

1999 PARLIAMENTARY AND
PRESIDENTIAL ELECTIONS
REPORT

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The material for this report was compiled by a team led by Commissioner Arthur Nanthuru as Chairman of the Legal Affairs Committee. The team was comprised of the following members of the Secretariat—

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and Mrs. Grace Medi and Mrs. Alice Langwani who typed and retyped the document. All Commissioners contributed to the contents of this Report and adopted it at the 9th meeting of the Commission.

JUSTICE J. B. KALAILE, SC
Chairman

PART A—THE ORGANISATION

1. Introduction

The Electoral Commission (hereinafter referred to as the “Commission”) is required, under section 6 (1) of the Electoral Commission Act, 1998 (EC Act), for purposes of accountability, to report “directly to the President on the overall fulfillment of its functions and powers” which are contained in section 8 of the said Act. This report is about the overall management of the 1999 Parliamentary and Presidential Elections (the Elections).

2. The Current Commission

The current Commission was appointed on the 1st July, 1998, in accordance with section 75 of the Constitution as read with section 4 (1) of the EC Act. Those appointed were—

Justice William Hanjahanja—*Chairman*
Commissioner Mrs. Flora Chirwa
Commissioner Mr. Marco Kanjo
Commissioner Mr. Garnet Kamwambe
Commissioner Mr. Nyemba Mbekeani
Commissioner Mr. Augustine Mtendere
Commissioner Mr. Arthur Nanthuru
Commissioner Miss Monica Ngwembe
Commissioner Mr. Kafwe Tembo

Justice William Hanjahanja resigned as Chairman on health grounds on 14th May, 1999, in accordance with section 4 (3) of the EC Act. He was replaced on the same day, by Justice James Kalaile, SC.

The Commission undertook the following activities—redemarcation of constituency boundaries, registration of voters, nomination of candidates, monitoring of the political campaign, resolution of complaints, conduct of polling and determination and announcement of results.

The Commissioners provided the needed guidance throughout the whole process directing the newly established Secretariat in the implementation of its policies.

The Commission maintained contact with interested parties who included donors, Civil Society Organizations (popularly known as Non-Governmental Organizations (NGOs)) and political parties through various workshops and consultative meetings.

3. Committees

In order to properly execute its functions, the Commission, under section 7 (1) of the EC Act, established nine committees each chaired by a Commissioner as follows:

(a) *Legal Affairs Committee—Commissioner A. V. Nanthuru*

The following duties and functions fall under the ambit of the Legal Affairs Committee:

- (i) The review of existing laws relating to elections in Malawi and suggestions and proposals for amendment thereof.
- (ii) The making of regulations for the creation of practices and procedures in electoral matters in accordance with the law.
- (iii) The consideration of all legal actions by or against the Commission in respect of any aspect of the electoral process or otherwise.

(b) *Civic Education Committee—Commissioner Kamwambe*

The Committee considers and reports to the Commission on all matters concerning—

- (i) Programmes of Civic and Voter Education, whether conducted by the Commission or otherwise.
- (ii) Accreditation of NGOs to deliver Civic and Voter Education using materials and guidance provided by the Commission.
- (iii) Liaison with accredited NGOs to ensure effective delivery of Civic and Voter Education.
- (iv) Accreditation of domestic monitors and international observers in accordance with agreed guidelines.

(c) *Finance and Administration Committee—Commissioner M. Kanjo*

The Committee considers and reports to the Commission on all matters concerning—

- (i) The annual Budget of the Commission.
- (ii) Accounts and Audit Reports.
- (iii) Assets of the Commission—buildings, vehicles and equipment.
- (iv) Administrative procedures of the Commission.
- (v) Terms and conditions of service of all Commission employees, both permanent temporary.
- (vi) Staff discipline.

(e) *Training Committee—Commissioner M. Ngwembe*

The Committee considers and reports to the Commission on all matters concerning—

- (i) The recruitment and training of short-term temporary staff for Voter Registration, Polling and Counting of Votes.
- (ii) Training programmes and materials for short-term temporary staff.
- (iii) Training and staff development programmes for permanent staff of the Commission.

(d) *Campaign Monitoring Committee—Commissioner A. G. Mtendere*

The Committee considers and reports to the Commission on all matters concerning—

- (i) Code of conduct for Political Parties—Sanctions for Violation
- (ii) Campaign activities and incidents throughout the country, whether directly related to political parties, candidates or other individuals.
- (iii) Access of candidates and agents to campaign freely.
- (iv) Access of Parties and candidates to the media.
- (v) Liaison with the Police and Army in respect of security and public order issues, both general and specific.

(f) *Logistics and Operations Committee—Commissioner N. Mbekeani*

The Committee considers and reports to the Commission on all matters concerning—

- (i) All aspects of the planning and execution of agreed Voter Registration activities.
- (ii) All aspects of the conduct of polling and counting of votes.
- (iii) Supervision and guidance of Returning Officers and staff.
- (iv) Field activities of the Regional Election Officers and their staff.

