been scaled down to 7,470,806 voters.

3.1.3 Party Nominations

The nomination processes was conducted according to the law and was properly managed by the electoral commission. However the nomination of the running mate for the president was not done by consensus but rather as a personal prerogative of the party President. Further, the nominations of parliamentary candidates in some of the parties continued to suffer from imposition and coercion. There was an evident lack of preparation on the part of all parties for the election of councillors. In most cases these candidates were handpicked. One worrying aspect of nominations for 2014 elections is filing in of nominations by some facing charges in court of law ranging from murder, financial embezzlement and plotting coup to prevent constitutional order to take course.

For parliamentary elections, electorates will elect 193 Members of Parliament while for the local government elections they will elect 462 councillors. There were a high number of independent candidates constituting more than 33% of the contestants. This can be attributed to the high defection of politicians from their parties due to the internal party adoption processes. There were 54 registered political parties during the 2014 Malawi electioneering period; 12⁴ of the registered parties were able to field a presidential candidate.

3.1.4 Political Campaigns

The Parliamentary and Presidential Election Act (1998) provides political parties with an equal space and treatment to campaign freely. During the 2014 electioneering period, the official campaign period commenced on 21st March and ended on 18th May 2014 based on the law that provides for the campaign period to be 2 months and ends two days before the Election Day.

The campaigns were relatively peaceful, in spite of isolated violent incidents and confrontations especially before the commencement of the official campaign period on 21st March.

³ <http://www.themalawian.com/voter-registration-verification-goes-electronic-malawi-road-to-may-election/>

⁴ People's Party (PP); Malawi Congress Party (MCP); People's Transformation Party (PETRA); Umodzi Party (UP); New Labour Party (NLP); Chipani Cha Pfuko (CCP); People's Progressive Movement (PPM); United Democratic Front (UDF); Democratic Progressive Party (DPP); Malawi Forum for Unity and Development (MAFUNDE); National Salvation Front (NASAF); and United Independence Party (UIP).

Malawi was able to hold its first ever presidential debates that attracted all the 12 presidential candidates except for the 2nd presidential debate that attracted only 11 presidential candidates. The debates provided a platform for the presidential candidates to share their ideologies and strategies that they will employ to move the country forward economically, socially and politically.

With regards to campaign financing, political parties are not compelled by electoral laws to disclose their sources and limits of their funds. Although, the Electoral Code of conduct for Political Parties and Candidates, under Section 7(16) prohibits the abuse of public resources by the incumbent for political party purposes, stakeholders including political parties in opposition and civil society organizations raised concerns about the violation of the code of conduct. This was exemplified with claims that the huge amount of money that was embezzled in the public sector during the *cash-gate scandal* was being used by the People's Party to gain undue advantage during electoral campaigns.

3.1.5 Civic and voter education

To enable the electorate to effectively understand and participate in the electoral process, and make informed choices, it is important for stakeholders especially the electoral commission to provide the voters with relevant information through civic and voter education. Information dissemination as well as awareness creation was very important during the 2014 tripartite elections considering that the elections were the first ever elections where Malawians were required to vote for the president, the Member of Parliament and councillor concurrently.

The electoral commission was able to accredit 107 organizations to complement its voter education efforts. Due to limited financial resources most civil society organizations were not able to roll out their civic and voter education exercises. Consequently, the National Initiative for Civic Education (NICE) played a prominent role in providing the much needed civic and voter education. The education focused on providing the electorate with the information on the tripartite elections, the voting steps, the documentation needed and how to mark the ballot. The civic and voter education programme also featured debates at the constituency levels that brought together independent candidates as well as candidates from political parties.

The electoral commission however did not provide any targeted civic and voter education for persons with disabilities. For example, no measures were put in place to disseminate the information in disability friendly formats e.g braille and/or audio for the visually impaired.

3.1.6 Participation of Women and Persons with disabilities

The participation of women and persons with disabilities in the 2014 Malawi tripartite elections was very low. This can be attributed to the fact that the government including the electoral commission and political parties did not provide sufficient measures to enhance the participation of the women and PWDs in the electoral process.

