



OBSERVATION REPORT ON THE MALAWI 2019 TRIPARTITE ELECTIONS



March 2020

Executive Summary

1.0. Introduction

This report presents key observations by the National Initiative for Civic Education (NICE) on the electoral process in Malawi leading to the tripartite elections on 21st May 2019. It also proffers recommendations on several issues that require attention in order to improve the quality of future elections and the post-election period.

On the basis of the totality of the observations, the central message of this report is that for all processes and aspects of the election that were easily visible and amenable to observation, the rest of the electoral processes appeared to be reasonably fairly managed except for results management, transmission and aggregation to determine the winner in the presidential election.

2.0. Background information on the 2019 Tripartite Elections

The tripartite elections held on 21st May 2019 were Malawi's sixth general elections after the transition to multiparty democracy. It was, however, only the second tripartite general election. Before 2014, Malawi's general elections comprised of presidential and parliamentary elections. From 2014, local government elections were added to the general election via a constitutional amendment, thereby changing from a bi-partite to a tripartite general election.

As in previous elections, winners in all the three elections were determined on the basis of the first past the post electoral system i.e. the candidate with at least one more vote than the closest competitor was declared to be the winner. For local government elections, there were 462 electoral districts (Wards), 2615 candidates of whom 649 were women representing **(24.8%)**. Six parties participated by fielding candidates. For parliamentary elections, there were 1034 candidates for the 193 electoral districts (constituencies). 295 of the candidates were women representing **(28.5%)** and six parties fielded candidates. For the presidential election, there were seven candidates. Six political parties fielded candidates and one candidate was independent. None were women.

The general election was administered by the Electoral Commission under the chairmanship of Justice Dr. Jane Ansah, SC. Besides the chairperson other commissioners appointed in terms of the electoral Commission Act comprised of three men and three women.

3.0. Methodology for the long term observation methodology

The NICE carried out long term electoral observation. It recruited, trained and deployed election observers for all stages in the electoral process and to all centres where election activities were taking place. The observers prepared and submitted observation reports that were consolidated. For polling, in addition to stationed observers at 5002 polling stations, 462 roving observers were deployed. The observers relayed real time data through the Mzinda ICT citizen journalism platform and a web-based application, *Masoathu* that were supported by Mhub. Furthermore, the NICE ran and managed an Election Situation Room (ESR) at Mount Soche Hotel to support verification and quick response to electoral issues as reported. The ESR comprised three segments namely intervention desk comprised personnel from the Malawi Police Service, Malawi Human Rights Commission (MHRC) , Malawi Electoral Commission (MEC) and Centre for Multiparty Democracy (CMD) , the experts Desk comprised a Political Scientist , Statistician and communication and media expert and the Technical Desk comprised NICE and Mhub ICT teams and data officers.

4.0. Key observations and recommendations

4.1. Legal framework

The legal framework for elections is comprehensive but has been in need of reforms for a long time to improve its delivery on democratic principles of legitimacy and representation and to ensure consistency, clarity and coherence of the laws that are in different statutes. The inability of the authorities to enforce the law banning handouts, the latitude allowed by law for hate speech during campaign and artificial distinction by the Malawi Electoral Commission (MEC) between observers and monitors are some of the legal issues that were identified to be in need of attention. This is in addition to those issues identified by the

Special Law Commission on Electoral Law Reforms. NICE, therefore, recommends revisiting the electoral law reforms and enacting them.

4.2. Civic Education

Civic and Voter Education (CVE) was delivered by fewer Civil Society Organisations (CSOs) than in previous elections due to lack of funding as donors shifted their attention away from CVE to other interests. Nonetheless, NICE and a few CSOs that accessed financial support escalated issue-based civic education.

Null and void votes increased from 1.09 per cent in 2014 to 2.0 per cent in 2019 but remained below the maximum acceptable threshold. Overall, more null and void votes were recorded in central and southern regions. However, it was observed that the legal definition of null and void vote provided in the Presidential and Parliamentary Elections Act (PPEA) are inadequate and lack clarity.

Voter turnout was above 74 per cent which is comfortably high. However, in its computations, MEC segregated between Parliamentary and Presidential Elections suggesting that a wrong data source was used (ballot books instead of voters' register) which breached standard and normal way of calculating voter turnout and presented problems of reconciliation in accounting for ballots.

It is recommended that a Voter Education Fund be established to support CSO civic education activities; civic and voter education be incorporated in school curricula; PPEA be reviewed to broaden and clarify the definition of null and void vote and that MEC be held accountable to explain their computation for voter turnout.

4.3. Registration of voters and verification of voters roll

56 per cent of registered voters were women. 54 per cent were youth (18-35 years old) most of them born after the transition to multiparty politics in 1993 and without their own direct experiences or memories of the one party state. Compared to 2014, fewer voters registered for various reasons including unsatisfactory performance of parliamentarians and

councilors, perception that votes do not count and the introduction of the national ID which removed the incentive to use a voter's certificate as an identity document.

To improve registration it is recommended that CVE providers must create new narratives to encourage voting; adopt a new model for civic education especially voter mobilization and introduction of online registration among others.

Verification of voters roll was not well patronized for several reasons including the fact that it was carried out during farming season when people were busy in their gardens given the seasonality of the agricultural calendar. However, verification by mobile phone was very effective.

4.4. Nominations

The nominations processes proceeded well and the one for the presidential election was colorful, ceremonious and entertaining. However, this is still lack of clarity on what evidence aspirants should present to prove their ability to speak the English language. Neither is there transparency on the determination of nomination fees for the various elections by the Electoral Commission nor accountability for the money especially in view of the fact that the figures have gone up significantly and the deposits have become nonrefundable. Despite the gender parity campaign, numbers of female candidates were low – 24.82 per cent for local government elections, 28.52 per cent for parliamentary elections and zero per cent for presidential election.

Recommendations are given including review of eligibility criteria especially the requirement of ability to speak English; measures for transparency and accountability for nominations fees to avoid creating the impression that the right to participate in elections as candidates is for sale and a rethink of the approach of the gender parity campaign that is informed by the realities of the electoral process.

4.5. Campaign

The campaign period was characterized by activities that undermined the quality of the electoral process. In particular, they included political handouts to voters (against the law),

interparty conflicts over venues for rallies, inter-party violence mostly by youth cadres of political parties, hate speech, abuse of public resources for political activities including mass promotions of teachers and police officers closer to polling day when the two categories were earmarked for crucial roles in the administration of the elections.

Recommendations are proffered on implementation modality to enforce handout ban, strategy for anticipating and responding to electoral violence and the need to operationalize the law on campaign finance.

4.6. Media

NICE made a few key observations including the persistent bias of the state broadcaster, Malawi Broadcasting Corporation (MBC) in favour of the Democratic Progressive Party (DPP), absence of media monitoring reports by the Malawi Communications Regulatory Authority (MACRA) on media coverage of the elections; the influential role of the social media in spreading election news and information as well as fake news and disinformation. Recommendations are made to emancipate the state broadcaster from political capture, enforcement of media standards for elections and a search for ways to minimize the creation and spread of fake news.

4.7. Polling

More than 96 per cent of polling centers opened on time with voters arriving as early as 04:00 am. Polling was mostly peaceful despite isolated incidents of conflicts. Other pertinent observations included disenfranchisement of some voters due to the confusion created on voters' transfers, continuation of campaign and electioneering activities on the polling day by desperate candidates and their agents, violations of the secrecy of ballot arising from position of security personnel and party monitors in relation to polling booths and lack of consequences for clear breaches of the electoral laws. It is recommended that MEC should review the law and policy on transfer of voters and find better and effective ways of enforcing electoral laws.

4.8. Result management and electoral results

Results management was the most problematic and chaotic stage of the electoral process especially for the presidential election. At 22.22 per cent of polling stations, management of spoiled ballots did not follow procedures laid down in the law and affected reconciliation of ballots during vote counting; most presiding officers were unable to account for electoral materials, especially ballots, mostly due to insufficient training as teachers were recruited very late to serve as polling staff. Other results management issues included alteration of figures on result forms by presiding officers; refusal of presiding officers to give copies of result sheets to party monitors in some polling stations, transposition/swapping of vote figures between candidates, floating ballot and ballot boxes that could not be properly accounted for, differences in figures of votes on original result sheets and those announced by the Commission in the process of determining results and result forms of different constituencies and districts being signed off by same returning officers. Consequently, it led to slow determination and late announcement of results as other stakeholders sought judicial intervention through interlocutory injunction restraining MEC from announcing results without addressing the complaints and anomalies.

For the presidential election, Peter Mutharika of DPP was announced as winner. However, the figures announced by MEC showed that the calculations did not adhere to standard formulae. For parliamentary elections, 55 seats were won by independent candidates, 62 by DPP, 55 by the Malawi Congress Party (MCP), 10 by the United Democratic Front (UDF), 5 by the Peoples' Party (PP), 4 by the UTM and 1 by the Alliance for Democracy (AFORD). The proportion of women elected to Parliament increased to 23 per cent from 16 per cent in 2014 but still remained far below gender parity aspirations. For local government elections, six political parties won seats: AFORD – 2; DPP-161; MCP-160; PP-4; UDF -20; UTM-39. 74 seats were won by independent candidates. Women elected as councilors comprised only 12.39 per cent.

4.9. Post –election observations

The May 21, 2019 presidential election was successfully challenged by Dr. Saulos Chilima and Dr. Lazarus Chakwera. The Constitutional Court nullified the election on 3rd February, 2020 and ordered a fresh election to be held by 2nd July, 2020. This was despite attempts

by DPP sympathizers to bribe judges. On the determination of the court, the arithmetic formula for determining a winner in presidential elections ought to be 50% plus at least one valid vote cast. This determination is going to reconfigure electoral politics by changing the incentives for political parties to work together.

Citizen protests against the Electoral Commission, led by the Human Rights Defenders Coalition (HRDC) were the epitome of the post-election period. The deficit of political legitimacy of the President and the loss of public confidence in the Malawi Police Service unraveled into an atmosphere of general lawlessness in the country with tribe, religion, region and political affiliations being common fault lines. Occasionally, the Military stepped in to shore up security without trampling on the rights of citizens.

Conflict and instability have been high during this period. Different stakeholders, including NICE ventured into peace building to promote political tolerance and coexistence despite differences in political affiliation and other identities. However, most peace brokers lacked credibility because of partisan inclinations and for attempting to push positions that compromised human rights, reinforced perceptions of injustice and sought to maintain a low equilibrium status quo. It is evident, that a lot needs to be done through the Peace Commission in order to build capacities for peace making or brokering in the political sphere.

5.1 Conclusion

In conclusion, the position of NICE is that the entire process up to campaign was conducted in a substantially free, credible and transparent manner. However, polling and result management was characterized with a number of irregularities which substantially affected credibility and integrity of these two processes. Furthermore, the post-election period was characterized with high levels of political violence and continuous demonstrations by HRDC and other concerned parties agitating for the removal of the Malawi Electoral Commission Chairperson and Commissioners

The most serious downside of the 2019 elections was therefore about result management, determination and announcement of results of the presidential election. A package of

electoral law reforms on these issue already exists. It is extremely important that the reform proposals get revived and the Parliament enacts them before the next general election.

Table of Contents

Executive Summary.....	ii
Acknowledgements.....	iv
Acronyms and Abbreviations	v
List of Tables.....	vii
List of Figures.....	viii
1.0. Introduction.....	1
1.1. Purpose of this report.....	1
1.2. Roles and methods of NICE in the electoral process for the 2019 general elections	1
2.0. Overall Election Management and Administration	2
3.0. Legal framework for Elections in Malawi.....	4
3.1. Electoral law reforms.....	5
3.2. Handouts.....	5
3.3. Electoral violence and hate speech.....	6
3.4. Observer versus Monitor status of Local Non-Governmental Organisations and persons.....	7
3.5. Key recommendations on legal framework	7
4.0. Civic Education.....	8
4.1. Limited delivery of CVE by CSOs.....	9
4.2. Issue-based civic education	9
4.3. Null and Void votes in the 2019 elections.....	10
4.4. Voter turnout	12
4.5. Key recommendations on civic education.....	14
5.0. Registration.....	15
5.1. Key observations on voter registration.....	15
5.2. Key recommendations on registration of voters.....	18
6.0. Verification of Voters Roll	19
6.1. Key observations on verification of voters' roll.....	19
6.2. Key recommendations on verification of voters roll.....	20
7.0. Nomination of candidates.....	21
7.1. Key observations on nomination of candidates.....	21
7.1.1. Low rejection rate of candidates.....	21

7.1.2.	Eligibility criteria for nomination –English language	21
7.1.3.	Lack of transparency on determination of nomination fees	22
7.1.4.	Low numbers of female candidates	22
7.2.	Key recommendations on nomination exercise	23
8.0.	Campaign.....	24
8.1.	Key observations on the Campaign.....	24
8.1.1.	Campaign period	24
8.1.2.	Hand-outs	25
8.1.3.	Promotion of police officers and teachers	26
8.1.4.	Conflicts over venues for campaign rallies	26
8.1.5.	Political party youth cadres and inter-party conflicts and violence.....	27
8.1.6.	Undemocratic attitudes of some traditional leaders.....	28
8.1.7.	Hate speech	29
8.1.8.	Campaign financing and expenditures	30
8.2.	Key recommendations on campaign	30
9.0.	Role of media and social media.....	31
9.1.	Key observations.....	31
9.1.1.	Persistent bias of the state broadcaster.....	31
9.1.2.	Tracking of media coverage by MACRA	32
9.1.3.	Social media and fake news.....	32
9.1.4.	No official election broadcaster	33
9.2.	Key recommendations on media	33
10.0.	Polling.....	33
10.1.	Key observations on polling.....	33
10.1.1.	Timeliness in opening polling centres.....	34
10.1.2.	Voters who lost voter certificates or names not on voters register	35
10.1.3.	Disenfranchisement of voters due to issues with voter transfers between polling stations	35
10.1.4.	Electioneering on polling day.....	35
10.1.5.	Violations of secrecy of ballot	37
10.1.6.	Lack of consequences for breaking electoral laws.....	38
10.1.7.	Nature of incidents reported to the Election Situation Room	39

10.2.	Key recommendations on polling.....	40
11.0.	Results management.....	40
11.1.	Key observations on results management.....	40
11.1.1.	Lighting.....	41
11.1.2.	Management of spoiled ballots.....	41
11.1.3.	Inability of presiding officers to reconcile election materials	41
11.1.4.	Late recruitment of teachers as polling staff	42
11.2.	Key recommendations on results management	42
12.	Election results.....	43
12.1.	Presidential election results.....	43
12.2.	Parliamentary election results.....	44
12.3.	Local government election results.....	46
13.0.	Electoral systems issues	46
13.1.	Wasted Votes.....	46
13.2.	Minority-elected office bearers	48
13.3.	Key recommendations	49
14.0.	Key observations on post- election period.....	50
14.1.	Electoral petitions and nullification of the presidential election.....	50
14.2.	Attempts to bribe judges of the constitutional court.....	51
14.3.	Citizen protests against the Electoral Commission.....	52
14.4.	Peace building initiatives.....	53
14.5.	Substitution of the MPS by MDF	55
14.6.	General lawlessness associated with a legitimacy deficit of the President	55
15.0.	Conclusion	57
	References	1

Acknowledgements

NICE Trust has been able to carry out its mandate by drawing on the goodwill and collaboration of many individuals and organizations. NICE Trust, therefore, is grateful for the support it received that helped to ensure its roles and contribution to the 2019 tripartite elections. The following require special mention:

First and foremost NICE expresses appreciation to the European Union (EU), Open society for Southern Africa (OSISA), the Germany Embassy and the Government of the Republic of Malawi for financial and technical support throughout the electoral process. NICE takes this support as an indicator of the relentless willingness of the European Union and the Government of Malawi to enhance democracy in Malawi.