(g) *Media and Public Relations Committee—Commissioner F. C. Chirwa*

The Committee considers and reports to the Commission on all matters concerning—

- (i) Relations with the media and the reporting of all aspects of the Commission's activities.
 - (ii) Policy on Press Statements and responses to media inquiries.
- (h) *The Registration and Demarcation Committee—Chaired by Justice W. Hanjahanja*

The Committee considers and reports to the Commission on all matters concerning—

- (i) The method and timing of Voter Registration and the manner in which Voter Registers shall be maintained and updated for each election.
 - (ii) Demarcation of National Assembly Constituency and local government ward boundaries.
 - (iii) Supervision and guidance of Registration Officers and staff.
- (i) *The Adhoc Budget Committee—Commissioner A. V. Nanthuru*

The Committee made the budget for the elections and negotiated with Government and donors on the funding for the same.

4. **The Management of the Process**

Secretariat

Prior to the passing of the EC Act, the Commission's Secretariat consisted of the Clerk of Parliament as Chief Elections Officer. He was assisted by officers subordinate to him and by staff seconded to the Commission from various Government ministries and departments

(section 6 (1) (repealed)) of the Parliamentary and Presidential Elections Act (PPE Act).

In terms of Sections 12 and 13 of the EC Act, the Commission established a Secretariat consisting of a Chief Elections Officer, Mr. S. Winga; two deputies, Mrs. K. Kaluma and Mr. G. R. E. K. Chimwaza and five Heads of department *inter alios*. The Secretariat was strengthened by the creation of three Regional and 29 District Election Offices although their performance was affected by lack of experience.

The Chief Elections Officer, Mr. Stuart Winga, was, in the course of the elections, replaced by Mr. Roosevelt Gondwe who became Co-ordinator of the Elections Management Team. The other members of the Management Team were Mr. Ben Mbewe, Secretary for Forestry, Fisheries and Environmental Affairs; Mr. Mathew Matemba, Secretary for Education; Mr. Beaton Munthali, Secretary for Information; Mr. Lloyd Golosi, Commissioner for Census and Statistics and Mrs. Hawa Ndilowe, Secretary for Defence.

Consultants

The Commission availed itself of the services of a number of consultants from three major sources, namely, the United Nations Development Programme (UNDP), the International Foundation for Election Systems (IFES) and the Commonwealth Secretariat.

Specifically, the UNDP assigned Mr. Frank Vassalo to advise the Commission in Logistics and Operations. He contributed towards the demarcation exercise, the drawing up of the electoral calendar and logistics for the distribution of ballot papers and polling materials. He was instrumental in handling voter statistics.

In addition, UNDP assigned Mr. Horacio Boneo to carry out a needs assessment survey. He advised the Commission on the demarcation and registration exercises (*infra*).

The Commonwealth Secretariat assigned Dr. Dinanath Gajadhar who provided technical advice to the Commission. He reviewed all the forms designed by IFES consultants, the current electoral laws, assisted in the compilation of manuals and generally guided the Commission in all technical matters. Dr. Gajadhar was instrumental in the implementation of the whole electoral process.

IFES, headed by Mr. Victor Butler, provided the largest team of consultants. They provided assistance towards the establishment of the Secretariat, on how to redemarcate and on the registration process.

The other consultants were Ms Anne Longley, a Training Specialist; Ms Deborah Williams, a Media Specialist, and Mr. Steve Telford who assisted in the designing of electoral forms.

IFES also assigned three Ghanaians namely: Mr. Kwame Boateng, Mr. Samuel Aidoo and Mr. Emmanuel Sakyi. These were advisors to the Regional Elections Officers.

While IFES was instrumental in training and development of electoral forms, their contribution in planning was generally defective, and inconsistent with legal provisions. For instance, their advice that 500 cameras would be adequate for the whole registration exercise proved to be erroneous and led to unbudgeted expenditure and exposed the Commission to ridicule and litigation. They only made available registration stationery for eight days despite the Commission's resolution to have registration for 14 days in accordance with the PPE Act, Section 29 as amended by Act No. 16 of 1994.

Save for inducting the new Commissioners IFES did nothing to assist the Commission's quest for capacity building. Their consultants worked in seclusion.

Towards the end of the process, IFES publicly castigated the Commission in spite of the fact that the problems that the Commission was facing were due to their defective advice. They abandoned their role as advisors to the Commission and wore the mantle of critics.

5. Election Finances

Section 15 (1) of the EC Act, paragraphs (a), (c) and (f) provide a broad latitude in terms of possible sources of finance for funding elections.

However, funding for the Elections came mainly from two sources. These were Government and donors.

The total expenditure of the elections was K1,172,394,519 (K1.2 billion). Parliament appropriated K300 million for the elections, during 1998/99 Financial year. The donor community pledged K400 million for election materials and equipment.

The total cost for the registration exercise was K747,108,000. Government and donors funded K571,360,000 and K175,748,000 respectively. The donor contribution paid for registration forms, cameras, films and other materials. The Government expenditure covered: payment for the first lot of 2 million registration forms; hire of motor vehicles; allowances for all registration staff, purchase of 50,000 films and additional 2,000 cameras.

The total expenditure for the polling exercise amounted to K425,286,519; K227,883,940 from Government and K197,402,579 from donors. The donor contribution went into the purchase of fuel, ballot papers, ballot boxes, polling booths, hurricane lamps, torches and batteries.

The Government contribution went into the payment of allowances for polling staff, part of the hiring costs, the fuel and the polling booths' costs. At the time of writing this report, the Commission owed suppliers of goods and services the sum of K43 million.

