



# **Preliminary Observations and Recommendations on the Electoral Process for the Fresh Presidential Election 25-June-2020**

## **1.0. Introduction**

On 23<sup>rd</sup> June 2020 Malawians undertook an important democratic exercise by voting in a fresh presidential election thirteen months after they had voted in a general election in June 2019.

As you are all aware, the presidential election held on 21<sup>st</sup> June 2019 was successfully challenged in a court of law on the basis of petitions of Dr. Saulos Chilima and Dr. Lazarus Chakwera. A constitutional court of five judges found the election to have been littered with numerous irregularities and illegalities that undermined significantly the credibility of the process. The court also found that the law was misapplied in the determination of the winner and that the Electoral Commissioners had acted in ways that had displayed gross incompetence and bias. The court therefore nullified the presidential election and ordered a fresh one within 150 days. On appeal, the Supreme Court upheld the findings and orders of the Constitutional Court and emphasized that a president with a legitimate mandate conferred on the basis of a credible electoral process should

be sworn in by the 151<sup>st</sup> day of the judgment of the Constitutional court, this day being the 3<sup>rd</sup> of July 2020.

A consortium comprising of the National Initiative for Civic Education (NICE) Public Trust, Catholic Commission for Justice and Peace (CCJP), the Public Affairs Committee and the Mhub carried out Long Term Observation of the Fresh Presidential Election from the time of the Constitutional Court order. The consortium will issue a detailed observation report in due course. This statement provides highlights of key preliminary observations and recommendations. However, before presenting our summary view on the FPE, we wish to acknowledge the support the consortium received to do its work.

## **2.0.Acknowledgements – A vote of gratitude to partners**

The consortium was able to carry out its mandate on election observation by drawing on the goodwill, financial, technical and logistical support and collaboration of many individuals and organisations in the various capacities. The following require special mention:

- i. Malawi Government, European Union (EU), commonwealth , open society Initiative for Southern Africa (OSISA) and USAID for financial support to the consortium or its partners that enabled the undertaking of the various observation activities;
- ii. Malawi Electoral Commission for accrediting the members of the Consortium to carry out electoral observation and for continued mutual trust, honest engagement and collaboration;
- iii. CSOs, traditional leaders, Faith based organizations, the Media and other stakeholders that played various complimentary roles in the electoral process for mutual collaboration, synergistic relations and moral support.
- iv. The supervisory and stationed observers, who provided data on which basis the work of the consortium was carried out.
- v. Staff of the consortium's member organisations at national, regional and district levels whose concerted efforts in executing the planned interventions ensured adherence to professional standards such as political neutrality and impartiality and the pursuit of efficiency in the delivery of services of civic empowerment.

### **3.0.Reception and uptake of the determinations of the courts by electoral stakeholders**

The FPE is a court-ordered exercise. The Consortium made the following observations on the uptake of the determinations and orders of the courts:

- i. The petitioners (Dr. Chakwera of MCP and Dr. Chilima of UTM) and their supporters naturally welcomed and celebrated the judgments of the courts and went immediately into preparations for the FPE;
- ii. The respondents (Prof. Muntharika of DPP and the Electoral Commission) contested the judgments, engaged in various schemes to frustrate uptake and implementation of the orders of the courts in relation to the FPE and in the process wasted precious time for adequate preparation for the FPE
- iii. The National Assembly acted with commendable speed and zeal to execute court orders in order to timely put in place a legal and institutional framework for the FPE. Its efforts were continually frustrated by the exercise of veto power by the President or through other schemes by the Executive branch of Government with the intention to avoid the election or at least delay it for as long as it was possible;
- iv. Up to the time the new Electoral Commissioners took office, the conduct of the Electoral Commission in relation to the FPE was half- hearted and projected a continuation of denial and resistance to the court judgments
- v. The consortium would like to remind all politicians and their supporters, the Electoral Commission and the general public that as a Republic, our country is founded on rule of law.
- vi. We therefore commend the Judiciary for its independence and professionalism in upholding constitutional values in adjudicating electoral matters; the National Assembly for its diligence and creativity in finding politically feasible ways for upholding the rule of law in so far as the FPE was concerned; and the new Electoral Commission for getting to work soon after appointment to deliver the FPE within the time frame ordered by the court.