NICE Trust would like to express its appreciation to the Malawi Electoral Commission for accrediting NICE Trust to participate in the electoral processes. NICE would also like to express its gratitude to all the CSOs that played several and various complimentary roles in the electoral process for mutual collaboration, synergistic relations and moral support.

NICE Trust also acknowledges the contribution of all its roving and stationed monitors, especially from its volunteer structure, who travelled to distant and difficult locations and provided data on a daily basis on the work of NICE Trust in the electoral process was executed.

NICE Trust's successful participation in the electoral process would not have been possible without the dedication and commitment of its technical staff from its secretariat, regional and district offices 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 for civic empowerment.

MHUB and other specialists supported Election Day monitoring and manned the Election Situation Room to analyze data and information and provide guidance on response. NICE is grateful to all of them for their commitment, dedication and contributions.

Acronyms and Abbreviations

ACB	Anti-Corruption Bureau
AFORD	Alliance for Democracy
BVR	Biometric Voter Registration
CRO	Constituency Returning Officer
CSOs	Civil Society Organisations
CVE	Civil Voter Education
DPP	Democratic Progress Party
ESR	Election Situation Room
EU	European Union
ID	Identity
MACRA	Malawi Communications Regulatory Authority
MBC	Malawi Broadcast Corporation
MCP	Malawi Congress Party
MEC	Malawi Electoral Commission
MRA	Malawi Revenue Authority
NDI	National Democratic Institute
NECOF	National Elections Consultative Forum
NGOs	Non-Government Organisations
NICE	National Initiative for Civic Education
OMR	Optimal Mark Registration

PPEA	Presidential and Parliamentary Elections Act
PP	Peoples Party
SMS	short messaging service
UDF	United Democratic Front
UNDP	United Nations Development Programme

List of Tables

Table 1: Distribution of youth voters by region.....	16
Table 2: Distribution of youth voters by district.....	16
Table 3: Share of nominations for women	22
Table 4: Preliminary and final presidential results.....	44
Table 5: Distribution of parliamentary seats by political affiliation and region	44
Table 6: Local Government Election by party and region	46

List of Figures

Figure 1: Null and Void votes for presidential and parliamentary elections within region and at national level.....	10
Figure 2: Null and void votes for presidential and parliamentary elections at district.....	11
Figure 3: Voter turnout for presidential and parliamentary elections with regions at national level	13
Figure 4: Proportion of parliamentary seats won by women in general elections	45
Figure 5: Wasted votes by political affiliation in Parliamentary Election	47

1.0. Introduction

1.1. Purpose of this report

On 21st May 2019 Malawians undertook an important democratic duty and right by participating in the sixth general election after the transition in 1993 from a one-party constitutional framework to a multi-party democratic constitutional order. The election provided Malawians with yet another opportunity to choose for themselves their representatives in Local Councils and in the National Assembly as well as the Head of Government and State of the Republic of Malawi.

This report presents key observations and recommendations of the National Initiative for Civic Education (NICE) Public Trust on the electoral process and results of the 2019 general elections in Malawi. The main purpose of the report is to contribute to experiential learning by distilling lessons from the electoral process and signpost reforms or areas that require improvement. NICE Public Trust is an active participant and observer of Malawi's democracy in general and the electoral process in particular, since 1999. Thus, NICE participated in the processes for the 2019 elections riding on a wave of experience and continuous learning as an accredited service provider in civic and voter education and as a local monitor/observer of all aspects of the electoral process.

1.2. Roles and methods of NICE in the electoral process for the 2019 general elections

In pursuance of its mandate as provided in the Articles of Association, NICE Trust participated in the electoral process in various capacities:

Firstly, as an accredited civic education provider, NICE Trust **mobilized Malawians to actively participate at each stage of the electoral process**; and provided and disseminated voter information relevant for each stage. NICE also mounted an issue-based civic education programme focusing on varied subjects or topics on governance, civic life and service delivery. Civic and voter education as well as voter mobilization was carried out through the country-wide institutional framework of NICE which cascades from the National Office to regions, districts and communities/wards. A workforce of professional

and administrative staff and trained volunteers at community level delivered civic education lessons using various interactive methods.

Secondly, as a local monitor of democratic development and elections, NICE deployed observers for all stages in the electoral process to promote rule of law and enhance inclusive, responsive and accountable electoral governance and management so that democracy is made much more meaningful to ordinary people. During each phase in the electoral process, NICE assigned observers/monitors at the relevant centres of electoral activities. For polling, NICE Trust deployed 462 roving monitors and 5002 stationed monitors covering all polling stations across the country. Using a mobile application (*Masoathu*) designed and operated by Mhub, the observers' relayed real time monitoring data to the Election Situation Room (ESR) that operated from Mount Soche Hotel in Blantyre. Besides, the *Masoathu* observation application, with Mhub NICE operated a Citizen Journalism Platform. Citizens were encouraged to report any observations through short messaging service (SMS) on the platform. Through Mhub, NICE collated the data in the data centre and isolated issues for immediate redress. This provided data to enable expert analysis of prevailing trends at polling stations and kept journalists and the people informed;

Fourthly, on the polling day, NICE operated an Intervention Desk as part of the Election Situation Room to contribute to speedy resolution of electoral issues wherever they occurred as reported through the *Masoathu* mobile application and citizen journalism platform. The ESR comprised three segments namely intervention desk comprised personnel from the Malawi Police Service, Malawi Human Rights Commission (- MHRC) , and Centre for Multiparty Democracy (-- CMD) , the experts Desk comprised a Political Scientist , Statistician and communication and media expert and the Technical Desk comprised NICE and Mhub ICT teams and data officers.

2.0. Overall Election Management and Administration

Unlike in previous general elections, management of the electoral process for the 2019 general elections through most of the stages proceeded reasonably well with only isolated

incidents of managerial shortfalls. NICE would like to commend the Electoral Commission and the Government for the following key elements in the management of the electoral process:

Provision of adequate funding for the elections by the Government. The 2019 elections were funded to a very large extent by the Government of Malawi, supplemented by development partners. It is extremely important and satisfying that progressively, reliance on donors to fund national elections is receding. Besides demonstrating Government's commitment to procedural democracy, it shows that local ownership and internalization of the significance of democratic electoral processes are taking root in our society and especially among our decision makers concerned with the allocation of resources.

Timely appointment of the Electoral Commissioners. As mandated by the Constitution and the Electoral Commission Act, President Prof. Peter Mutharika, appointed commissioners in good time which enabled the commissioners to take up their posts and start preparations for the 2019 tripartite elections in good time.

Improved communication by the Electoral Commission: Compared to the communication practices of the Electoral Commission in previous elections, NICE and other electoral stakeholders observed proactive communication of information on any election matter to all stakeholders by the Commission and the use of different channels to disseminate messages;

Implementation of administrative reforms: The Electoral Commission implemented most of the administrative reforms that had been recommended following reviews of previous general elections to enhance the credibility of the electoral process and election results while increasing the confidence of the public in the elections;

Effective use of the National Elections Consultative Forum (NECOF): MEC engaged with electoral stakeholders and enhance transparency and accountability while preventing and managing conflicts;

Successful implementation of Biometric Voter Registration (BVR): The use of BVR and collaboration between MEC and the National Registration Bureau increased the efficiency of the registration process which lasted not more than one minute per person and led to a more credible voters roll than in previous elections.

Increased responsiveness of the Commission demonstrated by its quick decisions and action on a number of issues that were presented to the Commission on the eve of polling and through the Election Day.

However, the management and consolidation of election results did not go on very well at many constituency tally centres leading to irregularities that significantly undermined the electoral process. Management and transmission of results from constituency tally centres to the National Tally Centre, resolution of disputes and announcement of results are the stages of the electoral process that came out as wanting and requiring further improvements if voters' confidence in the electoral process should be sustained.

3.0. Legal framework for Elections in Malawi

Malawi's legal framework for the elections is an assemblage of Constitutional provisions and four statutes, namely, the Electoral Commission Act; Presidential and Parliamentary Elections Act; Local Government Elections Act, and the Political Parties Act. It provides for a majoritarian electoral system based on simple plurality for all elections. For Parliamentary and Local Government elections, it provides for single member electoral districts called constituencies and wards, respectively. Candidates can be sponsored by political parties or they can be independent. It also provides for an Electoral Commission appointed by the President of the Republic and chaired by a Judge. The legal framework for elections, when measured against practice, still presents challenges for fully credible, free and fair elections. It is of extreme importance that these issues should be attended to and corrected well before the next general election in May 2024. Key observations on the legal framework include the following:

3.1. Electoral law reforms

Several legal problems were identified in previous elections that had to be addressed by amending the law. A comprehensive electoral law reform process was carried out by a civil society task force supported by the United Nations Development Programme (UNDP) and the National Democratic Institute (NDI) and by the Law Commission. A total of 32 reforms were recommended to achieve four main objectives: improve the representation, legitimacy and inclusiveness of the electoral process and electoral outcomes; improve coherence of the laws, rules and regulations governing elections; improve the impartiality, effectiveness, efficiency and credibility of election administration and management; and enhance education and access to information to ensure that voters are adequately and appropriately informed about the electoral process. The reforms related to appointment of Electoral Commissioners; electoral system design, determination and announcement of results, among others¹. However, in its collective wisdom, the 2014-2019 Parliament rejected the reforms at second reading of the reform Bills. The problems that had to be addressed still persist and some of them confounded the 2019 elections to a significant measure.

3.2. Handouts

Handouts for electioneering purposes were recognized as a problematic practice that amounts to vote buying and undermines and distorts voters' choices. In particular, the political culture makes public service through elected offices a very expensive venture and, therefore, a preserve for those who are economically well off in our society. It further disadvantages opposition political parties without access to resources to finance the handouts and unfairly favours ruling political parties which are able to mobilize resources from the state to finance the provision of handouts. The *Political Parties Act* which came into force in December 2018 prohibits the distribution of handouts by political parties, candidates and their agents. However, the practice continued unabated during the 2019 election. The Electoral Commission could not enforce it on the basis that enforcer of the

¹ Law Commission report on the Review of the Electoral Law; MESN report on Issues and Recommendations for Electoral Reforms.

statute is the Registrar of Political Parties². However, the Office of the Registrar of Political Parties does not yet have an institutional framework for executing this mandate. Furthermore, the electoral laws are clear in their emphasis that the Electoral Commission is the ultimate duty bearer for the management and administration of the electoral process. For handouts given out or received during the official campaign period, the Electoral Commission cannot shun responsibility of enforcing the law. There is need to clarify the law and the enforcement arrangements.

3.3. Electoral violence and hate speech

The electoral law does not adequately address the problem of electoral violence. Electoral violence is seen only as a criminal matter only and, therefore, entirely left for Police action. The Electoral Commission is not sufficiently mandated to respond and address electoral violence alongside the Police. Many stakeholders believe and would want a clear role for the Electoral Commission to be spelled out because electoral violence is a special type of criminal behavior which has significant impact on the credibility, freeness and fairness of the electoral process.

The legal framework for elections indirectly but significantly promotes and encourages violence in the form of hate speech, defamation and character assassination among candidates, their supporters and agents as it grants a blanket privilege of immunity from criminal liability for anything said or expressed about political opponents as part of the right to campaign. Section 59 of the Presidential and Parliamentary Elections Act is most explicit on this:

“Every political party and every representative, member or supporter thereof shall enjoy complete and unhindered freedom of expression and information in the exercise of the right to campaign under this Act and no person shall, during or after the period of campaigning, be subjected to any criminal prosecution for any statement he made or any opinion he held or

² EC chairperson, Media Briefing 22 May 2019 at COMESA Hall, National Tally Centre.

any campaign material he produced, published or possessed while campaigning in the election”.

This provision is in sharp contradiction to the decorum and civility expected and encouraged from political opponents in carrying out campaigns and debates to deepen democratic politics, focus on issues rather than personalities and promotion of diversity.

3.4. Observer versus Monitor status of Local Non-Governmental Organisations and persons

For the 2019 elections, the Electoral Commission rejected accredited organisations to serve as election monitors as was the case in all previous elections. Instead they were all designated as election observers on the basis that the status of monitor is for agents of candidates and political parties and cannot extend to non-partisan impartial actors that ply their trade in the civic sphere. NICE holds the view that the decision of the Electoral Commission was unlawful. Section 84 of the Local Government Elections Act provides for monitoring of elections by local Non-Governmental Organisations and local persons while section 85 of the said Act stipulates the functions of the observers which include monitoring roles. Section 102 of the Parliamentary and Presidential Elections Act provides that there should be transparent, credible and fair elections by allowing neutral parties to observe and monitor the elections. In the context of tripartite elections, the two statutes operate concurrently so much that monitoring of elections by the local Non-Governmental Organisations therefore covers the whole election. The provisions of the Local Government Elections Act should be read together with the provisions of the Constitution, the Parliamentary and Presidential Elections Act and the Electoral Commission Act.