7. Specific Donor Contributions

The Commission received the following donations—

- (a) The Royal Danish Government supplied 22,000 ballot boxes.
- (b) The International Foundation for Election Systems (IFES) provided technical support, paid for the printing of forms and manuals.
- (c) The German Government Agency for Technical Assistance (GTZ) funded workshops on civic and voter education for political leaders.
- (d) The Canadian Government through the Canadian International Development Agency (CIDA) donated registration and polling kits.
- (e) The British Government paid for 12 million ballot papers.
- (f) The Government of the Republic of China donated five motor vehicles, 20 long distance office radios, and paid for the hiring of helicopters.
- (g) The Japanese government funded part of the transport costs for the polling exercise.
- (h) The Commonwealth Secretariat provided technical assistance.

- (i) Various other donors contributed to the electoral process through the UNDP Trust Fund.
- (k) The European Union—paid for the leasing of 500 cameras from Ghana and the purchase of another 500 cameras, batteries for 1,000 cameras and also paid for part of the registration forms.

PART B—THE ELECTORAL PROCESS

1. Preparations

In preparation for the Elections, the Commission examined issues that needed attention, to wit, redemarcation of constituencies, the introduction of a new registration system that was fraud-proof, the establishment of a Secretariat, and the review of the existing electoral laws. This was as a result of the recommendations by the UNDP (the Boneo Report) and IFES that—

- (a) a full re-demarcation of the constituencies was not possible since it required precise population data.
- (b) only a limited revision of the constituency boundaries would be reasonable.
- (c) it was possible to implement a new registration system that would be fraud-proof.
- (d) there was need to review electoral laws before the general elections.

2. Redemarcation of Constituency Boundaries

Thirty-six (36) new constituencies were created in 1993 and sixteen (16) more in 1998.

Both exercises did not apply the principle of equality of the vote as enshrined in the Malawi Constitution Section 76 (2) (a). Hence constituencies do not have the desired equal populations.

The Commission proposed the creation of 70 new constituencies. This proposal was not accepted by the National Assembly and was referred back to the Commission on grounds that it was not economically sustainable.

A second redemarcation exercise therefore took place in February 1999 based on the Boneo Report as directed by the National Assembly.

Using a 50,000 population to define a large constituency as recommended by the Boneo Report, seventeen new constituencies were identified out of which the National Assembly confirmed sixteen. Malawi has now 193 constituencies.

3. Demarcation Problems

- (a) Under Section 76 (2) of the Constitution the Commission is supposed to demarcate constituency boundaries on the basis of ensuring that constituencies do have approximately equal numbers of voters eligible to register subject only to considerations of:

- (i) population density;
- (ii) ease of communication;
- (iii) geographical features and existing administrative areas.

The Commission proposed the creation of 70 new constituencies which figure was arrived at in accordance with the legal provisions above cited.

However, the National Assembly rejected the proposal on the grounds that the Malawi economy could not support such a large National Assembly. The Commission was aggrieved to note that Parliament used a completely different basis for demarcation than that contained in the above legal provision.

There is need for the National Assembly to observe and uphold its own enactments and not approbate and reprobate.

- (b) The principle of the equality of the vote was greatly undermined by the varying population densities in the three regions such that constituencies in the Northern Region are sparsely populated as compared with the densely populated constituencies in Central and Southern Regions.
- (c) The third problem with demarcation ensued from problem no. (b) supra. While it is the desire of the Commission to observe the law as enshrined in Section 76 (2) that demarcation should be based on impartial and professional considerations there was a general feeling that the Northern Region was being marginalised as it did not gain any new constituencies. The reason for this was that the

population in that region did not justify the creation of any new constituencies.

4. The Registration of Voters

Relying on the 1998 population census, the Commission expected to register 4,980,794 voters which, broken down by region, was estimated to be 592,856 in the Northern Region; 1,975,064 in the Central Region and 2,412,874 in the Southern Region. However, at the close of registration, on 14th May, 1999; 5,071,822 voters had been registered.

The enthusiastic turn out for registration could be explained by—

- (a) the possible registration of under age voters;
- (b) the promise that registration would entitle the people to a starter pack (fertiliser and maize seed);
- (c) the hope that registration would mean a permanent identity card.

5. Improved Registration System

The Commission was aware of the weaknesses of the 1994 registration system. The system made for easy impersonation, which led to allegations of buying of voter registration certificates and counterfeiting of registration certificates.

The registration system is divided into three phases. Phase one, which is already complete, is the actual registration of voters which comprised the taking of the voters personal details and photographs. Phase two will be the scanning of the voters' personal details and photographs into computers. The final phase will be the creation of a National Voters' Roll on line.

6. Registration Problems

- (a) On planning registration the Commission received defective advice from IFES which was reflected in the apparently incompetent way the process was managed.
- (b) Donors released funds after the demarcation exercise was completed and the new constituencies confirmed by the National Assembly. As a result, by the time registration started on 16th March, 1999, the Commission had not yet received all the

materials required for the exercise as suppliers did not release materials without payment.

- (c) The late release of funds affected the entire process of registration. The Commission experienced shortage of materials from the first week of registration when it only had 2 million registration forms against the required 5 million for the entire process and 1,000 cameras against 3,701 registration centres. The Government intervened with the purchase of additional 50,000 films and 2,000 cameras.
- (d) The haphazard delivery schedule of the additional 2,000 cameras, 4 million registration forms and 296,750 films negatively affected the distribution plan. This generated a syndrome of "registration material shortage" in a number of centres leading to a wastage of the statutory 14 day minimum statutory requirement for registration.
- (e) In addition 17,000 films representing a 6 per cent of the total purchased films were wasted due to:
 - (i) inadequate training of the cameramen,
 - (ii) pilferage,
 - (iii) the Commission was supplied with expired films.