### **4.0.Bottlenecks and booby traps on the road to the Fresh Presidential Election**

The road to the FPE was littered with political bottlenecks and booby traps which were activated at every turn in the process, mostly by the political executive that clearly did not want the FPE to happen. The consortium identified the following bottlenecks:

**Sticking in office by Electoral commissioners:** The Constitutional court and the Parliamentary Committee found the Electoral Commission that was headed by

Dr Jane Ansah, SC and the individual commissioners to be incompetent. As per section 75 of the Constitution, the Parliamentary Committee recommended that they be removed from Office. The President vetoed and caused a gridlock. Their sticking in office caused delays in preparations for the FPE. Furthermore, it afforded them opportunities to continue with administrative schemes that threatened the credibility of the FPE.

**Appointment of a new Electoral Commissioners:** The consortium commends political parties and President Mutharika for acting timely for the appointment of the new Electoral Commissioners when the contracts of the previous set of Commissioners ran out. However, the re-appointment of two commissioners from the previous commission which had been found incompetent has raised serious questions about principles and values of integrity in public service. The consortium believes that the nominating party had the capacity to identify other persons and that the re-nomination and reappointment was motivated by the need to show political power and antagonize governance-minded stakeholders in the electoral process. It also had the potential effect of dampening citizen willingness to participate in the electoral process.

**Setting the polling day for the FPE:** Until three weeks to the polling day, the date for polling was not set due to distractive politics based on competing understandings of the court judgment and the route or procedure for setting the date. It was observed that that the Political Executive preferred ways that had too many political constraints including several veto points at which the decisions would be frustrated or delayed unnecessarily. The way the Executive exercised their power undermined the rule of law, attempted to skirt around popular sovereignty and undermine the functioning of the institution of Parliament. The Consortium commends the Legal Affairs Committee of the National Assembly and the entire national Assembly for finding a politically feasible way of setting the polling day. We also commend the new Commission for acting with speed and zeal to restore rule of law in electoral administration to deliver the FPE within the timeframe ordered by the court despite the fact that the politics of setting the election date ate into the time the new commission had to prepare for the election;

**Corona virus disease (Covid) 19:** The FPE was ordered at the time COVID 19 was claiming huge numbers of lives and public health advice was to avoid gatherings of people. The consortium further observed that the fight against Covid 19 was seriously undermined by a widespread public perception that the political executive sought to use anti-covid measures such as lockdown to avoid the FPE

## 5.0. Campaigning and Electoral violence

- i. Although handouts for purposes of electioneering are banned under the Political Parties Act, handouts have pretty much been a characteristic feature of the FPE especially because the COVID 19 provided a rationale for social protection and livelihood support. The law was not enforced at all mainly because of the absence of an institutional framework for collaboration between the Electoral Commission which regulates the electoral process and the Registrar of political parties which has mandate to enforce the Political Parties Act.
- ii. Supporters of the DPP-UDF alliance and the Tonse Alliance often appropriated the political space and projected a sense of misguided entitlement that motivated them to act with impunity against candidates or members of the competing party, uprooting flags and removing any other campaign materials of rival parties and acting violently against opponents especially in areas regarded as strongholds or support bases of the parties.
- iii. Most often campaigning rekindled tribalism and regionalism, personality attacks and divisive religious affinities in ways that encouraged hate speech and violence. This practice is partly encouraged by section 59 of the Presidential and Parliamentary Elections Act which grants campaigners immunity against criminal liabilities arising from things uttered while on the campaign trail, the provisos and possibilities of civil suits notwithstanding.

### **Key recommendations on campaign**

- i. The Political Parties Act should be supported with a proper institutional framework for its implementation and the MEC, the Registrar of Political Parties and the Anti-Corruption Bureau (ACB) should collaborate to define and implement a strategy of jointly implementing those provisions that are of shared or mutual interest such as the giving and receiving of handouts during the campaign period;
- ii. The Electoral Commission and the Malawi Police should collaborate and institute a strategy for anticipating and responding to electoral violence;
- iii. Electoral laws should be reviewed to provide for linkages between the electoral administration and criminal justice system for acts of violence that happen in the context of elections;
- iv. Electoral Commission should consider converting all codes of conduct for various stakeholders including that of Traditional Leaders into regulations. This will help in properly sanctioning traditional leaders who create 'no go zones' of their areas for some political parties and candidates. The current

codes of conduct have no enforceable sanctions and are dependent on the goodwill of stakeholders to adhere to them.

- v. The laws on political and campaign financing as provided in the Political Parties Act should be operationalized as soon as possible to manage and contain the influence of money in politics and governance.

