

AFRICAN UNION

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**AFRICAN UNION ELECTION OBSERVATION MISSION TO THE
20 MAY 2014 TRIPARTITE ELECTIONS IN THE REPUBLIC OF
MALAWI**

PRELIMINARY STATEMENT

22 May 2014

I. INTRODUCTION

1. At the invitation of the Government of the Republic of Malawi and the Malawi Electoral Commission (MEC), the Chairperson of the African Union Commission (AUC), H.E. Dr. Nkosazana Dlamini-Zuma, deployed an African Union Election Observation Mission (AUEOM) to the 20 May 2014 Tripartite Elections in Malawi.
2. The Mission is headed by His Excellency Sam Nujoma, the founding President of the Republic of Namibia. The Mission is comprised of 52 Observers, including 10 Long Term Observers (LTOs) and 42 Short Term Observers (STOs). The observers were drawn from the Pan-African Parliament, African Ambassadors to the African Union, Election Management Bodies, Civil Society Organisations and experts from the following countries: Algeria, Botswana, Burkina Faso, Cameroon, Ethiopia, Gabon, Ghana, Kenya, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Sierra Leone, Somalia, South Africa, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe.
3. The Mission is supported by a technical team drawn from the AUC, the Pan-African Parliament (PAP) and the Electoral Institute for Sustainable Democracy in Africa (EISA).
4. The AUEOM has a mandate to observe the 20 May 2014 Tripartite Elections in conformity with the relevant provisions of the African Charter on Democracy, Elections and Governance, which entered into force on 15 February 2012. The AUEOM's mandate is further strengthened by the AU/OAU Declaration on the Principles Governing Democratic Elections in Africa (AHG/Decl.1 (XXXVIII)); the African Union Guidelines for Election

Observation and Monitoring Missions both adopted by the Assembly of the African Union Heads of State in July 2002; as well as other relevant regional and international benchmarks for election observation and the legal framework for the conduct of elections in the Republic of Malawi.

5. The observations and recommendations of the AUEOM are based on the principles and standards for the conduct of democratic elections as enshrined in the aforementioned AU instruments.
6. Cognisant of the fact that the tabulation of election results is on-going; the AUEOM hereby presents its preliminary assessment of the conduct of the elections up until the close of polling on 21 May 2014¹. A final report of the AUEOM's assessment will be released within 3 months after the official announcement of the results.

II. OBJECTIVES AND METHODOLOGY OF THE MISSION

7. In line with its mandate stipulated in the aforementioned AU instruments, the objective of the AUEOM is to make an independent, objective and impartial assessment of the May 2014 Tripartite Elections in Malawi.
8. To achieve its objective, the Mission undertook the following activities:
 - 8.1. Deployment of a team of 10 Long Term Observers (LTOs) in Malawi since 12 April 2014 in the four regions covering 27 districts to assess the pre-election context. Since their arrival in the country, the LTOs consulted with the MEC, relevant government agencies, political parties and civil society groups to formulate their assessment of the pre-election context.
 - 8.2. The AUEOM issued its interim assessment of the pre-election context at a press conference on 15 May 2014. The LTOs will remain on the ground in Malawi until 7 June 2014 and will continue to observe the post-election phase of the process.
 - 8.3. The LTOs were joined by a team of Short Term Observers (STOs) on 12 May 2014. The STOs underwent an intensive 3-day orientation session during which they received briefings from a wide range of electoral stakeholders including MEC, the Media, civil society groups and election experts.

¹Polling was postponed until 21 May 2014 in 45 polling centres (36 centres in Blantyre, 6 centres in Dedza and 3 centres in Lilongwe in Central Region). AU observers were present at these centres. LTOs will remain on the ground to observe polling in centres that were further postponed.

- 8.4. The AUEOM received a visit by the Chairperson of the African Union Commission, Her Excellency, Dr. Nkosazana Dlamini-Zuma from 14 to 16 May 2014 during which she consulted with the top leadership of political parties, MEC, candidates, and government officials.
- 8.5. The leadership of the AUEOM also held high-level consultations with electoral stakeholders. It coordinated its efforts with other international election observer groups in Malawi by hosting a pre-election coordination meeting. The AUEOM leadership also attended a post-election coordination meeting hosted by the Southern African Development Community (SADC).
- 8.6. On 17 May 2014, STOs were deployed in 22 teams to all the regions of Malawi covering 174 constituencies in 24 districts. . During the period of deployment, observers held further consultations with electoral stakeholders at district and constituency levels, observed the final campaigns and the distribution of electoral materials.
- 8.7. On Election Day, AU observers visited 262 polling stations to observe Election Day procedures.