7. Procurement and Distribution of Materials

The Commission procured and distributed three types of election materials, namely, registration materials, polling materials and materials for a variety of supporting tasks.

These materials were as follows—

- (a) For registration there were:

6,000,000	Registration forms
550,000	Registration manuals
3,000	Cameras
296,750	Photo Films

- (b) For polling purposes, there were:

6,000,000	Presidential ballot papers
6,000,000	Parliamentary ballot papers
21,000	Ballot boxes

5,500 Polling manuals
4,000 Torches
4,000 Lamps
111,000 Bottles of indelible ink
80,000 Batteries

The Commission printed forms for various supporting tasks, to wit, documentation of results, official records and summaries, log books for incidents and complaints, plastic pouches, identification badges, writing materials, tamperproof envelopes as well as various information posters.

All these materials were distributed to the various centres by road. A few centres were not accessible by road and the materials had to be delivered by helicopter. These centres included Itulo, Ititi and Ifumbo in Chitipa; Luwerezi in Mzimba South; Chakupompha in Nkhata Bay, Lupachi in Nkhotakota; Chaoni in Machinga and Chididi and Kaloga in Nsanje.

The Commission's plan for the distribution of materials was not properly implemented at district level due to shortage of materials (Supra).

8. Retrieval of Registration Materials

The process of retrieving registration materials started soon after the close of registration on 14th May, 1999.

Registration lists and record cards were securely packed in cartons and transported to the District Commissioners' warehouses for safe-keeping. Data cards were sealed in tamper proof envelopes and taken to the Central Warehouse in Blantyre where the automation programme will take place.

Such materials as registration kits were shipped to the Regional warehouses. These will be used again in future exercises.

While the retrieval of cameras went smoothly in the Northern Region, the Commission faced problems in the other two regions. In the Central Region, 35 cameras were not recovered whereas in the Southern Region 10 cameras were lost. The matter was reported to

Police. There were also 23,450 films which were retrieved from the districts after having used 254,705 films out of a stock of 296,750.

9. Nomination of Candidates

Nomination of Parliamentary candidates took place from 12th to 14th April, 1999, and for Presidential candidates on 15th April, 1999.

Candidates were required to pay nomination fees: K750.00 for Parliamentary candidates and K7,500.00 for presidential candidates.

Nominations went on smoothly except for a challenge from Messrs Brian Mungomo and Goodwin Mvula who obtained a court injunction restraining the Commission or its agents from receiving nomination papers on the said days. However the Commission was able to have the injunction vacated and the nomination went ahead as planned.

10. Civic and Voter Education

The Commission defined civic education as embracing general issues on governance, human rights and democracy and voter education as being specific and confined to making available to all voters information on what they are expected to do during both registration and polling days.

The Commission developed a strategy for educating all citizens. It decided that in urban areas, the mode of voter education would be mostly by trained educators through direct meetings with voters. The print and electronic media would also be used as a back-up to the face to face approach. The Commission decided to use Government Agriculture Field Assistants and Health Surveillance Assistants in the rural areas.

However donors were of the view that Non-Governmental Organizations (NGOs) should be employed for this exercise and the Commission agreed to this.

The Commission accredited those NGOs that showed capability to handle the exercise efficiently and approved material to be used by them in their programmes. The major participants among the NGOs disseminating civic and voter education were NDI, Church NGO-Consortium, PAC-NICE INITIATIVE, and Blantyre CCAP Synod "Church and Society Initiative". Donors funded NGOs directly after accreditation.

The Commission also designed, printed and published voter information posters regarding the registration, campaigning and polling stages. For registration, the Commission produced and distributed 130,000 posters with 11 different messages in English, Chichewa and Chitumbuka. The posters were distributed to all District Commissioners for posting in public places. The focus of the message was "No Registration—No Vote" For polling the Commission produced and distributed over 8 million posters and leaflets in English, Chichewa and Chitumbuka.

From March to June, the Commission set up and used an MBC Elections Reporting Task Force to air voter information to the electorate. The radio programmes kept up the election momentum more successfully and were more acceptable to all contesting parties and to the electorate.

Capital Radio 102.5 FM Day Break Malawi Programme also deserves special mention for keeping up the election heat. The radio facilitated dialogue among stakeholders and listeners who phoned in their questions. Through this medium, the Chief Elections Officer was able to clarify a lot of cloudy issues on the electoral process between May and June, 1999.

The newly-launched Television Malawi also successfully ran a ten-minute slot on the polling procedure in the last week prior to polling day.

11. Campaign Period

The Campaign period was relatively peaceful. However some violent incidents were reported in Mangochi, Karonga, Lilongwe, Machinga and Mulanje.

The Commission organised roundtable discussions with political leaders from which a common understanding was reached to condemn violence. As a reinforcement to its position on violence, the Commission organised workshops on tolerance among politicians and contestants.

There was concern among some interested parties that the United Democratic Front party was given adequate coverage by the Malawi

Broadcasting Corporation as opposed to the other parties contesting the elections.

The Commission negotiated the donation of three motor vehicles by GTZ-Democracy to assist MBC on its campaign news coverage. However, the motor vehicles were never used and were later withdrawn by the donor as MBC did not agree with the donor's pre-conditions on the use thereof.