## **6.0.Civic education**

- i. The consortium observed that CSO involvement in monitoring, mass mobilization and civic and voter education for the FPE was low. The CSO sector has continued to face severe resource constraints for purposes of civic education since suspension of the basket fund that had been created for this purpose.
- ii. Media reports on unofficial results suggest that voter turnout and the number of null and void votes in the FPE may be significant. This appears to be a direct result of the limited reach of CSOs to carry out tailored civic education for the FPE as the political landscape changed significantly. The consortium will carry out a detailed analysis when official data is made available to identify areas where voter turn-out and null and void votes have best worst and identify explanatory factors that should be addressed for future elections.

### **Key recommendations on civic education**

- Stakeholders led by the Ministry of Civic Education, Culture and Community Development and the Electoral Commission should review the design and implementation of the civic and voter education basket fund and come up with a revised but sustainable financing model for civic and voter education.

## **7.0.Registration and voter verification**

MEC released an electoral calendar for the FPE that included voter registration. Registration commenced before the Supreme Court delivered its judgment on the appeal against the decision of the High (Constitutional) court to nullify the presidential election. The Supreme Court determined that the voters' roll for the FPE was that of the nullified 2019 election. Thus registration for the FPE fell off. However, the consortium observed that the registration that had been done before the Supreme Court judgment was littered with allegations of registering under-age persons. There was a significant widespread perception that the Electoral Commission and the National Registration Bureau had connived to increase the number of registered voters in some parts of the country and

decrease them in others based on common political affiliations (stronghold support areas of parties). There was therefore a fear of an institutionalized scheme to rig the FPE. The decision of the court on the voters' roll, therefore, had a soothing and calming effect among the segment of the population that had lost trust in the impartiality of the Electoral Commission;

MEC introduced voter verification using a USSD code on mobile phone networks. We commend MEC for its continued adoption of the use of technology in facilitating some aspects of the election administration. In the two days provided for verification, the use of technology eased voter verification and has proved to be time efficient and cost-effective;

### **Key recommendations on verification of voters roll**

- i. In view of the ease and efficiency of using USSD code on mobile phones for verification, stakeholders must review the need for physically opening ALL centres for verification. To aid this review, the commission should release information and data on verification using the USSD code, showing geographical spread of the use of the code, numbers of voters that used it etc. The consortium will be interested in analyzing such data to make appropriate recommendations to make the elections even more cost effective.
- ii. MEC should consider developing and executing an electronic system for processing and issuing 'Authority to Transfer' to transfer. In future, voters should be able to log in with voter identification credentials and transfer themselves to a new centre at least 24 hours before polling.
- iii. In addition to verification by mobile phone, MEC should consider introducing online verification
- iv. The decision of the court on voters roll sets a good principle that should be reflected in the legislation on run-off elections that Parliament should put in place before the next general election

## **8.0.Election monitoring and observation**

### **Key observations**

- Due to Covid 19, the FPE was not graced by missions of international observers. However the formation of the Election Observation consortium under the leadership of CCJP helped to fill the void to provide independent oversight of the electoral process.

- The consortium mounted an Election situation Room which received real time monitoring data that was accessed and analyzed by experts (Data Scientist, Police Scientist and Communications expert) to make sense of the electoral process. The ESR included an Intervention Desk comprising of officers from the Electoral Commission, Malawi human Rights Commission, Centre for Multiparty Democracy, the Malawi Police and Mhub
- However, there are still capacity gaps for local CSOs in election monitoring and observation. The number of CSOs involved is low; the high technology system for receiving and processing data requires speed improvements etc
- For the FPE, the consortium observed that political parties improved significantly on their monitoring role and this was enhanced by the attitude of the new Commission to encourage transparency of all electoral processes as laid down by law.

## **Recommendations**

- i. The Commission should endeavor to maintain the high levels of transparency in election administration to enable effective oversight by CSO observers and sustain the credibility of the electoral process and the legitimacy of its outcomes;
- ii. Development partners and other stakeholders should consider investing resources in technological infrastructure and human skills for election observation so that there should be more CSOs providing oversight on elections which in itself should prevent institutional capture by political interests and enhance credibility of findings of the election oversight process.

## **9.0.Role of Media and social media**

- i. Media coverage of the electoral process was robust especially by private and faith-based and community media houses. However, despite improving the policy and legal framework through amendments to electoral laws (2015), Communications Act (2016) and Electronic Transactions and Cyber Security Act (2016), the state broadcaster, Malawi Broadcasting Corporation persisted in its biased coverage in favour of the ruling party. In addition to conventional bias, the media House sank as low as it engaged in modification of facts, fabricating counter narratives,

misinforming the nation and being uncouth and obscene in their language and publications on opposition politicians. Mention of opposition parties and candidates on MBC outlets was mostly for negative publicity and ridicule.