3.5. Key recommendations on legal framework

Electoral law reforms: The Parliament of 2019-2024 should revisit electoral law reform Bills and enact them before the third year of the government term. Delays beyond the third year means that the reforms will not be enacted and the next general elections are likely to be confounded by the same bottlenecks as in 2014 and 2019 elections;

Enforcement modality of ban on handouts: The Political Parties Act and the Electoral Commission Act should be reviewed to create clear synergies between the Electoral Commission which regulates the electoral process and the Registrar of Political Parties which is mandated to sanction the use of handouts by political parties and candidates for purposes of electioneering;

Taming electoral violence: Electoral laws should be reviewed to strengthen the provisions on electoral violence so that the vice is made both a criminal and an electoral offence and a mechanism of joint work between the Malawi Police and Electoral Commission is provided for;

Addressing hate speech: Section 59 of the PPEA should be reviewed and necessary amendments made to address hate speech, character assassinations and defamations while campaigning for elected offices.

Enhance the status of local NGOs and other electoral stakeholders as election monitors: Electoral statutes should be consolidated and ensure that section 84 of the Local Government Act and section 102 of the Presidential and Elections Act are unambiguously clear on the role of NGOs and other electoral stakeholders in so far as monitoring and observation of the elections are concerned. In particular, local NGOs should be accorded a clear right to monitor and not just observe the electoral process.

4.0. Civic Education

The mandate for civic and voter education is given to the Electoral Commission under section 8 (j) of the Electoral Commission Act, Also the National Initiative of Civic Education (NICE) Public Trust is mandated to contribute towards democracy and good governance through civic and voter education. The accreditation process carried out by the Electoral Commission gives delegated responsibility to Civil Society Organisations and other electoral stakeholders to carry out voter education on behalf of and in collaboration with the Commission.

4.1. Limited delivery of CVE by CSOs

NICE observed that CSOs involvement in monitoring, mass mobilization and civic and voter education for the 2019 electoral process was at its lowest level. While the Electoral Commission accredited a total of 117 organizations for these purposes, only a few of them were able to execute their roles, often with limited geographical coverage and implementing the activities without consistency. The main problem was that, the CSO sector faced severe resource constraints for purposes of civic education. It is evident that donors to the governance sector have shifted their focus and emphasis away from civic education.

4.2. Issue-based civic education

The 2019 election saw the escalation of issue-based civic education by NICE and other service providers. Issue-based civic education, in the electoral context, refers to a set of activities and messages aimed at empowering voters to choose among parties and candidates on the basis of actual or expected performance. It is a problem-based way of educating voters on what to consider of candidates and parties in exercising their right to vote as well as social and collective deliverables that enhance the welfare of the greatest numbers of people. ICVE is an initiative that strives to incorporate issues of importance to citizens and their communities during the electoral process by encouraging discussion of issues within communities and by educating voters to focus on the policy and programmatic proposals presented by candidates and political parties³.

However, preliminary election results suggest the resilience of identity politics, especially the power of ethnicity and regionalism as significant determinants of voters' choices at presidential and parliamentary elections especially in the southern and central regions. The pursuit of issue-based politics is still an uphill task and calls for a reconsideration of approaches for delivering civic education to shift mindsets from an obsession with parochial identities of tribe and region. The first past the post electoral system and the pervasive of patronage politics reinforce identity politics and militate against issue-based

³ NDI description of the ICVE

politics. Changing the political culture will definitely require support from institutional reforms of the electoral system to engineer inclusive and accommodative politics that will make focus on identities redundant.

4.3. Null and Void votes in the 2019 elections

The magnitude of null and void votes⁴ is a potent indicator of the quality and reach of civic and voter education. Although 2019 elections registered an increased number of null and void votes of about 2% for Presidential elections compared to 2014, but this was below the minimum acceptable standard. In 2014, the proportion was reported to be 1.09 per cent⁵. In 2019, there were more parliamentary null and void votes at 2 per cent than presidential votes at 1.5 per cent. The distribution of null and void votes across regions shows that central and southern regions had the highest number of null and void votes cast for parliamentary elections compared to other regions. Northern region had the lowest number of null and void votes both at parliamentary (1.2%) and presidential elections (0.8%). The figure below summarizes null and void votes within region and at national level.

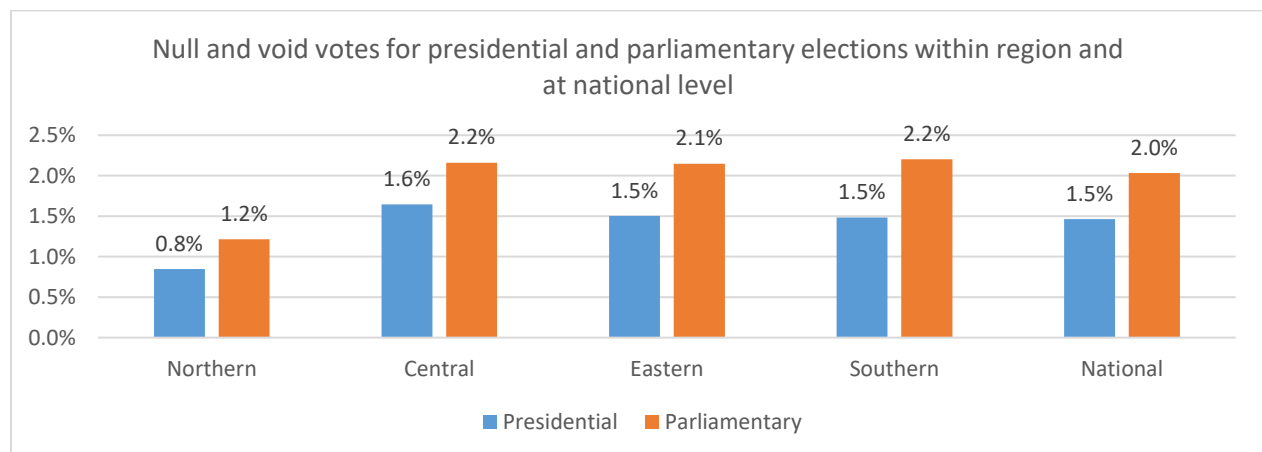


Figure 1: Null and Void votes for presidential and parliamentary elections within region and at national level

⁴ Calculated as a proportion of total votes cast.

⁵ MEC 2014 Tripartite Elections Report p.65. Notice, however, that the calculation was conceptually wrong and meaningless as the proportion was calculated on the basis of valid votes instead of total votes cast.

District level

The analysis of null and void votes at district level shows that Chikwawa had the highest number of such votes (3.4%) seconded by Nsanje and Nkhotakota at 2.8% each at parliamentary election. The presidential election shows similar trend in which Chikwawa had the highest number (2.5%) of null and void votes. It was even worse in some constituencies within districts. For instance Mulanje North (7.7%), Chikwawa Mkombezi (6.1 %) and Mangochi South (5%) registered highest number of null and void votes of the total votes cast in parliamentary election. On the other hand Likoma District had the lowest number of null and void votes for both presidential and parliamentary elections, 0.3% and 0.5% respectively. The figure below presents null and void votes in all the twenty eight districts in Malawi.

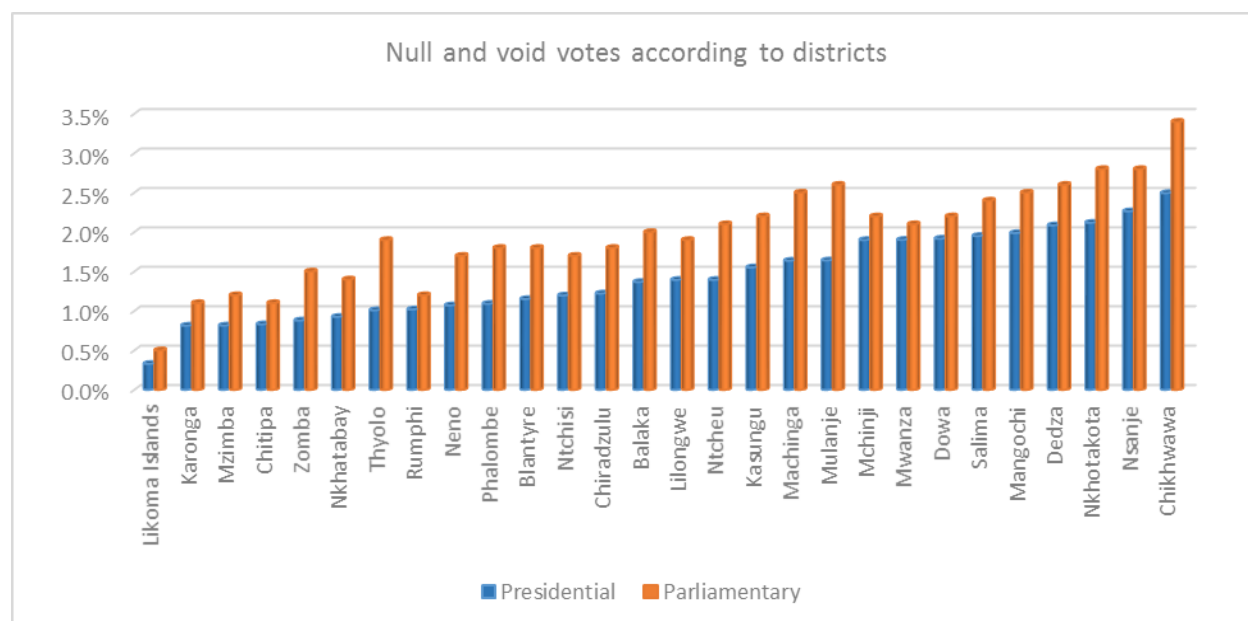


Figure 2: Null and void votes for presidential and parliamentary elections at district

The null and void votes in the presidential and parliamentary elections imply either limited understanding of the voters on correct voting procedures or misunderstanding by electoral staff and party monitors surrounding what constitutes a null and void vote in an election.

The Presidential and Parliamentary Elections Act does not sufficiently define a null and void vote. Section 88(1), defines a null and void votes as follows: *if the ballot paper has been torn into two or more parts.* Section 83 (2d) provides another meaning: *where voting has been adjourned to another day due to occurrence of some public disaster, or commotion which interrupts voting for more than three hours.... the vote cast on the original day shall be null and void*⁶.

The legal provisions lack clarity and are not inclusive enough of elements that make a ballot a null and void vote. For example having more than two marks against more than one candidate on the ballot paper is excluded even though it is the most common occurrence. Some stakeholders take the view that part of the null and void votes are an expression of protest by the individual voters against elected leaders due to their sub-optimal performance i.e. A voter who has lost trust in political leadership may express his/her contempt by simply null voting in the elections. This sounds like a credible hypothesis but will require a different kind of political science research to validate.

4.4. Voter turnout

Voter turnout is one measure of citizen participation in politics. It is usually expressed as the percentage of voters who cast a vote. Turnout is measured as a percentage of registered voters⁷ and is an extremely important statistic in validating results of the election and in thinking about the popular legitimacy of those elected.

The Electoral Commission's data published together with the electoral results segregated turn out for presidential and parliamentary elections. When the figures are aggregated, they yield the figure below.

⁶ Presidential and Parliamentary Elections Act (1994 as amended)

⁷ IDEA, 2002.

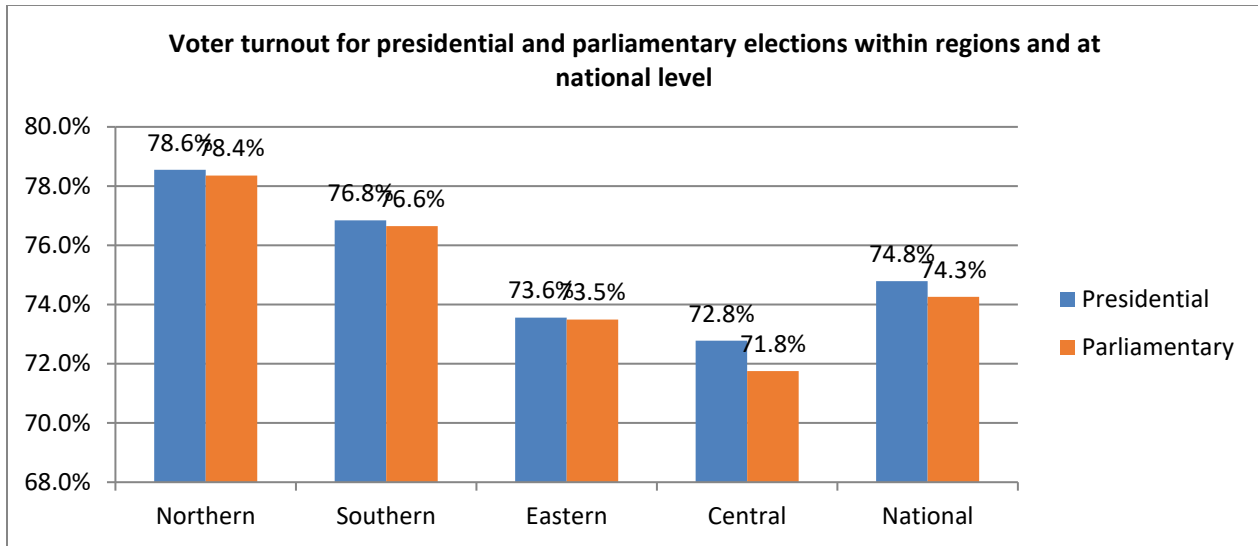


Figure 3: Voter turnout for presidential and parliamentary elections with regions at national level

As shown in the figure above, the presidential election had slightly higher turnout (74.8%) than parliamentary election (74.3%) at the national level. A similar pattern is observed at regional level. The variances in voter turnout between presidential and parliamentary elections range from 0.2 percentage points to 1 percentage point. This way of computing voter turnout is conceptually erroneous. By definition, voter turnout should only be one figure as it captures the number of people who show up at the polling centre and cast their votes. The data source for voter turnout is the register of voters. The segregated data published by the Commission shows that data for computing voter turnout was sourced from counting ballots and not from the register. The segregation also means that the number of ballots cast in parliamentary elections does not match with those in presidential elections and with numbers identified in the voters' register. This in itself makes reconciliation of figures during determination of results difficult or impossible and inherently defeats the utility of voter turn-out as a tool for checking the validity of vote counts.

The discrepancies in voter turn-out figures revealed between presidential and parliamentary elections mean that there were voters who voted only in the presidential election and did not vote in the parliamentary election. There are isolated reports of voters

who refused to proceed to vote for parliamentarians and ward councilors for various reasons including lack of choice and the perception that parliamentarians and ward councilors do not matter in the configuration and exercise of political power. Not only does this practice make reconciliation of figures during results management difficult, it also shows a lingering degree of civic incompetence among voters especially on the roles of parliamentarians ward councilors.