12. Polling

In accordance with Section 67 (1) of the Constitution, the Elections were initially scheduled to take place on 18th May, 1999, but were deferred to 25th May, 1999.

However by the 3rd of May, 1999, the initial date for close of registration, only 4,556,952 people had registered. A lot of people were still presenting themselves for registration. As a result the Commission was compelled to extend registration to the 14th May and this decision contravened Section 29 of the PPE Act and resulted in a court case. The Commission therefore recommended to the President for the National Assembly to reconvene and provisionally amend the Constitution to enable it to set a new polling date, 15th June, 1999.

13. Polling Process

In line with Sections 76 and 77 of the PPE Act as amended the Commission changed to a new single ballot system. The ballot had empty boxes set aside against each candidate for the voter to mark for a candidate of his/her choice. In the 1994 elections the voter had to tear off the picture of the candidate of his/her choice and place it in the ballot box. In order to cater for illiterate voters the Commission provided for thumb printing as an alternative for choosing candidates.

A total of 4,755,422 people voted in the Presidential Elections representing 93.76 per cent of the registered voters. Null and Void votes for the presidential poll numbered 91,671 or 1.93 per cent.

In the Parliamentary race, a total of 4,680,262 people voted representing 92.28 per cent of the registered voters. Null and Void votes accounted for 192,324 or 4.11 per cent.

14. Problems Faced During Polling

The Commission faced the following problems on polling day—

- (a) Voters at Jombo in Chikwawa Mkombezi constituency and at Ng'ombe centre in Ntchisi South constituency did not vote on the 15th June, 1999, because ballot papers were delivered late.
- (b) Voters at Milenje and Kankholikoli centres in Mzimba Luwerezi constituency were unable to vote on the 15th June, 1999, because Mzimba West ballot papers were inadvertently sent to that constituency.

In these centres the Commission extended the poll to 16th June, 1999.

- (c) Ballot papers for Mwanza Central Constituency had faces of MCP and UDF candidates transposed. The Commission printed 16,400 new ballot papers overnight at Kris Offset Printers in Blantyre and voting went on in the constituency as scheduled.

15. Retrieval of Polling Materials

The process of retrieving polling materials started soon after the counting of results was done at the polling stations. In accordance with Section 94 of the PPE Act, all used ballot papers were sealed in ballot boxes and dispatched to the District Commissioners' offices under conditions of absolute security against loss, tampering or interference. They were later transferred to the central warehouse in Blantyre for safe custody.

Retrieval of other materials like lamps and torches was completed after a week. Unfortunately some lamps and torches were stolen and the Commission recovered only 85 per cent of those items.

The Commission reached an agreement with the Ministry of Local Government to carry out the exercise jointly and all booths are at district commissioners Offices.

16. Counting of Votes

In accordance with Sections 96–99 of PPE Act, counting of votes took place at all polling stations at the close of the polls. The

Commission's polling staff counted the votes. The counting was witnessed by party or independent candidates' monitors, and local and international observers.

Presiding Officers displayed publicly the results of the vote count at all the stations and party or independent candidates' representatives were given copies of the results.

17. Determination of National Results

The Commission determined the results of the Elections at the Chichiri International Conference Centre in Blantyre. The determination was based on the records delivered to it by Returning Officers for all the districts.

Prior to the determination of the results, the Commission considered all complaints that were submitted to it up to that time. The Commission found that they were of a general nature and could not adversely impact on the determination of the results.

Further, the Commission debated how results of the presidential election would be determined considering the provisions of majority Constitution (section 80 (2)) and the PPE Act, section 96.

The Commission ultimately resolved that the candidate who scored the most votes cast would be declared winner of the presidential poll in accordance with Section 96 of the PPE Act.

18. Announcement of Results

The Commission announced the results at 5.00 p.m. on 18th June, 1999, at Chichiri International Conference Centre. The function was covered live on MBC Radio One, Television Malawi and Capital Radio 102.5 FM.

Present at the function were party representatives, members of the Media, local and international observers and members of the Diplomatic Corps.

19. Presidential Results

In the presidential election, the following results were declared—

<i>Name</i>	<i>Votes</i>	<i>% of Total</i>
Dr. Bakili Muluzi (UDF)	2,442,685	51.37%
Mr. Gwanda Chakuamba (MCP)	2,106,790	44.30%
Mr. Kamlepo Kalua (MDP)	67,856	1.43%
Bishop Daniel Kamfose Mkhumbwe (CONU)	24,347	0.51%
Dr. Bingu wa Mutharika (UP)	22,073	0.46%

In its determination, the Commission declared Dr. Bakili Muluzi of the (UDF) winner of the Presidential Election.

20. Parliamentary Results

In the Parliamentary Elections, the Commission announced the following results by name of winner—

UDF	93 seats
MCP	66 seats
AFORD	29 seats
Independent candidates	4 seats

The following political parties that contested the Parliamentary Elections did not secure any seat.

Congress for National Unity (CONU)
 Malawi Democratic Party (MDP)
 Malawi Democratic Union (MDU)
 Mass Movement for Young Generation (MMYG)
 National Patriotic Front (NPF)
 Social Democratic Party (SDP)
 Sapitwa National Democratic Party (SNDP)
 United Party (UP)

21. International and Local Observers

The Commission extended invitations to both international and local observers to monitor the registration and the polling exercises. International observers came from the Commonwealth, OAU, the SADC Region and other countries sponsored by UNDP. Local observers included NGOs and Church Organisations.