- ii. The consortium observed that the implementation of section 63(2) of the Presidential and Parliamentary Elections Act was sub-optimal in so far as furthering democratic ideals was concerned. The section provides that MEC may, on arrangement with the MBC, allocate time on television and radio during which political parties and candidates may be allowed to speak in campaigning for an election, allocate equal time to every party. There is no evidence whatsoever that this was complied with or that there were any attempts to comply with this.
- iii. The consortium observed that so far the best remedy MEC has provided upon receiving complaints on the conduct of MBC in relation to the election is to issue cautionary letters to MBC and rely on goodwill for compliance. The MACRA is has been unable or unwilling to take action against MBC as both institutions appear to have been politically captured and repurposed in the service of the DPP regime.
- iv. The consortium observed that that for the FPE just as was the case with the 2019 elections, the Malawi Communications Regulatory Authority did not track and publish coverage of political party election activities as was done in previous elections. This omission of duty means that the Electoral Commission and other election stakeholders were left without systematic quantitative evidence of unfair coverage or access to public media by all parties and candidates as required by electoral law.
- v. **Social media and fake news:** Social media turned out to be a double edged sword in the electoral process. While it spread quickly official communications about the elections and prompted transparency and responsiveness of duty bearers, it was also abused to spread fake news

about the elections. Furthermore, with social media, the cooling period of the campaign before polling was violated as electioneering continued digitally through several devices and platforms well after the campaign period and even during polling. Social media and fake news created uncertainty and fuelled rumours of rig

### **Key recommendations on media**

- i. **Political emancipation of MBC:** Stakeholders should find ways of reforming the state broadcaster and ensure that it becomes a true public broadcaster serving all Malawians not just a particular political community. In particular, the state broadcaster should be rescued from the political grip of the ruling party and made more autonomous in its operations;
- ii. **Collaborative enforcement of media standards for elections:** The working relationship between MEC and MACRA in terms of oversight of electronic media for purposes of a fair electoral process is sub-optimal and needs review to ensure effectiveness. There is need to spell out enforcement mechanisms including sanctions for non-compliance;
- iii. **Minimizing fake news and its effects on elections:** Stakeholders and Malawi Regulatory Authority should explore ways of minimizing fake news about elections to ensure credible and useful information gets to voters and citizens to enable their effective participation in the democratic process;

## **10. Polling day**

The consortium made general and specific observations about the proceedings of the Election Day. Most of the specific observations are supported by charts generated from real time data as at the end of the polling day. These charts are in the Appendix to this statement:

- i. Generally, the electoral activities on the polling day proceeded without major hiccups or bottlenecks. While there were a few isolated incidents, none of them affected the process as to undermine the credibility of its outcomes. The CSO consortium, would like to commend stakeholders and the Electoral Commission for pulling off this election so well given the time, resource and political constraints affected the FPE;

- ii. Despite isolated incidents of scuffles, the Election Day proceeded in atmosphere that was largely peaceful and characterized by the observance and maintenance of law and order. The consortium would like to express gratitude and commend security agencies, in particular, the Malawi Police, Defence Forces, Prison Services and Department of Immigration services for their vigilance, diligence and professionalism in maintaining law and order and in responding to incidents of illegalities, irregularities and conducts that were likely to cause breach of peace on the Election Day.
- iii. Throughout the polling day, the Election situation Room received and verified reports of suspicious activities that fueled rumours of rigging. In this regard, there were the following reports worth noting:
  - a. Military ex-service men on a mission to disrupt or support rigging schemes in Nkhotakota and salima districts. They were arrested by Military Police;
  - b. There were allegations of premarked ballots and intended ballot stuffing in Lilongwe Area 49, Nkhotakota, Kasungu and Salima among others but these were not confirmed.
  - c. There were reports of malicious damage of property connected to electoral politics in Nkhotakota and Lilongwe (Mpingu) and these were referred to the Malawi Police Service. Three people, armed with illegal weapons, invaded the District Tally Centre in Mzimba. They were arrested by the Military and handed over to the Malawi Police. A criminal case has was opened.
- iv. The ESR received and verified reports of acts of intimidation and vigilantism in several centres and districts whereby citizen groups over engaged themselves in 'protecting their votes' to the extent of violating other people's rights including engaging in acts of mob justice.
- v. It is commendable that nearly all polling centres opened and closed on time ensuring that each polling station was open for a maximum period of 12 hours for voting as shown in the figure 1 in the Appendix. Long queues were observed in many polling centres across the country suggesting voter enthusiasm to vote for a president of their choice.
- vi. Lighting for counting of votes: Adequate lighting was reported in 97 per cent of the centres. A few centres had in adequate lighting due to malfunctioning gas lamps. Matengele School in Chiradzulu.