4.5. Key recommendations on civic education

Voter Education Fund: 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;

Civic education in school curricula: The Ministry of Education, Science and Technology should increasingly integrate civic and voter education topics in the primary and secondary schools curricula to initiate future generations of Malawians to civic life;

Identification of null and void vote: Parliament should review the legal provisions that define a null and void vote to enable common understanding and identification of such a vote. Among others, a null and void vote shall be determined when the ballot cast has been left blank, or more than one of the candidates have been selected on the same ballot. In short, the definition should effectively amount to the effect that a null and void vote is one for which the electoral staff are unable to determine the voting choice of the voter.

Technical accountability for the computation of voter turnout: In the spirit of accountability, the Electoral Commission should provide a rationale for the way they computed voter turn-out and undertake to use the correct formula in subsequent elections.

Civic education on tripartite voting: The delivery of civic and voter education should emphasize on what is meant by tripartite elections and duties of a voter. Voters must vote in all three elections. In the worst case, voters that do not want to vote in a specific election for whatever reason (e.g. parliamentary election) should be encouraged to cast a null and void vote for purposes of ballot reconciliation.

5.0. Registration

In monitoring the voter registration phase of the 2019 general elections, the role of NICE was to ensure that the process was conducted in accordance with the law, thereby effectively contributing towards credible, free and fair elections and enhancing democracy and good governance in the country.

5.1. Key observations on voter registration

The following observations were made on the registration phase for the 2019 elections:

Voter registration commenced on 26th June and ended on 9th November 2018. MEC created 567 new centres over and above the number for 2014 for the 2019 tripartite election registration. The increased number of centres eased access to registration centres for many people. Except for very few centres which experienced hiccups, each centre was open for 14 days.

Biometric Voter Registration (BVR) was adopted and used for the first time. Previous elections used Optimal Mark Registration (OMR). The use of BVR and collaboration between MEC and the National Registration Bureau increased the efficiency of the registration process which lasted not more than one minute per person and led to a more credible voters roll than in previous elections.

On a voters' roll of 6,859,570 for the 2019 elections, more women (56%) than men registered to vote. 54 per cent (3,729,588) of voters were youth (18-35 years) of which 2,113,620 were female and 1,615,568 were male. A significant proportion of them were born after the transition to multiparty democracy and were first time voters in the 2019 general elections. This group of voters represented a real opportunity for a break with voters' electoral choices influenced by historical experiences and parochial identities of regionalism and tribalism (ethnicity) which have been major determinants of voting trends and voting outcomes since the transition to multiparty politics in 1993. In view of the urgency for democratic governance and socio-economic progress in the country, this group of voters represented a potentially more receptive group of voters for issue-based voting, free from the constraints imposed by politics of affection and identity.

This proportion of youth on the voters' roll laid the intuitive foundation for assertion that the 2019 election outcomes would be influenced by the youth vote. Nonetheless, given that political parties in Malawi, as anywhere else, have geographical and ethnic bases of their support, it was important to have a sense of how the youth voters were distributed across the country.

Table 1: Distribution of youth voters by region

Region	Number of registered voters	Proportion of youth voters	Proportion of youth voters of total youth voters	Proportion of youth voters of total registered voters per region
North	506,588	13.58		54.47
Centre	1,610,168	43.17		55.13
South	1,014,495	27.20		54.00
Eastern	602,337	16.15		53.35

Source: MEC (2019) Final Voter Registration figures for 2019 Tripartite Elections

Table 2: Distribution of youth voters by district

Northern Region						
District	Total Registered Voters	Registered Voters	Youth	Total Voters	Youth	Percentage of Youth Voters/District
		Male	Female			

Chitipa	95,698	22,888	28,240	51,128	53.43
Karonga	146,386	36,019	44,930	80,949	55.30
Likoma	6,973	1,947	1,994	3,941	56.52
Mzimba	478,233	114,446	143,910	258,356	54.02
NkhataBay	106,074	25,706	30,169	55,875	52.68
Rumphi	96,610	24,380	27,959	52,339	54.18
Central Region				-	
Dedza	310,066	67,668	94,968	162,636	52.45
Dowa	324,520	83,258	94,806	178,064	54.87
Kasungu	324,786	83,581	93,153	176,734	54.42
Lilongwe	1,011,415	271,205	298,965	570,170	56.37
Mchinji	242,096	63,740	72,423	136,163	56.24
Nkhotakota	178,035	46,253	55,042	101,295	56.90
Ntcheu	228,400	51,596	68,853	120,449	52.74
Ntchisi	129,844	33,694	38,501	72,195	55.60
Salima	171,261	38,593	53,869	92,462	53.99
Eastern Region				-	
Zomba	319,035	66,852	100,785	167,637	52.55
Machinga	250,756	47,425	89,281	136,706	54.52
Mangochi	402,823	75,809	142,091	217,900	54.09
Balaka	156,359	30,531	49,563	80,094	51.22
Southern Region				-	
Blantyre	497,407	131,698	150,892	282,590	56.81
Chinkhwaw a	258,471	62,536	78,889	141,425	54.72
Chiradzulu	145,677	29,401	44,551	73,952	50.76
Mulanje	250,756	59,275	89,038	148,313	59.15
Thyolo	279,233	55,342	86,375	141,717	50.75
Mwaza	48,294	11,139	15,577	26,716	55.32

Neno	56,049	12,408	17,637	30,045	53.60
Nsanje	145,472	31,536	46,608	78,144	53.72
Phalombe	167,467	37,042	54,551	91,593	54.69

Compared to 2014, in the 2019 elections, fewer voters registered in many districts on account of several factors including the following: Unsatisfactory performance of elected officials; perception that people’s votes do not matter because outcomes are pre-determined by electoral authorities; perception based on misinformation that they would be able to vote using the National ID only; the introduction of the National ID which removed the need to use a voters certificate as an identity document and therefore removed the incentive to register as voters; and culturally embedded procrastination leading to congestion at the registration centres on the last day thereby creating frustration for some potential voters who simply turned away without registering. These factors were identified through careful analysis of narratives associated with each registration phase.

Incidents of missing registration equipment such as the BVR kit that went missing while in transit to Mwanza and was found on a train in Mozambique, and thefts of registration computers and generator set in the North worsened fears and speculation of a grand scheme to rig the election at registration stage. Management of these incidents by MEC was significantly below the mark. The Explanations provided by MEC and the manner and tone in which the explanations were given did not inspire public confidence.

5.2. Key recommendations on registration of voters

For future elections, the following recommendations are proffered:

New civic education narratives: Civic educators need to create new narratives and identify new incentives to convince and attract people to register for voting when performance of elected officials is wanting and they are seen as self-serving rather than acting in the interest of the greatest good for the greatest numbers in our societies;

Civic education financing model: Stakeholders must engage in a search for a sustainable financing model for civic and voter education that will meaningfully enable CSOs to remain engaged in the electoral cycle to support the cause of civic empowerment of the citizens;

Online registration: MEC should consider introducing online registration for repeat voters who have their National IDs and Voter certificates from previous elections;

Improving logistics management and investigative capacities: While MEC's communication and attitude towards stakeholder concerns improved a great deal along the way, it is important that the Commission improves its system on logistics management and investigative capacities in order to adequately respond to stakeholder concern particularly on missing registration materials as these fuel waves of suspicions of arrangements to rig the electoral process.

6.0. Verification of Voters Roll

Voters' roll verification is an important exercise as it gives an opportunity for registrants to verify their names and pictures in the voters roll. For this reason, voter verification is a mechanism that prevents disenfranchisement of voters. The voter verification phase is also the time when registered voters can process transfers from the centers where they registered to new centres depending on their new circumstances. Voters roll verification also generates more reliable data for the Electoral Commission on quantities of materials to be printed or procured for the election. This last point is particularly important as under-supply of materials cause logistical challenges with potential to disenfranchise some voters and cause disquiet while over-supply of sensitive materials such as ballot papers beyond a minimum threshold raises questions and suspicions.

6.1. Key observations on verification of voters' roll

The following observations were made on voters roll verification phase for the 2019 general elections:

- i. The exercise was poorly patronized by registered voters. One reason for this low patronage was probably poor timing of the exercise as it was carried out during the

farming season when most Malawians especially in rural areas were preoccupied with farming activities. Another reason is that the awareness and mobilization activities for the exercise started late;

- ii. MEC introduced voter verification using a USSD code on mobile phone networks by dialing *2019#. This initiative made verification easier, time efficient and cost-effective for many voters and appears to have significantly compensated for the physical checks at the centres; and
- iii. The transfer window, tied to the verification exercise, came too early – five months before polling. As evidenced on the polling day, this had the effect of disenfranchising voters who had to move places in the period between verification and polling. This situation was aggravated by the administrative decision made by the Commission not to grant ‘Authority to Transfer’ to any voters except electoral and security personnel. A late relaxation of this decision by way of exceptions caused disquiet especially among university students who were on campuses on the voting day but had been registered elsewhere in their localities of permanent residence.

6.2. Key recommendations on verification of voters roll

On the basis of the foregoing analysis, the following recommendations are proffered to improve the implementation of voter verification:

Alternative/electronic methods for verification: In view of low patronage to registration centres for voters’ roll verification due to agricultural seasonality and the ease and efficiency of using USSD code on mobile phones for verification, MEC must review the need and necessity for physically opening all centres for verification. To aid this review, MEC 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 and any other related data;

Online verification: In addition to verification by mobile phone, MEC should consider introducing online verification.

De-linking voter transfer from verification exercise: MEC should consider de-linking the transfer window from the voter verification exercise and allow transfers up to two months before polling to avoid administrative disenfranchisement of registered voters.

Online issuance of voter transfers: MEC should consider developing and executing an electronic system for processing and issuing 'Authority to Transfer' that can be accessible on phones and computers.

7.0. Nomination of candidates

Nomination of candidates for the tripartite general elections were carried out from 4th to 8th February, 2019 at various centres across the country. Seven candidates were duly nominated for the presidential election, 1,034 and 2064 candidates were nominated for parliamentary and local government elections respectively.

7.1. Key observations on nomination of candidates

The following observations were made on nominations:

7.1.1. Low rejection rate of candidates

Most candidates fulfilled the requirements for nomination for their respective elections. Only a few did not and were disqualified as required by law. This means that information on eligibility criteria and completion of nomination forms was well disseminated and understood by aspirants.

7.1.2. Eligibility criteria for nomination –English language

The eligibility criteria for nomination includes ability of the aspirant to speak the English language well enough as to be able to effectively participate in the proceedings of their respective elected bodies. However, there is lack of clarity on the kind of evidence that is acceptable to prove that the aspirant is able to speak the English language to minimum standards of proficiency.

7.1.3. Lack of transparency on determination of nomination fees

The requirement of aspirants to pay non-refundable nomination fees determined by the MEC using opaque criteria or arbitrariness raised questions and ignited a discourse on how this requirement infringes on political rights of poor citizens to participate in elections as candidates and how it creates or reinforces social stratification on the basis of economic classes and meshes them with politics with a potential effect to sustain political exclusion. Further questions were raised as to what MEC uses the money for, how it accounts for it and whether MEC should be allowed to be used as a revenue collector for government by turning itself into a market for trading rights of political participation in the electoral process. These are fundamental questions that remain unaddressed and will likely come up again with renewed vigour at the next general election if they remain unaddressed;

7.1.4. Low numbers of female candidates

For several general elections, as a country, we have been agitating for increased numbers of women in political decision-making institutions. In this regard, NICE collaborated with like-minded organisations to support the nomination and eventual election of women to parliament and local councils. The number of nominations for women improved over those of 2014. However, the number of female candidates still lagged behind that of men with a significant margin as shown in the table below. This variance indicates that there is an uphill task to achieve gender parity in politics and political decision making structures.

Table 3: Share of nominations for women

Election	Number	Number Female candidates	Number of male candidates	Proportion of female candidates
Presidential	1	0	7	0
Parliamentary	193	295	1034	28.52%

Local Government	462	645	2064	31.25%
------------------	-----	-----	------	--------

The low numbers of women taking up candidatures in elections and even fewer being elected mean that there still exist deep seated barriers to women’s political participation that militate against our collective desire to develop a gender sensitive, gender-balanced and inclusive political institutions. This desire is unlikely be realized any time soon unless at a political level, deliberate reforms along the lines of affirmative action are instituted. Furthermore, the persistently low numbers of women amidst advocacy work on the same, point to the possibility that the advocacy efforts are deficient in some aspects and require rethinking;

Candidate selection in political parties started off with a significant amount of enthusiasm through party primary elections. However, none of the political parties completed the process as primary elections often ended up in disputes and caused cracks in parties, with disgruntled aspirants defecting to new parties or going solo as Independent candidates. The abandonment of primary elections avoided intra-party conflicts but it undermined internal democracy in political parties. This shows that the political parties are yet to get institutionalized and most of them do not yet have clear and agreed frameworks of rules and practices for identifying candidates for elections. It is necessary that parties invest in institutional development if they have to live up to their expected roles in democratic politics and governance.

7.2. Key recommendations on nomination exercise

For future elections, the following recommendations are proffered:

Eligibility for nomination: MEC and electoral stakeholders should review the eligibility criteria for nomination of aspirants especially the requirement on ‘ability to speak the English language’. To avoid further confusion, the kind of evidence that candidates must be presented to prove English language proficiency must be spelled out clearly.

Alternatively, stakeholders should review the need and relevance of a criterion that requires political representation in Malawi to be carried out in a foreign language.

Nomination fees: MEC should submit itself to the requirements of accountability in election administration by publicly addressing the many questions the public have raised on the non-refundable nomination fees.

Targeting nominations to influence candidate selection: Programs on women's political empowerment that seek to increase the numbers of women in elected decision making structures should particularly target candidate selection processes in political parties to influence nominations. The fewer the women are nominated, the more distant and elusive is the goal of gender parity in the National Assembly and Local Councils in the context of the majoritarian electoral system that is currently in use.

Primary election rules framework: Political party leaders should grow out of the tendency of thriving on the edges of chaotic internal arrangements by ensuring that predictable and clear rules are developed and enforced to promote internal democracy within the political parties and especially democratic candidate selection and nomination processes.