An advance team of International observers was in the country from 17th to 26th April, 1999, to monitor the registration process and a

second team arrived on the 10th June, 1999, in readiness to monitor the polling process on 15th June, 1999.

Both international and local observers were satisfied with the polling process and appreciated the difficulties the Commission faced during the voter registration exercise.

22. Review of Electoral Laws

Although it had been recommended earlier on by the Commission that some electoral laws be amended, not all were. As a result there were still some ambiguities such as in Section 80 of the Constitution, which was not clear about the legal status of a running mate when he belongs to a different party than that of a presidential candidate. There was also conflict between Section 96 of the PPE Act and Section 80 of the Constitution in the definition of the expression “majority” in determining Presidential results. The last two needed special attention as their inadequacy gave rise to challenges in court.

23. Complaints

The Commission received various complaints from concerned citizens and parties during the electoral process.

During the registration period the complaints centred around the inavailability of materials like registration forms, batteries and films. The Commission responded to these general complaints by extending the Registration period twice and buying additional materials.

The Commission also received various complaints on the registration of voters in some centres in Mzimba and Karonga districts. In the absence of Birth Certificates, such complaints were not easy to resolve. The Commission advised monitors and registration staff to ensure that only eligible voters should register.

The Commission also received a complaint that 160,000 voters in the Northern Region had been disenfranchised when registration was closed on 14th May, 1999. This figure however, could not be substantiated, and if the Commission was to reopen the centres as suggested it would have resulted in another change of the polling date.

During polling, the Commission received various complaints from contestants and parties. The complaints were mostly of a general nature based on suspicion and could not be substantiated.

In some cases investigations were instituted and the findings thereof communicated to the aggrieved parties.

24. Legal Challenges

During the period prior to the Elections there were four legal challenges to the electoral process—

(a) *Brian Mungomo and Mr. Mvula versus The Commission* (Vide nomination of candidates)

In this case the petitioners were granted a court injunction restraining the Commission and its agents from receiving nomination papers for the Elections. The injunction was set aside by the High Court and the nominations proceeded accordingly.

(b) *Gwanda Chakuamba and Chakufwa Chihana versus The Commission—The Running Mate Issue*

The crucial issue in this case was whether there were any constitutional or legal impediments against the two applicants contesting for the Elections as presidential candidate and running mate, respectively. Both the High Court and Supreme Court of Appeal found that there were no such impediments against the two applicants running together as aforesaid.

(c) *Concerned Citizens versus MBC and the Commission*

Some concerned citizens sued the Commission for failing to 'direct' MBC to balance campaign news coverage. The Court vindicated the Commission after noting that it had done all that it could to direct MBC. The Broadcasting station was however found to be in the wrong.

(d) *Gwanda Chakuamba (representing himself and other Stakeholders) versus The Commission*

This case arose as a result of the Commission's decision to extend registration of voters to the 14th May, 1999, and in the process breaching the 21 day statutory period between close of registration

and polling day. The applicant sought the following declaration and orders—

- (i) That the Commission's decision to extend registration to 14th May, 1999, had affected the rights of the voters and any stakeholder to inspect the voters register within 21 days from the date of closing of registration.
- (ii) That the abridgement of the 21 day period to 10 days occasioned by the Commission's decision was unlawful.
- (iii) That there were still many voters who had not registered and would not be able to register by the 14th May, 1999, because of non-availability of registration materials.
- (iv) That if the Elections were held on 25th May, 1999, the same would be unconstitutional in so far as many eligible voters were denied their right to vote guaranteed under Sections 40 (3) and 77 of the Constitution.
- (v) That the Commission would have failed to discharge its duty under Section 75 (2) (a) of the Constitution and would have failed to comply with Sections 29 and 31 of the PPE Act No. 31 of 1993 published on 31st December, 1993.
- (vi) That the Commission request and/or implore the President to reconvene the National Assembly pursuant to Section 67 (4) of the Constitution for the purpose of reconsidering—
 - (A) Whether the 21 days period required for verification of the Voters Register should be abridged.
 - (B) The repeal or amendment of Section 114 (6) of the PPE Act which barred voters and candidates from petitioning the High Court for an injunction within 14 days before the polling date.
 - (C) Shifting the polling date when the Elections might be held.
- (vii) A declaration that Section 114 (6) of the PPE Act is inconsistent with Section 76 (3) of the Constitution and therefore invalid.
- (viii) An injunction to restrain the Commission from proceeding to hold the Elections on 25th May, 1999.

The Judge made the following declaratory orders—

- (i) That the Commission's decision affected the rights of voters and stakeholders to inspect the Voters register within 21 days from close of registration.
- (ii) That the abridgement of the 21 day period was unlawful.
- (iii) That the Commission would have failed to discharge its duty under Section 76 (2) (d) of the Constitution and would have failed to comply with Statutory provisions of Sections 29 and 31 of the PPE Act.
- (iv) That the Commission was under a duty to report to the State President on matters pertaining to the electoral process in order for the President to form an opinion whether or not a constitutional crisis and grave emergency had arisen which required urgent legislation or consideration by the National Assembly under Section 67 (4) of the Constitution to consider:
 - (A) Whether the 21 day period required for the verification of the voters register be abridged.
 - (B) The repeal or amendment of Section 114 (6) and 114 (7) of the PPE Act which barred voters and candidates from petitioning the High Court for an injunction within 14 days before polling day.
 - (C) Shifting polling date for the Elections.
- (v) That Section 114 (6) of the PPE Act is inconsistent with Section 41 (3), 46 (2) 46 (3) and 76 (3) of the Constitution.
- (vi) The Court further granted a conditional injunction restraining the Commission from holding the Elections until after the expiry of 21 days from close of registration or in the alternative from holding the Elections on the 25th May, 1999, unless the National Assembly passed law abridging the 21 day period under Section 29 or passed law lowering the period as to make it lawful to expire on 25th May, 1999, or earlier.