- vii. Party representatives were available at closing and counting of votes in 98 percent of centres. CSO observers were present in all the centers during vote counting. We note that for this fresh presidential election there has been high uptake of civic duty by citizens to safeguard the votes and ensure the credibility of the electoral outcome.
- viii. Transportation of results to District Tally Centres ; The ESR did not receive any report suggesting bottlenecks in the transportation of results and election materials from the polling centres to the District Tally Centres. We therefore take the view that it was smooth. However, in a few instances such as in Chiradzulu (Chikwilira centre) and Neno (Mkomaliwiro centre), the record books were locked in the ballot boxes. These were reopened and resealed and serial numbers were recorded according to procedural requirements;
- ix. Identification and determination of a 'null and void' vote was reported to be problematic at some centres. The ESR has received reports of disputes during vote counting related to the identification and determination of a 'null and void' vote such as at Chimutu Centre; and Kalonga school in Maliya ward of Lilongwe City Centre constituency. The media houses have reported significant figures of null and void votes. In view of this, the Electoral Commission is urged to review the null and void votes carefully especially where significant numbers are recorded on results forms;
- x. Displaying of Tallied Results: Reports indicate that tallied results of all polling stations were announced and displayed publicly and accessed by all the party representatives, observers and media practitioners both at polling centres and at the District tally centres. On this basis, media houses have been able to collate and aggregate the figures for public information. We commend the Electoral Commission for sticking to the laid protocols of transparency to ensure that the outcome of the election reflects the will of the people as expressed through their ballots.
- xi. **Reports of possible disenfranchisement** In a few isolated polling stations, eligible voters were denied the right to vote despite having both the National ID and Voter Certificate because of missing names on the voters roll due to erroneous transfers. e.g. at Likoma Fisheries Center; These experiences suggest system or human failures in the administration of the election which the Commission should seek to address in future elections. Further complaints on disenfranchisement related to those who registered as new voters before registration of voters was cancelled by the Supreme Court determination regarding the voters roll for the FPE. The names of the voters were not on the voters roll.

- xii. At some centres party representatives in the electoral process were found to be using their privileged position to carry out irregular or unlawful activities at polling centres. For example a female party representative in Mzimba was found with National IDs and voter certificates of people who were not at the polling centre. Similarly in Likoma, a party monitor was

### **Key recommendations on polling**

- i. **Malicious damage of property:** Violent and malicious damage of property associated with politicians or political parties should not be tolerated. The law enforcement agencies should investigate these cases with speed and make public their findings and prosecute offenders.
- ii. **Excessive vigilantism:** While civic aptitude among citizens to protect the vote and enhance the credibility of the electoral process is appreciated, it is necessary that political parties should rein in their supporters and agents, especially in such places called party strongholds so that they exercise vigilance only within the limits of the electoral law. Unwarranted infringement of freedoms of other citizens is not acceptable.
- iii. **Involvement of party representatives in malpractice:** We would like to remind all political party representative (monitors) that the rights they have under the electoral are meant to enable them to act in ways that enhance the credibility and integrity of the electoral process. They should therefore refrain from engaging in any actions that amount to discrediting the process in any way.

## **11. Results management**

The Consortium would like to commend the Electoral Commission for promoting transparency in vote counting and tallying and displaying of results at appropriate places for the general public to see. This goes a long way in mitigating fears of rigging that are making rounds on social media. The CSO consortium would like, therefore, to appeal to the general public to take note that the results they are accessing at this stage are not official and should be treated with caution.

The Consortium noted that the Commission is being methodical in its processes to determine and announce official results. It is therefore important that the general public should take due cognizance of the electoral law especially section 96(1) of the Presidential and Parliamentary Elections Act (PPEA) which stipulates that the Electoral Commission shall determine and publish the national result of an election based on the records delivered to it from all districts and polling stations.

Gender was adequately mainstreamed during the elections. There were so many positive on gender implications. In a nut shell starting with the Malawi Electoral Commission composition gender is well balanced with amongst the 7 commissioners 3 being female and 4 being male. Similarly during deployment of elections staff our findings indicate a well-balanced gender between male and female district electoral staff and staff at polling centres. Figures below shows the different gender distribution observed at polling centres.