8.0. Campaign

The official campaign period started on the 20th of March and ended 48 hours before the commencement of polling which by law (section 67 (1) of the Constitution) is on the Tuesday of the third week of the month of May. It is a period of two months which for a majority of citizens constitutes the heart of the election. Electoral campaigns are perhaps the most definitive features of general elections in Malawi because of how they shape political discourse and practice and they serve as an early indicator of things to be expected on the polling day and in the post-election period. For the 2019 general elections several observations on the campaign were made as follows:

8.1. Key observations on the Campaign

8.1.1. Campaign period

As in previous elections, candidates and political parties began campaigning very vigorously way before the official campaign period, contravening the provisions of the

electoral law. At some point, Blantyre District Commissioner warned political parties to desist from conducting public rallies before the start of the campaign period, and stressing that “If political parties disregarded the call and continued conducting campaign rallies the Council would consider those meetings illegal and necessary measures would be taken”⁸. However, all political parties continued to engage in this practice to the extent that there was no difference between the official campaign period and the period before it in terms of political party activities for electioneering. Interestingly, political parties, especially the ‘governing’ party called such meetings (before the official campaign period) ‘developmental’ rallies. However, the unofficial period of campaign is unregulated by the Electoral Commission. The variance between the legal provisions and what happens in practice is evident. Given the incentives for electioneering, it is clear that the practice is now part of deep seated political culture and sits at odds with the law.

8.1.2. Hand-outs

Although hand-outs for purposes of electioneering are banned under the Political Parties Act, they were pretty much a characteristic feature of the 2019 elections. Observations and reports verified by NICE observers revealed that politicians were finding it hard to adhere to the newly enacted Political Parties Act that prohibits distribution of hand-outs. Similar observations were made by MESN which reported that in all 28 districts, political candidates and parties were enticing people with material and cash gifts in an effort to lure them for votes. For example, in Nkhata-Bay South, an independent candidate was giving out K500 notes to constituents; a DPP candidate in Rumphi North was giving hand-outs to traditional leaders and constituents; in Likoma, an independent candidate was distributing blankets to the elderly while in Mulanje UTM officials were distributing soap and pants to residents at a rally⁹. The law banning hand-outs 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. Furthermore, the notion that materials are political hand-outs when they are for private benefit and without election

⁸ George Banda Nyasatimes, 6 July 2018

⁹ Malawi News. 13-19 April, 2019 by Mandy Pondani

messages inscribed on them is effectively permissive of hand-outs as candidates and parties simply brand the materials with party colours even when the materials are exclusively for private benefit of the recipients. Although the Chiefs Act stipulates that local leaders are not supposed to get anything as a 'gift' because it can be suspected as a hand-out, most of the beneficiaries of the hand-outs were traditional leaders who argued that there was nothing wrong with receiving the hand-outs as long as they know that their ballot is secret and the politicians would not know their decision in the polling booth¹⁰.

8.1.3. Promotion of police officers and teachers

During the campaign period, Government promoted 8,602 police officers and 20,210 teachers within a month. This development caused consternation in the political sphere as it was widely perceived to be a strategy of the party in government (Democratic Progressive Party) to entice and incentivise civil servants and members of the Malawi Police Service to support the ruling party during the May 21 elections.¹¹ In view of the roles of the Police and teachers in the management of the electoral process, these promotions created suspicions of attempts to 'buy political favours' or political goodwill of public servants who were going to be deployed in various capacities as electoral staff. While public servants have rights to career growth and promotions, the perceptions created by the mass promotions during the campaign period of what was clearly a highly competitive election, was insensitive and prejudicial to the maintenance of public confidence in the credibility and fairness of the electoral process.

8.1.4. Conflicts over venues for campaign rallies

The politics around notification of campaign rallies at public venues fuelled the occurrence of inter-party electoral conflict. Public servants involved in approving venues for political rallies (the District Commissioners and Officers in Charge of Police Stations) were confounded by interference of the political executive to act in favour of the ruling party. Consequently, opposition parties were a few times in several places barred from holding rallies and had to reschedule meetings at different venues simply on account of the ruling party indicating its intention to hold a rally at the same venue on the same day or as was

¹⁰ by Samuel Kalimira, Daily Times 2 April 2019

¹¹ Daily Times, 10 May 2019 by Mandy Pondani

the case in Zomba, because the venue of the opposition rally was quite close to the way that the President of the Republic and presidential candidate of the DPP was going to use¹². On a positive note, it was encouraging that the opposition UDF and MCP were able to use public spaces such as the CIVO Stadium and the Kamuzu Institute for Sports respectively for their campaign rallies.

8.1.5. Political party youth cadres and inter-party conflicts and violence

The youth cadres of political parties, often appropriated the political space and projected a sense of misguided entitlement that motivated them to act with impunity against other political parties, uprooting flags and removing any other campaign materials of rival parties. This apparent lack of action created the impression that party cadres of the Democratic Progressive Party were above the law. The Malawi Electoral Integrity Programme¹³ reported that as of April 30, a total of 45 incidents had been reported and verified in 12 of the 13 project districts. Lilongwe and Nsanje districts reported the highest number of cases at nine and seven respectively; Salima and Mulanje had 5 each. Other conflict-prone districts were Chikwawa, Rumphu, Karonga, Zomba, Mangochi, Chiradzulo, Blantyre and Kasungu¹⁴. Some of the recorded incidents are outlined below:

- Suspected DPP cadets pulled down MCP flags in Chikwawa and Nsanje as President Peter Mutharika visited people affected by heavy rains and floods in the two districts. DPP was reported to be deploying violent youth believed to have been ferried from Blantyre to terrorise the two districts¹⁵.
- Unknown people vandalised billboards of President Peter Mutharika which portrayed achievements during his term of office. DPP Regional Governor for the north propagated a narrative that the vandalism was carried out by UTM youths to frustrate DPP running mate Everton Chimulirenji, who was scheduled to conduct whistle-stop tours in Mzuzu City.

¹² Zodiak Online, 24 December 2018

¹³ MEIP is a programme which involves CSOs such as Youth and Society, National Elections Systems Trust-NEST, Tiphedzane Community Support and the Catholic Commission for Justice and Peace-CCJP Chikwawa Diocese

¹⁴ Daily times 8 May 2019 by Mandy Pondani

¹⁵ Times 360 Malawi, March 18, 2019, reported by Jameson Chauluka

- MCP and UTM Party supporters held joint protests in Dowa against the DPP which they alleged to have sent violent party cadres (i.e. cadets) to pull down the opposition party flags. The protests happened at Chankhungu Trading Centre in the district. The angry protesters were brandishing phanga knives and had stones and other weapons which they intended to use to harm DPP supporters in retaliation for the removal of the party flags.¹⁶
- DPP supporters clashed with UTM security over DPP flags and posters that decorated Mzuzu Shoprite roundabout. This did not please UTM supporters who uprooted all the DPP flags and hoisted UTM flags. UTM president Saulos Chilima was holding a rally in Mzuzu that day¹⁷.
- Another political violence occurred at Ngabu in Chikwawa between DPP and MCP supporters. It was reported that MCP wanted to retaliate after DPP cadres removed their flags when Chakwera visited the area earlier.

For acts perpetrated by cadres of the ruling party, police investigations were not forthcoming or grew cold feet very quickly.

8.1.6. Undemocratic attitudes of some traditional leaders

In some parts of the country, chiefs contributed to the infringement of political rights of citizens and political parties by refusing some political parties and candidates to hold political meetings in their areas of jurisdiction. This practice is against the letter and spirit of the electoral laws. It is, however, reinforced by the first-past-the-post electoral system which, in our context, encourages non-accommodative politics by creating ‘party strongholds’ which become ‘no-go zones’ for political opponents and hotspots of electoral violence. Furthermore, traditional leaders are incentivized to be politically biased in favour of ruling parties because the Chiefs Act binds them to the Presidency of the country and by extension to the ruling party. For example, Traditional Authority Mlumbe in Zomba warned his junior traditional leaders not to allow other politicians to hold political rallies

¹⁶ Nyasatimes, 28 April, 2019

¹⁷ Face of Malawi, 17 May 2019 by Robert Ngwira

in his area apart from those he endorsed, or the junior chiefs would be dethroned¹⁸. However, in a rare act of fairness, Traditional Authority Govati of Mwanza blamed fellow traditional leaders for orchestrating political violence by creating no-go zones for some political parties. He pointed out that there was need to give equal opportunities to all parties so that people have right choices about who should represent them¹⁹. Although chiefs signed a code of conduct with the Malawi Electoral Commission to promote democratic principles in the conduct of elections, the code of conduct, adherence was a challenge. This is so, because the code as all the current codes of conduct have no enforceable sanctions and are dependent on the goodwill of stakeholders to adhere to them. In some countries, such as Zambia, the code of conduct are part of the electoral laws as part of schedules.

8.1.7. Hate speech

The campaign season was characterized to a good degree by hate speech, verbal abuse, defamatory statement and outright incidents of character assassination among candidates and their supporters. This practice went on unabated because the electoral law condones it through section 59 of the Presidential and Parliamentary Elections Act which grants campaigners immunity against any criminal or civil liabilities arising from things uttered while on the campaign trail. At one political rally the DPP Regional Governor for the south described all opposition UTM women as *mahule* i.e whores or prostitutes in the presence of the President and the First Lady²⁰. At another rally, he described the UTM as a party comprising of “thieves, crooks and prostitutes.”²¹ Another case is that of DPP Director of Elections who ridiculed a female candidate for Balaka West, a former first lady who divorced from the former president. The DPP Director of Elections explained in graphic terms the candidate was a sexually incompetent woman and that was the basis for her divorce. While, the propensity to use hate speech was more frequent in the ruling party, there was cautionary restraint in other parties especially the UTM which seriously

¹⁸ Nyasatimes, 12 September 2018, by Owen Khamula

¹⁹ Nation, 15 April 2019, reported by Edwin Nyirongo

²⁰ Maravi Post, 23 November 2018

²¹ Nyasatimes, 7 September 2018

attempted to project an aura of civilised politics. For example, UTM President Saulos Chilima was applauded for condemning political castigation by one of their party cadres during a political rally in Chikwawa (Nchalo). The party cadre had attacked MCP President and his Vice President by describing them in a derogatory manner as a ‘Pastor’ and a ‘Sheikh’ whose political relationship was not righteous and would not last long²².

8.1.8. Campaign financing and expenditures

The 2019 campaign was evidently very expensive going by the quantities of campaign materials procured and distributed by political parties and candidates. This issue raises questions about the integrity of the electoral process in capturing the true will of the people. It also raises the need for governance stakeholders to engage in very practical ways with the question of campaign financing and its impact on governance. There were allegations that the DPP was abusing state resources to bankroll its campaign activities. At some point, the UTM through its presidential candidate accused the Malawi Revenue Authority (MRA) and the Malawi Communications Regulatory Authority (MACRA) of keeping funds for “special operations” meant to sponsor the election campaign activities of the ruling party. Government spokesperson/Minister of Information and Technology dismissed it as mere political rhetoric²³. In addition, the major political parties made a lot of investments through the use of all kinds of media (social, print, electronic and outdoor) to boost their chances of winning.

8.2. Key recommendations on campaign

Implementation modality to enforce hand-out ban: 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 hand-outs during the campaign period;

²² Nyasatimes, 11 December 2018

²³ Daily Times, 15 April 2019 by Emmanuel Chirwa and Serah Makondetsa

Strategy for anticipating and responding to electoral violence: The Electoral Commission and the Malawi Police should collaborate and institute a strategy for anticipating and responding to electoral violence throughout the electoral cycle and not just during campaign;

Designate electoral violence as electoral offence: Electoral laws should be reviewed to provide penalties for individuals and political parties that are found of perpetrating acts of violence during elections in a way that electoral violence is understood as being both a criminal and electoral offence so that perpetrators face election-specific penalties over and above criminal law penalties;

Conversion of codes of conduct into regulations: 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; and

Operationalization of statutory law on campaign finance: 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. Furthermore, harmonization of electoral laws on campaign finance and the provision of the political parties act is long overdue. It should be part of the electoral law reforms to be undertaken before the next general election in 2024.

9.0. Role of media and social media

9.1. Key observations

9.1.1. Persistent bias of the state broadcaster

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.

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. To implement this, MEC requested parties and candidates for 3-minute radio and television messages for onward transmission to MBC. Furthermore, political parties were asked to record 30 minute programmes focusing on their manifestoes and submit to MBC for Broadcasting. However, messages of opposition parties were hardly featured. Mention of opposition parties and candidates on MBC outlets was mostly for negative publicity and ridicule. The best remedy MEC could provide upon receiving complaints was to window dress the issues by writing cautionary letters to MBC and rely on goodwill.

9.1.2. Tracking of media coverage by MACRA

NICE observed that for the 2019 elections, the Malawi Communications Regulatory Authority did not track and publish coverage of political party election activities as has been done in previous elections. This omission of duty means that the Electoral Commission and other election stakeholders were left without systematic evidence of unfair coverage or access to public media by all parties and candidates as required by electoral law.

9.1.3. 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.

9.1.4. No official election broadcaster

MEC abandoned designating any media house as an official broadcaster of election information. NICE would like to commend MEC for this decision. It levelled the ground for all media houses subject to their capacities. Furthermore, it meant that all information, except that given by MEC itself was unofficial.

9.2. Key recommendations on media

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;

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;

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;

10.0. Polling

As in previous elections, many voters across the country were enthusiastic to cast their votes. NICE observed that at some polling centres, voters began to arrive as early as 04:00am.

10.1. Key observations on polling

The Election Day proceeded in atmosphere that was largely peaceful and characterized by the observance and maintenance of law and order. NICE 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 and diligence 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. Despite isolated incidents of scuffles and disputes.

10.1.1. Timeliness in opening polling centres

A large proportion of polling stations opened on time i.e. between 6 and 6:30 am. Only 2.5 percent of stations opened late due to various reasons, as outlined below:

- **Missing materials** such as ink pads, seals for ballot boxes, log books and pens. This occurrence suggested that packaging of materials was in some cases not very well done and that polling staff did not take heed of the advice provided by the Commission to check the adequacy and accuracy of the election materials delivered to their polling stations before the polling day;
- **Late set up of polling premises** mainly because polling staff showed up late at the polling stations; or due to shortages of polling materials especially ballot boxes with seals that did not have serial numbers. This also suggests challenges within the logistics and operational services of the MEC.
- **Disagreements between polling staff and security personnel over security protocol and identification issues.** NICE received and verified reports where security personnel at the polling centres refused to show their Identity Cards to electoral staff and this caused misunderstandings and delayed opening of the centres. In other cases, security personnel chose to take positions quite close to the voting booths which electoral staff adjudged to be prejudicial to the observance of the secrecy of the ballot for voters and so advised security personnel to change positions which they resisted. These occurrences suggested that polling staff and security personnel were not briefed from the same script and the security personnel did not fully understand the principles or values of democratic elections;
- Long queues were noted in 25% of the centres countrywide. This suggests that there were few Ushers at some centres against the number of polling streams

and that MEC officials came in late to open the centres to provide guidance to voters while the queues got longer and longer.