However the Court refused to order that there were going to be any voters who would not be registered by 14th May, 1999, due

to non-availability of registration materials as the registration period was sufficiently long for the eligible voter who had not been registered to be registered or have his complaint lodged and determined.

The Court further refused to allow that the holding of the Elections on 25th May, 1999, would be unconstitutional in so far as many eligible voters would have been denied their right to vote, guaranteed in Section 40 (3) and 77 of the Constitution.

After the polling on 15th June, 1999, there were the following legal challenges—

(a) *Iqbar Omar versus Mr. Rogers Gama and the Commission*

The Commission declared Mr. Rogers Gama of the Malawi Congress Party as winner in the Lilongwe City South Constituency. However the results in Livimbo Centre which would have entitled the applicant herein to the seat had not been included in the count. As a result the applicant brought proceedings against the Commission and the High Court decided in his favour and declared him winner.

The following matters are before the High Court but have not been concluded viz—

(b) *Chakuamba versus the Commission.*

The applicant is praying for an order *inter alia*, to declare the presidential results null and void by reason of alleged irregularities and that the Commission erred in its interpretation of Section 80 (2) of the Constitution.

(c) There are other court proceedings against the Commission in which certain losing candidates are challenging results of the Elections. These are—

(i) *Mwansambo versus Malawi Electoral Commission*

(ii) *Chikadza versus Electoral Commission*

(iii) *Mtunga versus Malawi Electoral Commission*

(iv) *Chindongo versus Mtafu and Electoral Commission (Civil Cause No. 7B of 1999)*

(v) *Chingonga versus Thomson and Electoral Commission (Civil Cause No. 4B of 1999)*

25. Conclusion

- (a) The appointment of an entirely new Commission did not provide for continuity of the functions of the Commission and as a result the electoral process suffered.
- (b) The Commission's Secretariat was appointed in February 1999 just a month before registration was due to start. This adversely affected the operations of the registration process as there was inadequate time for the Secretariat to plan for the implementation of the decisions that the Commission had made in the previous eight months since its appointment. The hurried manner in which the Secretariat was appointed impacted badly on the quality of those appointed as some of them could not handle the pressure of this busy organisation.
- (c) As observed earlier in the report some of the advisors to the Commission did not have well-defined roles. Consequently some of them did not submit reports to the Commission at the end of their assignments and the Commission can not evaluate their work. One wonders as for whom they worked for.
- (d) IFES and the donor community tried to influence the electoral process so that it should be handled according to their wishes. This was a negative development in the whole process.
- (e) The Commission appreciates the financial assistance rendered by Government to rescue the process from chaos.
- (f) Although the electoral process faced problems in such areas as inadequate registration materials and logistics the Commission persevered from criticism and managed to successfully steer it to conclusion.
- (g) The demarcation of constituency boundaries was not professionally done as politics ultimately won the day. The National Assembly used economic considerations to change a professionally handled demarcation exercise.
- (h) The turn up of voters for registration was overwhelming and exceeded the Commission's expectations. This could be explained by the fact that people were anxious to have identification cards, starter pack and that under-aged people also registered.

- (i) The system adopted for registration should be simpler in future once the data is computerised and a permanent voters roll is produced. This will be the biggest achievement of the Commission in the long term, as future registration will be carried out only to update the voters register.
- (j) After the Commission has fully established its registered voters database and has successfully implemented its procedure for updating its voters register, it will be in a better position to prepare provisional election calendars and budget proposals as early as 12-18 months in advance of the date for conducting the poll. Such lead-time would facilitate the advance allocation of funds, including contingency measures, by the Government. Donor-participation in election-funding would be similarly facilitated.
- (k) The purchase of most of the electoral materials just before the start up of the registration exercise affected the distribution plan of the electoral process as suppliers were unable to meet delivery dates. The situation was aggravated by the fact that all suppliers were based in Europe.
- (l) Electoral materials were distributed piecemeal and this was not cost effective as motor vehicles had to be hired for longer periods than necessary.
- (m) There was no system in place to monitor the delivery of civic and voter education. In future the Commission should put in place a proper supervision machinery to ensure that NGOs do not exceed their mandate.
- (n) In view of the problems faced with NGOs during the electoral process the accreditation of NGOs to implement voter education should be based on established criteria, such as—
 - (i) constitution, objectives and practices should be non-political;
 - (ii) track-records should be nationally known for at least two years;