## **12. Gender dimension of the election**

Gender was adequately mainstreamed during the elections. There were so many positive on gender implications. In a nut shell starting with the Malawi Electoral Commission composition gender is well balanced with amongst the 7 commissioners 3 being female and 4 being male. Similarly during deployment of elections staff our findings indicate a well-balanced gender between male and female district electoral staff and staff at polling centres. Charts in the appendix shows the gender distribution observed at polling centres. Security officers deployed in polling centers 72% were male and 28% were female. This, coupled with the timeliness of opening of polling centres, have rendered it possible for women, the disabled and youths to fully participate in the elections. In addition persons with disabilities, pregnant women and the elderly were given preferential treatment on queuing at the pooling centre as shown in the figure in Appendix.

## **Conclusion**

Generally, the electoral process so far has been good without major hiccups or bottlenecks. The CCJP, NICE, PAC consortium, would like to commend stakeholders and the Electoral Commission in particular, given the time and resource constraint in managing this election;

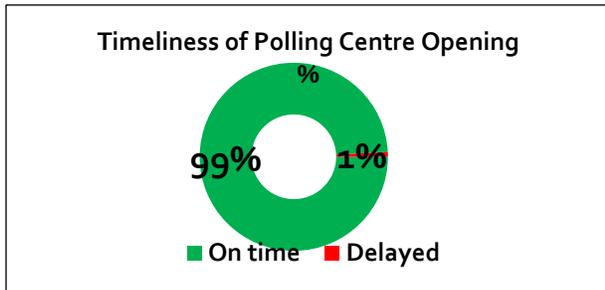
The Consortium also commends security agencies for their professionalism, diligence and rapid response in supporting the electoral process with logistical services as well as providing security and ensuring safety nsuring safety and security of polling staff, polling materials and the electorate;

The Consortium commends the Electoral Commission for promoting transparency in vote counting, tallying, and displaying of results at appropriate places for the general public to see. This goes a long way in mitigating fears of rigging that are making rounds on social media. The CSO consortium would like, therefore, to appeal to the general public to take note that the results they are accessing at this stage are not official and should be treated with caution.

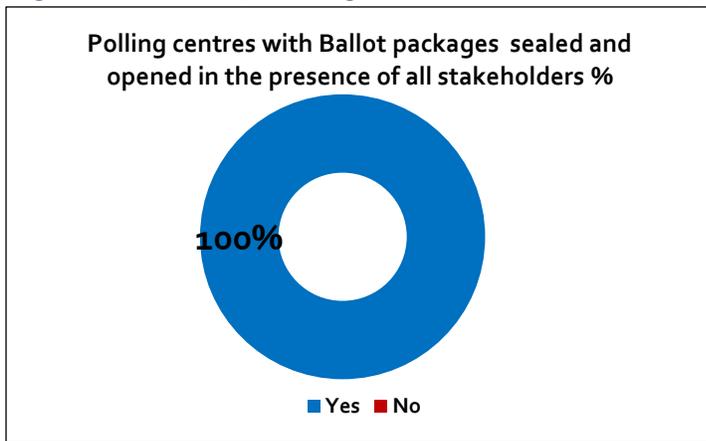
The Consortium also appeals to the general public to let the Commission go through its processes properly before announcing the official results of the FPE.



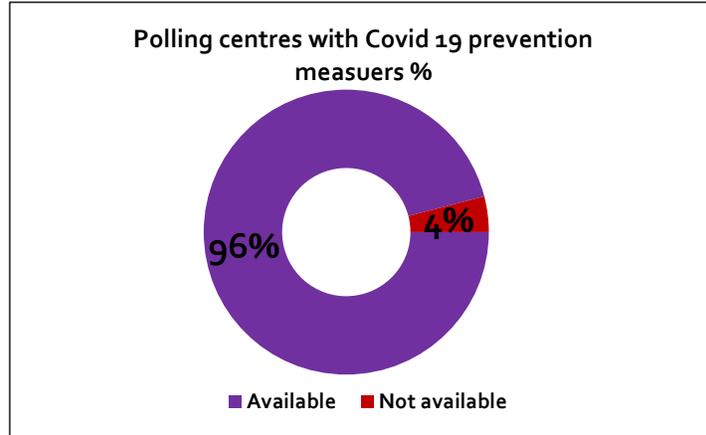
**Figure 1: Times of Opening Polling Stations**