10.1.2. Voters who lost voter certificates or names not on voters register

NICE commends MEC for an effective system through which registered voters who lost their voter certificates were allowed to cast their votes. For example, at Nachipere Centre, Nchima Ward, Thyolo, there was a case where a lady had her name missing yet she had her voter ID but she was allowed to vote. In Ntcheu West, Gomain Chikuse ward at Gongolo School the voters' roll had only names with surnames starting from J-Z while those from A-I were missing. Those that brought voter certificates were allowed to vote as their names were being written manually. At Khonjeni and Mitengo polling Centers in Khonjeni ward in Thyolo Central there were cases of people who had registered but their names could not be found on the voters roll but they were allowed to vote.

10.1.3. Disenfranchisement of voters due to issues with voter transfers between polling stations

The issuance and management of 'Authority to Transfer' to voters was inconsistent and characterised by information asymmetry. Consequently, a significant number of voters who registered to vote were effectively disenfranchised. For example, at Katawa Centre in Mzuzu, students from Mzuzu Technical College were not allowed to vote despite presenting a letter of authorization from MEC. At Chirimba School, Michiru ward, Kabula constituency students from The Polytechnic who registered elsewhere were denied voting by the Party Monitors despite the Constituency Returning Officer (CRO) getting clearance from MEC. Party monitors were the ones refusing to let students vote. At some centres such as Chibisa court in Chikwawa West, there were no transfer books so voters with authority to transfer were not allowed to vote as they could not be recorded.

10.1.4. Electioneering on polling day

Candidates and party agents in a significant number of places continued to campaign and engage in electioneering activities on the polling day against the law. The Election Situation

Room received reports, verified them and acted through the intervention desk. Below are some of the cases:

- Police in Machinga arrested former Member of Parliament for Machinga Central Shaibu Kaliati and his monitor for allegedly issuing money to voters during voting process. Mr. Kaliati was an independent candidate;
- A complaint was received by security personnel at Nkhotakota LEA School that at the eastern side of the school behind the classroom blocks in Nkhotakota South Constituency, there was a woman who was secretly enticing people to vote for a certain presidential candidate. She was later chased.
- The DPP candidate for Nkhatabay Central constituency was conducting a campaign on the eve of elections. The Police Officer in charge of Nkhatabay indicated that her office did not have enough human resources to be deployed the scene;
- Incumbent Ward Councillor for Mapanga Ward in Blantyre City East (Independent) was repairing a bridge on Election Day at Nanjiriri connecting Area 7 and 8; arguing that he was doing development and not politics.
- DPP candidate for Nsanje South West, Hellen Buluma was giving out MK1, 000 notes and bottles of fizzy drinks (Frozy) to people going to vote at Dinde centre. Police rescued her from protesters and escorted her to her car where people found a lot of campaign material (cloth) and people got them all from the car before she fled.
- DPP supporters at Makhwili School in Chikwawa were dressed in party colours, and Head teacher of the same school was telling people who to vote for a DPP candidate.
- Independent candidate for Rumphi Central, Chidumba Mkandawire, was distributing food to security personnel at Lukali centre.
- A man stood by Kasinje Court and was giving people money to vote for DPP and was arrested by the police. He admitted that he was sent by the DPP Candidate Dr. Nkungula.

- At Namasika center in Mpiri ward of Machinga North East constituency one UDF diehard was found campaigning 700 meters away from polling centre by giving out money to voters.
- At Nyungwe centre in Karonga agents of a certain shadow Member of Parliament were seen giving money to voters. They were arrested by the police.
- Georam Kaunda, a DPP monitor at Town Hall Centre in Lilongwe was allegedly caught distributing money to people. MDF soldiers dragged him for questioning but some DPP supporters tried to stop the soldiers. Infuriated, the MDF soldiers beat up the DPP supporters, injuring one DPP female member.

10.1.5. Violations of secrecy of ballot

Through the Election Situation Room, NICE observed that there were incidents of violation of the secrecy of the ballot. Cases included those of security personnel and party monitors who took positions too close to polling booths as to be able to see how voters voted. These situations tend to have negative influence on the conscience of voters and have been proven in many elections across the globe to negatively affect voters' choices especially in contexts where electoral violence is a real possibility and electoral politics is still driven by exchanges of private goods and services between the electorate on one hand and parties and candidates on the other.

The other form of violation of the secrecy of the vote was relatively new and reflects the technology driven and social media driven political environment. NICE received reports of assisted voters and many others that on their own volition took pictures of their completed ballots before casting them and later posted the same on different social media platforms. At a few centres, security personnel detained voters who took pictures of their ballot papers and confiscated phones until closure of polling. For example, at Chimutu Centre in Lilongwe City Centre constituency a man was taken to Lingadzi Police Station for questioning after being found taking a picture of the ballot paper during voting. This

second form of violation of the secrecy of the vote is unique in the sense that it is in the form of voluntary disclosure. The discourse so far on secrecy of the ballot has been on the assumption that people other than the voter himself or herself seek to know the voters' choices mainly for reprisals if the choices do not favour their preferred candidates or parties.

10.1.6. Lack of consequences for breaking electoral laws

Through the Election Situation Room, NICE received reports in which some stakeholders raised suspicions over the conduct of others as summarised in the Table below. What is of particular interest to NICE are the actions that were taken to address the issues or the outcomes of the said actions. Generally, NICE found that the actions taken were very inadequate for purposes of safeguarding the integrity of the elections as well as for serving as a deterrent against similar conducts in future elections.

- **Polling official found in possession of pre-marked ballot papers:** At Davie Primary School in Mzimba, a Ballot paper issuing Clerk was found with pre-marked ballot papers. An inspection was conducted on all presidential ballot papers and found that only one ballot was pre-marked and the marking 'appeared to have been done by a semi-literate person'. The DC was reported to have directed that the polling official be replaced; and that "all pre-marked ballots be replaced by another batch"²⁴. The directive to replace pre-marked ballots suggests that not only one ballot was pre-marked. The suggestion that the marking may have been done by a semi-illiterate person raises questions as to who this person was, at what point in time the ballot was pre-marked etc. There was need to investigate fully the issue of pre-marked ballots and not just to have them replaced and dismiss them as having been done by a semiliterate person that could not be identified. Neither was it adequate to simply replace the polling official without taking further steps to prosecute.
- Party monitors at Chafisi and Kavuula Centres in Mzimba were influencing voters on which presidential candidate to vote for. The monitors were replaced. There is

²⁴ NICE observer polling centre Observer report

no any other penal action taken on the monitors for breaking the electoral. Lack of penal action creates or reinforces the perception that electoral laws can be violated as the probability of punishment is negligible.

- Voter impostors: At Sindiri in Mangochi and at Kalonga in Lilongwe, some voters attempted to vote using voter's certificates of other people who had travelled. They were arrested by the Police. Just like in the case of many others who were arrested for breaking or contravening electoral laws, the cases were not seen through to their logical conclusions.
- A Presiding Officer was found with election materials such as ballot boxes with ballots cast for one candidate but not from any polling streams of the station, raising suspicions of attempts to rig the election by ballot stuffing

10.1.7. Nature of incidents reported to the Election Situation Room

The Election Situation Room received incident reports from multiple sources and verified them. Incidents received fall into the following categories: Inadequate or missing election materials; Identification of voters and their rights to vote; electioneering by candidates or agents of political parties and candidates near or at polling stations while polling was under way; ballot paper irregularities including missing details of candidates; irregularities in voting procedures and counting of votes; shortages of polling staff in some polling stations; transfer of ballot boxes for counting votes at locations other than the polling station, mostly due to lighting problems; delayed transmission of results from some polling stations to constituency tally centres due to administrative or logistical issues; attempted fraud through alteration of results and other election records by presiding officers.

Through the intervention desk, NICE supported the investigation and resolution of some of the issues and provided advice to relevant authorities including Commissioners and senior staff of the Electoral Commission on how to address others.

10.2. Key recommendations on polling

MEC should review and improve the management of voters on transfer to ensure that no eligible and willing voter is disenfranchised by administrative action while ensuring that voters on transfer do not pose risks to the credibility of the elections at any level;

MEC should consider converting the code of conduct for political parties into statutory regulations to help enforce specific provisions of the electoral laws such as prohibition of electioneering on the polling day;

MEC should clarify the practical aspects of the principle of the secrecy of the ballot. In particular, whether voters violate the principle when they voluntarily reveal their choice especially by publishing images of their ballot papers on social media platforms.

For future elections, it is important that **personnel from security agencies should be trained and not just briefed on the principles and values of democratic elections** as well as on the legitimate roles and administrative authority of other polling staff at the polling centres;

MEC and the Police should develop a collaborative Election Day case handling and management system that should be able to catalogue all cases of electoral offences for which arrests are effected on the Election Day. In a similar vein, to speed up resolution of cases, the judiciary should be encouraged to consider setting up time-bound electoral courts so that election matters do not go on forever in the ordinary criminal or civil justice systems.

11.0. Results management

Result management of the 2019 general election, particularly the presidential election, was probably the worst ever in the history of democratic elections in the country. Stakeholders observed and contested several issues including;

11.1. Key observations on results management

This section highlights some of the critical issues observed by NICE about results management of the 2019 general elections.

11.1.1. Lighting

In many polling stations, counting of votes was affected by inadequate or poor lighting. Only 14.29 per cent of stations reported having 'adequate lighting'. The lamps provided by MEC were not working in most polling stations. However, only 15.79 per cent of polling stations were reported to have transferred ballot boxes to another place for counting of votes on the basis that there was bad lighting at the premises where voting had taken place. In some cases there were disputes about where to go for counting.

11.1.2. Management of spoilt ballots

During voting, new ballot papers were given to voters who made mistakes on the initial ballot papers given to them. This was observed at 88.89 per cent of polling stations. Monitoring data showed that at polling stations equivalent to 22.22 per cent, voters kept spoilt ballot papers after being given new ones. This practice was un-procedural and it contributed to challenges for ballot reconciliation during counting of votes and violated a legal provision that requires such ballots to be retained by polling staff. Part of the problem of reconciling polling materials arose from this non-compliance with a very clear statutory requirement that presiding officers must retain the spoilt ballots.

11.1.3. Inability of presiding officers to reconcile election materials

Transmission of results from polling centres to tally centres was badly affected by inability of presiding officers to carry out correct reconciliation of polling materials especially ballot papers, and reconciliation of registered and actual voters at polling stations. While this problem showed that presiding officers did not receive adequate training on this aspect, there was anecdotal evidence that unscrupulous candidates and their agents took advantage of the situation to tamper with results of the elections and subvert the will of the people. NICE also observed unethical and dishonest conduct of compromised presiding officers who were caught changing figures on results sheet and also transposing figures between candidates when reporting them to Constituency Returning Officers especially in some polling stations in Chikwawa and Nsanje. In trying to reconcile figures, some presiding officers simply redistributed votes among candidates, in the process reducing votes for some while increasing votes for others. This practice did not only cheat the

candidates, but it also had the effect of subverting the sovereignty of voters and yield electoral outcomes that are not credible and fair.

11.1.4. Late recruitment of teachers as polling staff

NICE takes the view that the problems on results managements directly relate to the eleventh hour recruitment of teachers to serve as polling staff after training of initial recruits had been done already. The Electoral Commission issued a statement one week before polling instructing returning officers that all polling staff had to be teachers. The teachers were at best only briefed not trained. NICE also takes the view that some teachers were likely to be vulnerable and manipulated by some party agents in order to serve their partisan interest. The mass promotion of teachers a few weeks before polling did not auger well in terms of good faith in relation to the electoral process.

11.2. Key recommendations on results management

MEC should investigate thoroughly and establish why Presiding Officers were unable to do basic reconciliation of election materials especially ballots; and to accurately complete result forms;

MEC should investigate and disclose the extent and geographical spread of the cases of fraud and alteration of figures on result sheets and explain to stakeholders the role of election result election auditors in the management of results;

Political parties should seriously invest in the development of a pool of party monitors. The credibility and integrity of the electoral process and its outcomes is dependent on the vigilance, diligence and integrity of political party monitors. The monitors enforce transparency in the electoral process, participate in the counting of results, sign for results and keep copies of certified results at their level and ensure that tallying is correctly done and that results at the National Tally Centre are consistent with results at Constituency and District Tally Centres.

The malpractices demonstrated by some presiding officers in some centres in changing results underscores, the need that presiding officers should be accompanied by at least two monitors from different parties to deliver results to the Constituency Returning Officer.

12. Election results

12.1. Presidential election results

The first announcement of presidential election results by the Commission was in the evening of 22 May 2019. At that point the Commission had received results from 1,784 centres out of 5,002 centres, representing 35.67 per cent of polling centres. In terms of votes, the Commission had received 1,436 400 votes against an expected total of 6,859,570 (i.e. number of registered). Thus, the votes received and used to determine the results that were announced constituted 20.94 per cent.

NICE observed that the figure of 35.67 per cent as proportion of results available for the preliminary announcement corresponded to the number of polling centres whose results had been received at the tally centre and not the proportion of valid votes received against the number of registered voters as indicated or claimed in the statement issued by the Electoral Commission²⁵. As shown above, the proportion of results received was 20.94 percent. It was further observed that the Electoral Commission did not strictly adhere in its statement to principles and formulae used in the determination of results. For instance, a proper determination of results under Malawi's electoral system should always be on the basis of 'cast and valid' votes. By carrying out computations against the expected total number of votes, the Commission misdirected itself to potentially include uncast votes. Thus, rather than use number of registered voters to announce partial results, the number that should have been used was the total number of registered voters from the 1,784 centres whose results had been received by the Commission. It is, however, not clear whether these mistakes were genuine and innocent or were intentional.