Although the Parliamentary and Presidential Election Act (1998) empowers persons with disability to vote by use of an assistant of their choice or the presiding officer if they lack their own assistant, disability organizations specifically FEDOMA⁵ accused the electoral commission for failing to provide measures to empower both the electorate and candidates with disabilities to effectively participate in the 2014 electoral process⁶. The organization also pointed out that the commission has not been able to provide accessible civic education targeting persons with disabilities during the pre-election period.

With regards to the participation of women in the electoral process, the Constitution calls for the full participation of women in all spheres of the society, however, neither the Constitution nor the electoral laws makes any provisions for gender quotas or reserved seats for women in the National Assembly or local government. Out of the 1,290 candidates who ran for a spot in the National Assembly, only 257 were female compared to their male counterparts who were 1,033. Out of the 2,398 registered to contest the local government elections, 417 were female while 1,981 were male. Additionally, out of the 12 candidates running for President, only 2 were female candidates⁷.

Despite the aforementioned shortcomings, the electoral commission was able to reduce the nomination fee for female candidates for both the parliamentary and local government elections by 25%. Further, during the Election Day, the electoral commission was able to engage women as polling officials and officers.

⁵ Federation of Disability Organizations in Malawi

⁶ <http://www.nyasatimes.com/2014/04/09/fedoma-seeks-court-order-against-malawi-electoral-commission-on-negligence/>

⁷ They included Joyce Banda of the People's Party and Abusa Hellen Singh of United Independent Party

4.0 Polling stage

During the polling stage, KHRC observers collected vital information on the opening of the polling station, voting and closing of the polling stations. As such, noted the following:

- Polling stations were NOT clearly demarcated and marked with the Electoral Commission posters bearing useful details such as the name of the polling station, the constituency and ward name at the entrance hence making it difficult for observers and other stakeholders such as the media to locate the polling stations. KHRC observers had to depend on prior mapping knowledge to locate the polling stations.
- All the 12 polling stations that were visited by KHRC observers opened very late in the day. As per the electoral laws, polling stations are to be opened at 6AM to allow for the voting process; however this was not the case for the Blantyre tax office polling station where KHRC observed the opening procedures. The mentioned polling station officially opened for voting at 10 AM, which was 4 hours late.
- During the opening of the polling station, MEC officials did not carry out opening procedures as required by Section 80 of the Electoral Commission Act (1998) of Malawi that states though equivocally that the presiding officer shall display the ballot box in front of all people present in the polling station to verify that it is empty before being sealed. In Blantyre tax office, KHRC observers noted that the voting process commenced without the ballot boxes being showed to empty in front of the observers, party representatives and the media that was present.
- In all the 12⁸ polling stations that the KHRC visited, critical electoral materials necessary for the exercise such as indelible ink, ballot boxes, ballot papers, stamps, and other necessary stationery were either not available or not delivered on time. This led to almost 95% of the polling station opening late. For example, in Namilango Primary school, the presiding officer informed KHRC observers that the polling stations did not enough indelible ink hence she had to improvise by distributing the available ink into cups so that they can be shared among the various polling streams. Further, stationaries such as pens were also not adequate hence the presiding officer

⁸ Blantyre Tax office, Namiwawa School, Namilango Primary school, Mkolongochi, Goliath primary school, Ndirande Hill Primary school, Chitawira school, Chichiri school, Chilomoni Catholic School, Blantyre Sec. School, Catholic Institute Primary Sc, Nkolokoti, Blantyre Youth Centre

had to provide the voters with her own pens. Lastly, in Goliath polling station, KHRC observers noted that there were no polling booths hence voters were voting on desks.

- In all the polling stations that KHRC visited, it was noted that MEC officials only allowed eligible voters to vote by ensuring that the details/documents presented by the voters appeared in the voter register and that voters had valid identification documents. However in Goliath Polling station, KHRC observers noted that the MEC officials allowed local monitors (popularly known as party agents in other jurisdictions) to control the voting process i.e directing the voters to the polling space, providing them with stationaries such as pens etc.
- KHRC observers noted that voting procedures were generally well followed according to the electoral legal instruments and the secrecy of the ballot was generally well safeguarded in all stations the observers visited and in the case of the assisted voters; assistance was provided based on the law.

5.0 Post- Polling stage

During the post polling stage, KHRC collected information on the counting procedures, result transmission, vote tabulation, dispute resolution, and transition and handover.