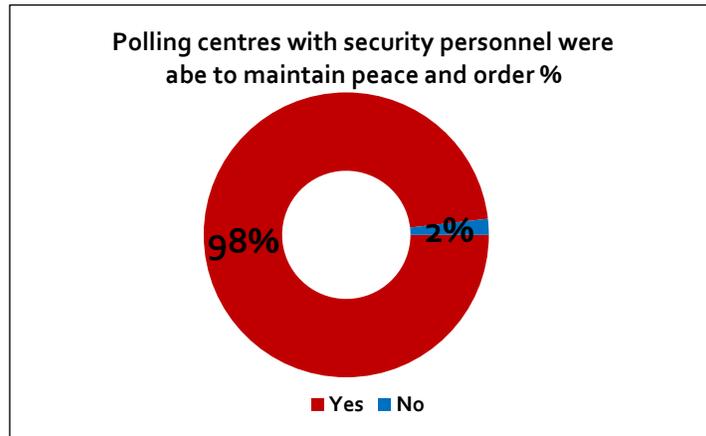
**Figure 2: Ballot packages were sealed and opened in the presence of all**



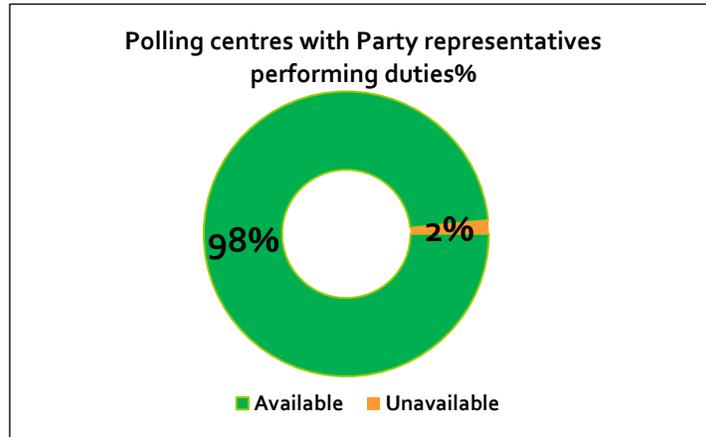
**Figure 3: Polling centres with Covid 19 prevention measures**



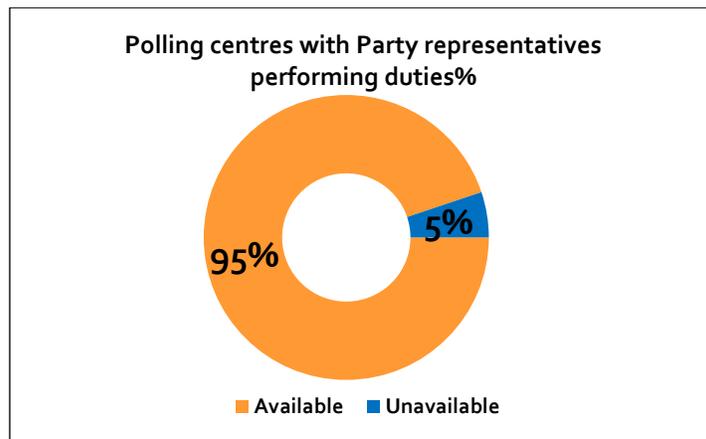
**Figure 4: Security personnel were able to maintain peace and order**



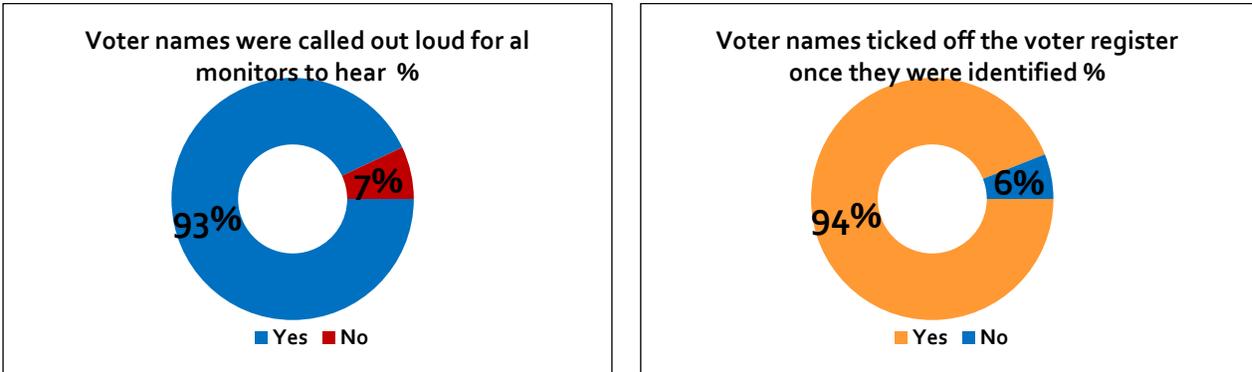
**Figure 5: Party representatives performing duties at polling centres**