The preliminary results as announced are shown in the table below alongside the final results. Suffice to indicate here that the preliminary results were challenged and stakeholders sought judicial intervention through which the Electoral Commission was restrained from making further announcement of results until outstanding issues were

²⁵ MEC Update No.7

resolved. The injunction was vacated on 27th May 2019, paving way for the Electoral Commission to announce election results as shown in the table below:

Table 4: Preliminary and final presidential results

Candidate	Preliminary results: 35% of polling centres			Final results: 100% polling centres	
	Votes	percentage		votes	percentage
Chakwera, Lazarus	533217	37.65		1781740	35.41
Chilima, Saulos	293978	20.76		1018369	20.24
Chisi, John	5786	0.41		19187	0.38
Kaliya, Reverend	4308	0.3		15726	0.31
Kuwani, Peter	6113	0.43		20369	0.4
Muluzi, Atupele	48766	3.44		235164	4.67
Mutharika, Peter	524247	37.01		1940709	38.57

At the time of preparing this report, Saulos Chilima and Lazarus Chakwera had filed petitions with the High Court in Lilongwe challenging the results and seeking a nullification of the presidential election. The petitions were based on Section 100 of the Parliamentary and Presidential Elections Act.

12.2. Parliamentary election results

The 2019 parliamentary elections were contested by 1331 candidates in 192 constituencies. In one constituency, a candidate had died and the election was postponed. Only 304 of the candidates were women, representing 22.8 percent of the total number of candidates.

As shown in table below, six political parties won seats in the National Assembly. A significant share of the seats, 28.65 per cent, were won by independent candidates.

Table 5: Distribution of parliamentary seats by political affiliation and region

Political Party Affiliation	Number of Seats	North	Centre	South
DPP	62	9	5	48
MCP	55	8	45	2
UDF	10	0	1	9
PP	5	3	0	2
UTM	4	2	1	1
AFORD	1	0	0	0
Independent	55	32	20	25
TOTAL	192	32	72	88

Upon announcement of parliamentary results, a total of 29 cases were registered in the courts across the country by losing or aggrieved candidates challenging the results on various grounds²⁶.

The proportion of women elected to parliament increased from a 16 per cent low in 2014 to the highest proportion ever since the transition to multiparty democracy at 23 per cent. The figure below shows the proportion of seats in the National Assembly won by women.

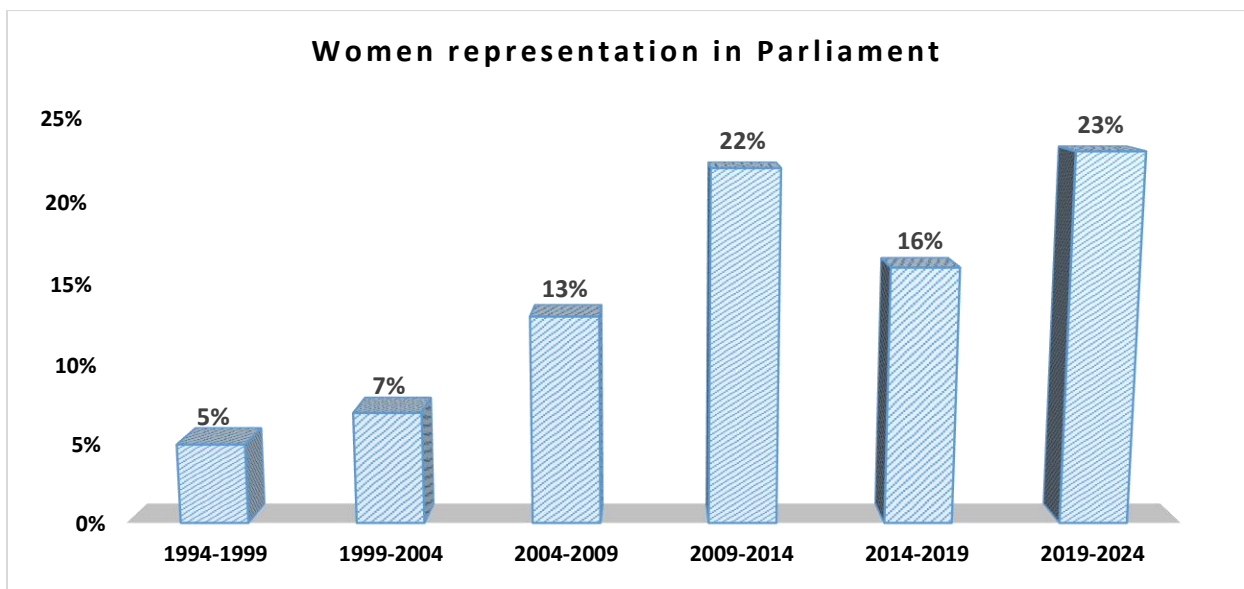


Figure 4: Proportion of parliamentary seats won by women in general elections

²⁶ Interview, MEC Legal Advisor.

As can be seen, the current electoral system is constrained by various factors to enable the election of more, at least enough, women into Parliament. At the pace signified by the figures in the figure above, achieving gender parity in elected decision making structures will remain a daunting challenge unless some fast track affirmative actions are implemented

12.3. Local government election results

Local government elections were conducted for 462 wards. A total of 2615 candidates participated of which only 649 (24.82 per cent) were women.

Table 6: Local Government Election by party and region

Affiliation	Number of seats	North	Centre	South
Afford	2	2	0	0
DPP	161	15	12	134
Independent	74	18	13	43
MCP	160	20	135	5
PP	4	2	1	1
UDF	20	0	0	20
UTM	39	23	9	7
Total	460	80	170	210

Upon announcement of results, only one case was registered in the courts to challenge the results but it was later withdrawn. Thus, the Local Government election results were received and accepted without challenge.

The proportion of elected female candidates still remains very low at 12.39 per cent, reflecting deep seated structural and institutional barriers to women's participation in electoral politics and elected decision making structures.

13.0. Electoral systems issues

13.1. Wasted Votes

By definition, a wasted vote is a valid vote in a majoritarian electoral system which does not contribute to the election of the candidate that is declared a winner of the election. In principle, it includes all valid votes cast for candidates who go on to lose the election and the excess votes of the winning candidate since under the current first-past the post

electoral system, a candidate needs only one more vote than the closest competitor to win the election. The narrower and more practical meaning, includes only those votes which are cast for losing candidates.

The proportion of valid indicates the proportion of voters who find the election meaningless in the sense that their votes do not elect any one or their votes are not represented by anyone in the decision making body.

For the presidential election, the total proportion of wasted votes was 61.43 per cent, meaning that the declared winner was opposed an absolute majority of the electorate. MCP candidate, Lazarus Chakwera amassed the highest proportion of wasted votes (57.6%) seconded by Saulosi Chilima of UTM (33%). Reverend Kaliya had the lowest number of the wasted votes (0.5%).

For parliamentary elections, independent candidates generated the most wasted votes (37%) followed by the DPP (21.3%) and UTM (17.3%) as shown in the figure below.

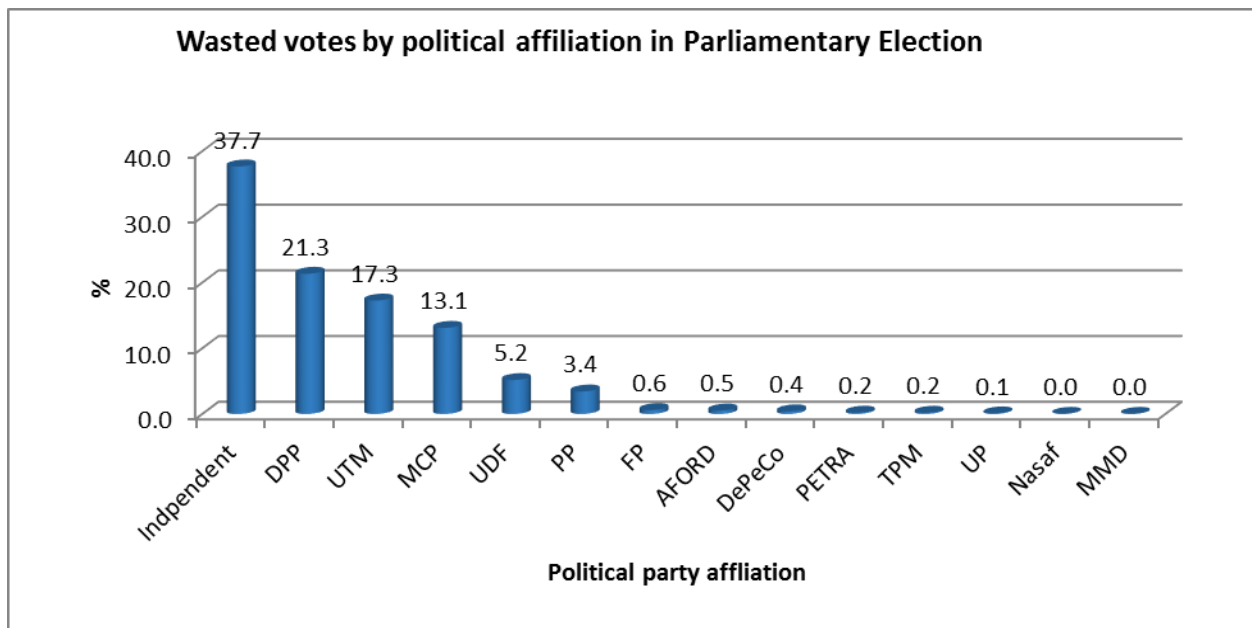


Figure 5: Wasted votes by political affiliation in Parliamentary Election

At the level of the parliamentary election, the absolute number of wasted votes (i.e. valid votes for losing candidates) was 2,654,959 which represented 53.44 per cent of the valid

votes cast. Thus, more than absolute majority of the voters effectively find themselves unrepresented or their votes did not contribute to the election of those declared as people's representatives in the National Assembly. The phenomena of wasted votes is a direct result of the first past the post electoral system. Studies in political studies have established that the first past the post system increases the proportion of wasted votes as numbers of candidate competing in single member constituencies' increase and political parties are founded on the basis of parochial identities such as tribe or region. Thus, the number of voters who find the elections meaningless increase and in the long term become reflected in worsening voter apathy as voters begin to believe that their vote does not matter. The phenomenon of wasted votes also mean that the principle of equality of the vote is undermined as some votes elect representatives while others, even though valid, do not relate to anyone elected to the National Assembly. Voters of the wasted votes are denied representation and voice. The voters lose the election with their candidates and they also lose representation. Furthermore, political studies across the world have shown that the phenomenon of wasted votes encourages tactical voting i.e. instead of voters choosing who they genuinely want to represent them, they vote for a candidate that is, in their mind, likely to win or they vote for a candidate whose votes help to keep out the candidate least liked²⁷. Wasted votes are responsible for the disproportionality between a political party's support among the electorate and the number of seats that the parties actually win in the National Assembly, which in many respects undermines the essence of democracy. In short, wasted votes indicate the degree of the inequality of votes as opposed to the mantra of equality of votes and yield a National Assembly that is hardly reflective of the popularity of political parties.

13.2. Minority-elected office bearers

Besides the problem of generating a big proportion of wasted votes that make elections meaningless to more than half of the electorate, the first fast the post electoral system also yields minority-elected officials. For the presidential election, Arthur Peter Mutharika was declared winner with a plurality of votes at 38 per cent. This problem has been observed

²⁷ Pedro Riera. 2016. Tactical Voting. University of Carlos III Madrid. online publication

before and the adoption of an absolute majority electoral system for the presidential election has been proposed but has not yet found political acceptability. Minority elected leaders face the prospect of challenges in governing arising from their narrow acceptability across the political divide especially in a context where the geography of political support is based mostly on tribalism and regionalism. The election, in these circumstances is nothing more than an ethnic census.

Even at parliamentary level, the majoritarian principle is under strain as more candidates participate in elections at the constituency level. For the 2019 parliamentary elections 124 out of 192 constituencies (64.58 per cent) returned representatives with minority votes. The Member of Parliament elected with the least votes polled only 21.30 per cent. The problem of wasted votes combined with the dynamics of political representation of minority Members of Parliament which mostly focus on their support base means that many constituents do not have effective political representation and therefore feel alienated or find elections less meaningful.

13.3. Key recommendations

In view of the foregoing, it is recommended as follows:

Electoral reforms should be adopted in order to make elections more meaningful to a lot more people that is currently the case. Thus, a change of the electoral system from the first past the post electoral system to 'List Proportional' for parliamentary elections should be adopted. The system has potential to strengthen political parties, eliminate or reduce to less than 5% of wasted votes and undermine the logic and effects of tribalism and regionalism. It also has the potential of eliminating atomistic politics of independent members of parliament who switch political allegiance willly nilly at the expense of voters;

For the presidential election, the options are two: Either adopt an absolute majoritarian system (50%+1) or consider changing the scheme of government to a parliamentary framework.