- (iii) agreement that the content of the message to be delivered to the population must be approved by the Commission; and
 - (iv) the Commission reserves the right to restrain anyone/any group from offering programmes relating to voter education.
- (o) The Commission will never be suitably and adequately equipped to meet its obligations of monitoring the Malawi Broadcasting Corporation as set out at Section 63 of the PPE Act 1993. There is need, therefore for revisiting the whole issue of political broadcasting by media houses with a view to arriving at alternative realistic solutions. Among these is the role political parties themselves must play in using the mass media.
 - (p) The success of the polling process is attributed to the discipline and competence of the electoral staff. The presence of both local and international observers gave support to the integrity of the process and ensured the credibility of the results.
 - (q) As many complaints were based on suspicion rather than evidence, there is a clear lack of knowledge among the electorate of what constitutes wrong doing that can affect the results of elections. This is dangerous and should be curbed by all interested persons. One way of doing this is to launch civic education at every level of society and include it in the school curriculum as a subject of study. The Commission must teach the electorate what constitutes electoral offences.
 - (r) The electoral process partly suffered because there are some ambiguities in the existing laws. There is need for immediate corrective action to amend the laws before the Local Government Elections are held.
 - (s) There is need for collegiality among Commissioners. All decisions of the Commission must be made according to law and respected by all Commissioners. There must be no cases where an individual member of the Commission makes decisions affecting the Commission or members of the Secretariat without consultation with other Commissioners.

Every member of the Commission and the Secretariat must be encouraged to read and understand the electoral laws so as to avoid putting the Commission in embarrassing situations and exposing it to ridicule and litigation. If all Commissioners participate in decision making, there will be more unity and less resentment among Commissioners. Resentment has at times spilled to the Press, to the embarrassment of us all.

26. Recommendations

- (a) The demands made on Commissioners to carry out electoral work are such that other work suffers and if employed elsewhere the employer is likely to be unhappy. It is recommended therefore that Commissioners be appointed to work for the Commission on a full time basis .
- (b) The discharging of all the Commissioners who conducted the 1994 elections meant that there was no one in the Commission who had previous experience in electoral matters. It is recommended that in future only a given number of Commissioners may be discharged at the end of their terms and the rest should remain to provide for continuity. Furthermore, the Commission should run during two lives of Parliament and the appointment of the new Commission should take place at least two years before holding the Presidential, Parliamentary or Local Government Elections.
- (c) The time schedule for the elections was too limited and did not provide sufficient time for preparations as it was tied to the time constraints set up by the Constitution. The Commission recommends that the Constitution be amended to provide for flexibility in the time schedule for the elections.
- (d) The Commission recommends the amendment of the electoral laws to provide for the enactment of subsidiary legislation covering such areas as registration rules, election rules and the Prescribed Forms Rules. This would give the existing rules, contained in election manuals and guidelines, a legal status and provide the basis for enforcement.

- (e) As the electoral laws still contain ambiguities which could be a source of litigation during elections, the Commission recommends a review of the Constitution, the Parliamentary and Presidential Elections Act, the Electoral Commission Act, and the Local Government Elections Act.
- (f) Planning for the expected number of voters posed problems as the figures provided by the National Statistical Office were only preliminary and were not accurate. The Commission recommends to set up a Geographical Information System that would assist in determining actual numbers of voters.
- (g) The present voter registration systems has as one of its valuable features, the continuous updating of the Voter's Register. This would require an ongoing mechanism for providing registration-related services such as registration, change of address and name, deletions due to death or migration, etc., to citizens on a countrywide basis. Due to recent developments in the restructuring of Local Government combined with the heavy workload of district administrations, the Commission recommends an amendment of the law extending its Secretariat to district-level establishments in the first instance. Such centres would also serve as positive motivators of the much-needed civic education efforts.
- (h) The special provisions in the laws for registration and polling of security personnel do not provide for the secrecy of the ballot as they are supposed to vote two days before the poll and their votes are supposed to be counted at the close of the poll so that everyone knows exactly which way the security personnel have voted. It is recommended therefore that the law be amended to provide for counting of the advance poll together with the votes for the given constituency on the main polling day.
- (i) Demarcation of constituency boundaries has a professional connotation and requires standardization. In view of this a demarcation law is recommended in which specific standards can be set for all future demarcation work.

- (j) In view of the many complaints received by the Commission during the elections it is recommended that there should be provision for setting aside a High Court Judge during the registration and polling periods to preside over all complaints made against the Commission pursuant to the provisions of Section 76 (3) and (5) of the Constitution.
- (k) Section 22 of the EC Act should be amended by deleting the word 'Minister' therefrom and substituting therefor the word 'Commission'. Reference to the Minister in this section would appear to contravene the spirit of section 6 of the EC Act which consolidates the independence of the Commission. It is imperative to publish regulations to cater for registration and polling under the PPE Act as well as various issues under the Electoral Commission Act. Section 121 of the PPE Act should similarly be amended by deleting the word 'Minister' therefrom and substituting therefor the word 'Commission'.
- (l) NGOs positively contributed to the success of the electoral process but in some cases they exceeded their mandate by usurping the functions of the Commission and trying to manage the electoral process itself and sometimes displaying political party leanings. In future the role of NGOs, if they are still necessary, has to be redefined under appropriate regulatory laws.
- (m) As the Commission will never be suitably and adequately equipped to meet its obligations of monitoring the MBC as set out at section 63 of the PPE Act, 1993 there is need, for revisiting the law with a view to arriving at an alternative realistic solution.
- (n) The training of registration centre/polling station personnel should not be left to district level administrations. The Commission should consider the intensive training of a cadre of trainers in each district who would be responsible for the training of all staff aforementioned. If the establishment of the district voter registration office materialises as recommended under "District Voter Registration Offices," this method of training would be facilitated. There are however, financial implications to this which should be taken into account.