**Figure 6: Party representatives performing duties at polling centres**

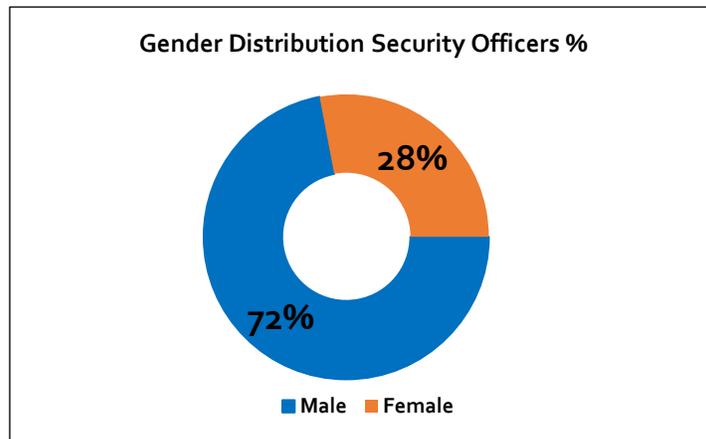


**Figure 7: Verification of Voters at Poling Centers**

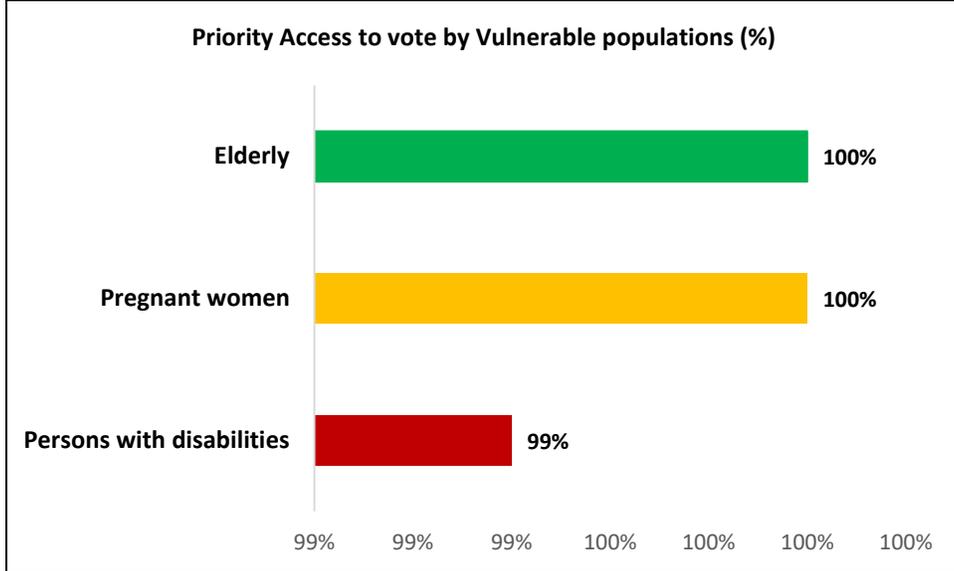


**Gender dimension s during elections**

**Figure 8: Gender Distribution Security Officers**

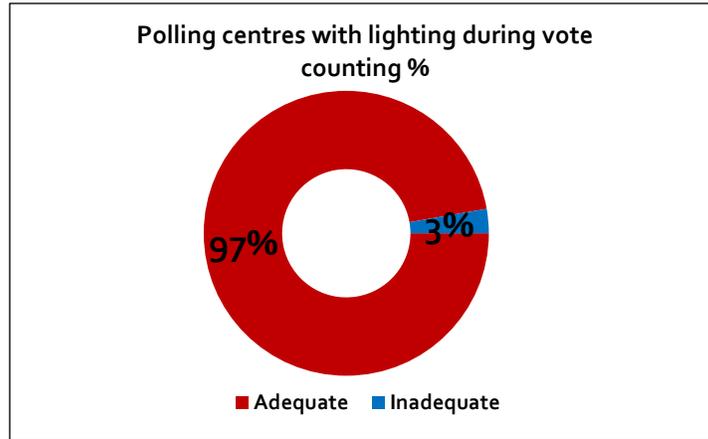


**Figure 9: Priority Access to vote by vulnerable populations**



During Vote Counting

**Figure 10: Availability of lighting during vote counting**



**Figure 11: Availability of Party representatives and CSO Observers during vote counting**



**Figure 12: Verification of Voters through checking in voter register**