- Regarding the counting procedures, KHRC observers noted that Presiding Officer at the Blantyre tax office displayed the ballot papers for local monitors, media and observers present to view and verify the ballots and this was the case for all voting stations as reported by other observer groups present such as SADC, MESN, AU and EU. However, prior to vote counting, KHRC observers noted in the aforementioned polling station that ballots were left unmanned and in dark spaces. In addition, the polling station was poorly lit and that MEC officials were confused about the time the vote counting was to commence despite the fact that the last voter had finished casted his vote 30 minutes ago.
- Regarding the transmission of the results to the national tally centre located in Blantyre, MEC utilized the electronic transmission of result platform known as the *digital election management platform*. In addition, MEC utilised the same platform for the management of the results. After the counting processes has been concluded, presiding officers are required to deliver the tally/results sheets- which are securely sealed in tamper proof envelopes- to the 35 local tally centres that had been approved by MEC. After the delivery at the local tallying centres, the results on the tally sheets

were supposed to be entered into the online results transmission system and transferred by internet to the national tally centre. However this process did not proceed smoothly due to technical issues with system forcing MEC officials to revert to the manual tabulation of the votes. The physical delivery of result sheets from the local tallying centre to the national tallying centre including the counting slowed the vote tabulation process leading to delays in the announcement of the final results.

6.0 Conclusion and Recommendations

- Based on the aforementioned observations, our conclusion is that the first ever Malawi tripartite Election were held in a relatively peaceful environment characterized with delayed opening of polling station, limited strategic voting materials, and violence in some areas during the election day. However the elections were free and fair with human rights being upheld; for example the right to vote through secret ballot, the right to vote and the right to freely choose representatives stipulated in article 25 of the International Covenant on Civil and Political Rights (ICCPR) and other international mechanisms being upheld.
- The management of the Election Day procedures was poorly conducted by the electoral commission with some polling officials not effectively conducting some procedures that enhance transparency and credibility of the process.
- The utilization and management of technology during the tripartite election was poor with the online transmission of the results system failing forcing the electoral commission to revert to manual transmission of results.

6.1 Recommendations

- **Conduct Strategic and effective planning.** The electoral commission should dedicate a substantial amount of time to effectively source for both financial and human resources that will enable it to effectively carry out its mandate. The 1st tripartite elections were marred with logistical problems on the Election Day that saw many polling stations open 2 to 4 hours after the official opening time of the polling station due delayed delivery of strategic voting materials to the polling stations. It is paramount that, the electoral commission have strategic voting materials such as the

ballot box, voters register, ballot papers organized the day before to avoid delay in the delivery of such materials.

Further the commission should source for adequate funding as well as effectively budget for the available financial resources in order to ensure that strategic materials and other essential materials needed during the electoral process are adequate. During the Election Day many polling stations did not have adequate voting materials and this forced the polling officials to improvise which could compromise the integrity of the E-Day procedures.

- **Promote the participation of women and persons with disabilities:** The Malawian government including the electoral commission and political parties should put in place both legal and administrative measures to ensure that women and persons with disabilities effectively participate in the electoral process. The Malawi electoral commission can learn from the South African electoral commission which conducts special voting usually a few days to the election day to purposely provide opportunity to people who cannot vote during the election day due to their disability or other issues such as pregnancy, sickness to effectively vote in their comfort of their homes or special designated areas.

With regards to legal measures, the Malawian government can learn from the Kenyan experience, where affirmative measures including quotas have been embodied in the legal frameworks including the Constitution which seek to promote the participation of both women and persons with disabilities in the political spheres. To this end, Kenya has seen an increment in the number of women and persons with disabilities in the political sphere including the National assembly, Senate, County Assembly, Judiciary and the executive.

- **Promote the effective participation of the electorate in the electoral process:** The electoral commission should put in place measures to ensure that electorate effectively exercise their right to vote during the Election Day. It is noted that during the first tripartite election, the Election Day which was on the 20th of May and a working day, was not declared a public holiday hence disenfranchising the Malawian working voters who were not able to get time off from work.

- **Utilization and management of new technology:** With many countries embracing new technologies as a way of effectively managing various electoral processes as well enhancing transparency and credibility of the electoral process itself; it is prudent that the Malawi Electoral commission capacitate its staff and source for adequate financial resources that will enable them to effectively utilize some of the new technologies such as the Biometric Voter Registration (BVR) system.



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