14.0. Key observations on post- election period

14.1. Electoral petitions and nullification of the presidential election

Upon the announcement of election results, Dr. Saulos Chilima and Dr. Lazarus Chakwera petitioned the High Court on 31st May 2019 under section 100 of the Presidential and Parliamentary Elections. On 4th June, the Court ordered consolidation of the petitions and referred the petitions to the Chief Justice to certify it as a constitutional matter. A Constitutional Court comprising five judges heard the petition and delivered its judgment on 3rd February 2019. The court nullified the presidential election. The following findings necessitated the nullification and are indicative of the need to improve results management, results determination and other aspects of the electoral process:

- i. That the Electoral Commission had abdicated its duty and engaged in improper delegation of its functions and duties of the to the Chief Elections Officer²⁸
- ii. That alteration of results tally sheets were not in line with law and were an irregularity²⁹
- iii. That there was massive use of tippex to alter results on the tally sheets³⁰
- iv. That the absence of signatures of Presiding Officers amounted to irregularity which undermined the integrity of the elections³¹
- v. That the signing of the results sheets for two constituencies by one same presiding officer when each constituency had its own presiding officer smacked a lot of suspicion on the integrity of the electoral process³²
- vi. That the shortfalls and omissions in the logbooks undermined the integrity of the election.³³
- vii. That complaints submitted by parties and candidates on the alterations of results were not resolved before determination and announcement of results as required by PPEA³⁴

²⁸ Page 304, Para. 1127

²⁹ Page 349; Para. 1287

³⁰ Page 316, Para. 1177

³¹ Page 322, Para. 1198

³² Page 322, Para. 1201

³³ Page 326, Para. 1211

³⁴ Page 329; Para. 1223

- viii. That the Commission failed to count for missing and extra votes³⁵
- ix. That the Commission announced final results of Presidential election without conducting a thorough audit and verification of the same³⁶
- x. That the use of duplicate form 66Cs by MEC in determining national results is an irregularity and had no plausible justification³⁷
- xi. That the use of tippexed results as an official record of the election results and using the same for determination of the final election results was in contravention of international accounting standards³⁸
- xii. That Failure to comply with the PPEA which required only compilation of results of constituencies at the District Commissioner's Office³⁹
- xiii. The default user accounts presented a risk to the integrity of the eRMS. Final calculation of results was made and approved in the system without the supervision of the Commissioners in the eRMS who had no user accounts in the system.⁴⁰
- xiv. MEC was party to tampering with results having acquiesced in this tampering by accepting tempered results and using them in determining presidential national results without any inquiry whatsoever⁴¹
- xv. That the correct arithmetic formula for determining the winner of a presidential election as provided for in s.80(2)

14.2. Attempts to bribe judges of the constitutional court

The revelations of attempts to bribe High Court Justices who sat as the Constitutional Court hearing the electoral petition filed by Dr. Chilima and Dr. Chakwera started as mere social media speculations until the Chief Justice submitted a formal complaint to the Anti-Corruption Bureau on 8th December, 2019. The director of ACB, Mr. Reyneck Matemba, on 14th January, 2020 revealed that the ACB was investigating two individuals in relation

³⁵ Page 332; Para. 1226

³⁶ Page 334; Para. 1235

³⁷ Page 344; Para. 1269

³⁸ Page 350; Para. 1290

³⁹ Page 354; Para. 1309

⁴⁰ Page 358; Para. 1329

⁴¹ Page 361; Para. 1341

to the allegations of attempts to bribe the Justices. As a hint, Mr. Matemba pointed out that one suspect was a senior public civil servant while the other was in private sector. On 22nd January, 2020, Mr. Thomson Mpinganjira, the Chief Executive Officer of FDH Grouping, was arrested. He was, however, released by a controversial court order that cancelled the warrant of arrest. Nevertheless, he was re-arrested on 28th January, 2020 following the High Court ruling which described the steps which Dr. Mpinganjira's lawyers took to secure the court order that cancelled the warrant of arrest as "strange, unusual and unethical"⁴². Following the re-arrest of Mr. Mpinganjira, he was charged with three accounts: 1) allegedly offering an advantage to public officer. He offered K100 million to justice Mike Tembo for his benefit and the benefit of justices Ivy Kamanga, Redson Kapindu, Healey Potani and Dingiswayo Madise as inducements to decide the election case in favour of the respondents (MEC and Arthur Peter Mutharika); 2) An attempt to induce Justice Tembo and Healey Potani to exercise their function corruptly to accept K100 million for the same purpose; and attempting to induce a public officer to abuse his office. At court and police premises, Mr. Mpinganjira was given moral support by DPP sympathisers. At the time of finalizing this report, Mr. Mpinganjira had been granted court bail and HDRC called for his resignation as the Board chairperson of ESCOM; 2) The lead lawyer of Mr. Mpinganjira, Mr. Lusungu Gondwe was ordered to stop representing his client and both Chief Principal Resident Magistrate Chitsamire of Zomba Magistrate court which had quashed the arrest warrant and Mr. Lusungu Gondwe were ordered to appear before Judicial Service Commission and Malawi Law Society for disciplinary hearing.3) the senior public servant named by the ACB was still unknown and no more arrests had been made and there were no new developments on the matter.

14.3. Citizen protests against the Electoral Commission

Since the swearing in of Peter Mutharika as President, there have been unrelenting public protests against the Electoral Commission organized country wide by the Human Rights Defenders (HRDC) since July 2019. A total of six national wide protest marches against election mismanagement and political bias of the Chairperson of the Electoral Commission

⁴²

and her commissioners were held before the ruling of the constitutional court that nullified the presidential election. Besides the national demonstrations, there were others at regional and district levels. The key demand of the protests has been the resignation of the Chairperson of the Electoral Commission for presiding over a sham of the electoral process and for her unashamedly associating with the DPP when a significant part of the population was challenging the results of the election she had presided over”. Civil protest quickly degenerated into regional and tribal conflicts spiced up with partisan politics. Msundwe, 41 km west of Lilongwe became a hotspot because of the civic activism of the people of the area in protesting the electoral outcome. Heinous crimes were committed at Msundwe by the people against the Police and vice versa as reported by the Malawi Human Rights Commission⁴³. However, there have also been protests organized by some civil society organizations and the Democratic Progressive Party that have sought to show solidarity with MEC and the DPP and the executive arm of the state.

14.4. Peace building initiatives

Peace building initiatives entail dealing with the factors that motivate people to fight or be in contestation and support societies to manage their differences and conflicts without resorting to violence⁴⁴. Given the high-tension environment that existed in the country soon after announcement of presidential election results to the time the constitutional court made its historic and momentous determination, peace-building initiatives became imperative. There were two initiatives, distinguished on the basis of their targeted audience. The first category, elitist and top down, focused on both leaders of vocal political parties and civil society organisations. The second one, citizen-oriented and bottom-up, focused on the citizens themselves. Under the first category, key peace brokers were former President of the Republic of Malawi, H.E. Dr. Bakili Muluzi and Public Affair Committee (PAC) but had different focal targets based on how they conceptualized the problem requiring mediation. Dr. Bakili Muluzi focused on Human Rights Defenders Coalition

⁴³ MHRC(2019) Investigation Report into the alleged rape, defilement and indecent assault by Police Officers on Some Women and Girls in Lilongwe West (M’Bwatalika, kadziyo and Mpingu Areas) (Lilongwe)

⁴⁴ Weekend Nation, Peacebuilding: therapy to end violence, Saturday, 8 February, 2020

(HRDC) and President Arthur Peter Mutharika and met them separately⁴⁵. The PAC focused on Peter Mutharika, the President of the Republic of Malawi and Democratic Progressive Party (DPP); Dr. Lazarus Chakwera, the president of Malawi Congress Party (MCP); Dr. Saulos Klaus Chilima, President of UTM party; Dr. Jane Ansah, Malawi Electoral Commission Chairperson; and the leadership of HDRC which usually included Mr. Timothy Mtambo, the Chairperson and Mr. Gift Trapence, the vice-chairperson and met them separately⁴⁶. The initiatives were generally aimed at finding a solution to the political impasse that engulfed the country following the disputed presidential election results. However, details of the proceedings of these meetings were never made public but it is evident that the initiatives did not yield any solution to the political impasse mainly because of deficiencies in the approaches of the mediators and also perceptions of lack of credibility of the mediators due to apparent partisan inclinations.

Citizen-oriented peace building initiatives were mostly non engagement initiatives that sought to appeal to the conscious and good will of citizens through mass media. The hallmark of these initiatives were press briefings and press statements. For instance, the following issued press statements: Episcopal Conference of Malawi⁴⁷, Malawi Government, and Malawi's key development partners⁴⁸, Malawi Council of Churches, United Nations, African Union Commission and African Union. The press statements urged Malawians and electoral stakeholders to keep peace and respect the rule of law.

The NICE implemented a citizen oriented peace building initiative that was based on direct engagement with stakeholders at district and community level. The initiative was designed in pursuit of one of NICE's strategic pillars: Promoting peaceful coexistence and social

⁴⁵ Dr. Bakili Muluzi met the leadership of HDRC on 23rd July, 2019 in Blantyre and his attempts for second meeting were unsuccessful; and he met President Arthur Peter Mutharika on 25th July, 2019 in Lilongwe. It was also reported that they had previously met in the last three weeks in Blantyre.

⁴⁶ PAC met President Arthur Peter Mutharika twice: on 2nd August, 2019 in Blantyre and on 9th December, 2019; PAC met Dr Lazarus Chakwera twice: on 15th August, 2019 and on 11th December, 2019 in Lilongwe; PAC met Dr. Saulos Klaus Chilima on 12th December, 2019 in Lilongwe; PAC met Dr. Jane on 30th September, 2019 in Blantyre; and PAC met HRDC leadership on 03rd August, 2019 in Lilongwe.

⁴⁷ Weekend Nation, Statement of the Episcopal Conference of Malawi (ECM) Calling for Continued Peace and Respect of the Rule of Law, Saturday, February 1, 2020

⁴⁸ US, UK, Japan, Norway, EU, Germany and Ireland

cohesion among Malawians. Through trainings, outreach and mass media campaigns NICE reached out to various stakeholders at district and community level to foster political tolerance, promote peace and sharpen skills for peace maintenance and conflict resolution. A total of 23 districts were covered where the following activities were carried out successfully: Engagement and training of District Multiparty Liaison Committees and District Peace Committees; capacity building of community peace building structures; sensitization campaigns including engagement with religious leaders as religion was becoming a fault line; facilitating stakeholders engagement and dialogue at community level to promote peaceful coexistence. Messages on peace and political tolerance were further disseminated through television and radio programmes and jingles.

14.5. Substitution of the MPS by MDF

The post-election period has been characterized by a loss of public trust in the Malawi Police Service. There is a widespread observation that the Police Service has been politically captured by the party in government and it has been repurposed away from a fair and objective enforcement of the law. For a significant part of the population, the Police has degenerated into an agent of criminal activities on behalf of the governing party and is hell-bent on meting out reprisals on opposition elements. Consequently, crowd control and maintenance of public order during mass gatherings mobilized by civil society organisations and opposition parties have had to be guaranteed by the Malawi Defence Forces (MDF) for whom public trust has surged significantly. Guaranteeing internal security through the Police Service will require addressing significant professional shortfalls in the service and implementing strategies that will rid the Police Service of partisan politics. It is of utmost importance from a good governance perspective that initiatives to reform the Malawi Police Service.

14.6. General lawlessness associated with a legitimacy deficit of the President

The issue of general lawlessness from the day presidential election results were announced to the present can be attributed the problem of political legitimacy of the government. The unrelenting civil protests demanding the resignation of MEC chairperson and her fellow commissioners, the compromising of the police service to guarantee law and order

and the narrative of an illegitimate president motivated people to take the law unto their own hands. The result was a widespread state of disorder due to disregard of law. Government through its appropriate institutions was unable to enforce laws or the law enforcement was in abeyance. In some cases, some law enforcers became the law breakers themselves. In terms of inability to enforce laws the case of removal of street vendors is very illuminating. Ministry of Local Government and Rural Development in its memo dated 4th October, 2019 addressed to all Chief Executive Officers and District Commissioners directed that the removal of vendors from the streets be suspended as it was politically risky for the government. In terms of law enforcers becoming law breakers themselves, the case of Msundwe-Mbwatalika-Mpingu is very revealing. The police were deployed to M'bwatalika and Mpingu to bring order and peace after the residents blocked the Lilongwe-Mchinji Road to stop Democratic Progressive Party supporters from attending the launch of a US-Government funded project graced by President Mutharika. It is alleged that some police officers raped and sexually abused 17 women on that day in the course of their operation. Since then, Msundwe has become the hotspot for violence⁴⁹.

Other cases of lawlessness were:

On the 10th December, 2019, Karonga Business Community battled with police, setting on fire a roadblock at Rukuru as they protested against Malawi Revenue Authority (MRA) roadblocks in the district. It was reported that protesters took the drastic action to burn the Rukuru roadblock and chase away the police officers manning it. In the process, the police were overpowered and four riffles and teargas canisters were snatched from them. In the fracas, seven police officers were injured and they were treated as out-patients. The main issue was that MRA officials and the police failed to address the concerns of the (KBC) raised that they wanted Iponga MRA, Rukuru police, Ipyana police and Chilumba MRA roadblocks to be removed arguing that the district has too many roadblocks that are collecting money from cross-border traders⁵⁰.

⁴⁹ See MHRC investigation report, supra.

⁵⁰ The nation Police, vendors clash in Karonga demos, December 10, 2019, <https://mwnation.com/police-vendors-clash-in-karonga-demos/>, accessed on 18th February, 2020

Furthermore, on the 15th October, 2019, fracas ensued between people of Mkondezi Village, Traditional Authority (TA) Mkumbira and Msakanene Village of TA Timbiri in Nkhatabay. The bone of contention was that some people from Mkondezi visited Msakanene at midnight to follow up on their property stolen some time back as their private investigations traced the property to Msakanene. This was not reported to police. The people of Mkondezi raided the house of a friend to the suspected thief who in turn alerted other villages by screaming that thieves were attacking him. The villagers from Msakanene mobilized themselves and assaulted the people from Mkondezi. In the process, a person from Mkondezi, a business person, was killed. People from Mkondezi retaliated to the killing of their own by torching 21 houses in the afternoon of the same day. The torching of houses did not go well with villagers from msakanene who pursued the people from Mkondezi and fight broke out. The fracas resulted in four deaths with other serious injuries.⁵¹

Besides ordinary criminal behaviors and associated mob justice or extra judicial justice, there were fracas reported across the country based on tribal differences, religious differences and political affiliations

15.0. Conclusion

In conclusion, the position of NICE is that the entire process up to campaign was conducted in a substantially free, credible and transparent manner. However, polling and result management was characterized by a number of irregularities which substantially affected credibility and integrity of these two processes. Also, the post-election period was characterized with high levels of political violence and continuous demonstrations by HRDC and other concerned parties agitating for the removal of the Malawi Electoral Commission Chairperson and Commissioners. The most serious downside of the 2019 elections was therefore about result management, determination and announcement of results of the presidential election, in which case, more procedures were not adhered to. As such, the Constitutional court found results management and tallying to have been

⁵¹ The Nation, 4 dead, 21 houses torched in Nkhatabay, 16 October, 2019, mwnation.com/4-dead-21houses-torched-in-nkhata-bay

serious compromised to the extent that the electoral outcome could not be said to have reflected the will of the people who voted. The election was therefore nullified and fresh election ordered to be held before or by 2nd July 2020.

Although the court, order that specific electoral law reforms, there are a number of a package of electoral law reforms as proposed by the special law Commission that already exists that will need to addressed. It is therefore, extremely important that the reform proposals get revived and the Parliament enacts them before the next general election.

Furthermore, in general, the electoral process encountered a plethora of challenges in the various stages which significantly affected or disrupted the electoral process or its credibility. Hence, , recommendations that have been proffered to improve the practices related to each stage as presented in each section of the report should be taken seriously by all stakeholders in order to ensure that future elections are improved

References

This report is based on direct observations by NICE and reinforced in some respects by media and other scholarly sources. All the sources have been acknowledged and identified through footnotes.