III. PRELIMINARY FINDINGS

a. General political context

9. The pre-election context was generally peaceful and open to political competition with isolated incidents of protests by party supporters before and on Election Day².
10. The AUEOM commends candidates and their supporters for their peaceful conduct in the run-up to the elections and encourages them to continue in the same manner in the post-election period.

b. Legal and constitutional framework

11. The legal framework for elections in Malawi is governed by the Constitution of Malawi (as amended), relevant Acts of Parliament and Electoral Regulations issued by the MEC.
12. The AUEOM notes that in line with the principles enshrined in the AU/OAU Declaration on the Principles Governing Democratic Elections in Africa, the legal framework for the conduct of elections in Malawi guarantees the

²The reported incident of minor protests in Blantyre by irate voters over delays in the opening of polling centres in Ndirande, Kadere and Community Hall polling centres

fundamental rights and freedoms of its citizens and recognizes the principles of separation of powers. It provides for the regular conduct of elections by universal adult suffrage; the establishment of an independent election management body; the adjudication of electoral disputes and procedures for constitution amendment.

13. The AUEOM notes with satisfaction the electoral reform initiatives undertaken ahead of the 2014 elections. These include:

- The review in 2012 of the electoral laws to provide for the holding of Presidential, Parliamentary and Local Government elections simultaneously;³
- The review and adoption of the 2014 Electoral Code of Conducts for Political Parties and Candidates; and
- The appointment of a new Electoral Commission in 2012 after a long period of transition, as well as the conduct of a new voters' registration process.

14. The 2014 elections will restore functional local governance structures in Malawi as elections at this level were last held in 2002.

➤ **Electoral system**

15. Elections in Malawi are conducted using a 'simple-majority' First-Past-the-Post (FPTP) system. The AUEOM also notes that the playing field was also impacted by the nature of this electoral system in Malawi which provides for a simple majority victory. The AUEOM also notes that the electoral system currently does not provide for affirmative action for women's representation.

➤ **Party and campaign financing**

16. Section 40 (2)⁴ of the Malawi Constitution provides for state funding of parties represented in Parliament that won one-tenth of the national votes in the last national election.

17. For campaign purposes, Section 66 of the Presidential and Parliamentary Elections Act⁵ allows parties and candidates to solicit for funds from individuals, non-governmental organisations and corporate entities. The law

³The 2014 elections are referred to as tripartite, as this is the first time the three elections will be simultaneously conducted.

⁴"the state shall provide funds so as to ensure that, during the life of parliament, any political party which secured more than one-tenth of the national vote in elections to that Parliament has sufficient funds to continue to represent its constituency."

⁵"Every political party may, for the purpose of financing its campaign, appeal for and receive voluntary contributions from any individual or any non-governmental organisation or other private organisation in or outside Malawi."

however, does not prescribe for disclosure of the sources of campaign finances; neither does it provide ceilings on expenditure. It is also important to note that the Electoral Commission is not mandated to audit party finances.

18. In line with internationally accepted standards and best practice for party and campaign finance regulation, an effective system to regulate party and campaign finance requires: a system of disclosure, limits on expenditure and monitoring of campaign and party finance.

➤ **Election Management:**

19. The AUEOM recognizes the central role of MEC as a statutory body entrusted with the management of the electoral process in Malawi. The process of appointment of the current Commission is commended by political stakeholders as transparent and satisfactory.
20. With regard to its fiscal autonomy, the MEC is funded through the national budget and with technical support of international organisations such as the UNDP. In its preparations for the 2014 elections, the MEC was faced with delays in the budget approval and disbursement procedures.

c. Voter registration

21. A credible voter register is critical to the integrity of an election. The MEC conducted a voter registration exercise from 12 July to 18 December 2013. While the AUEOM notes that the registration exercise was not devoid of challenges including the necessity to revert to the use of Optical Mark Recognition (OMR) system, the AUEOM commends the MEC for the successful conduct of the process. At the end of that process, 7,544,405 voters were registered which a marked 28.5% increase in the number of registered voters in the 2009 elections.
22. The AUEOM gathered from its consultations with stakeholders that the registration was conducted in a professional and transparent manner that was open to observation by party representatives and independent observers.
23. The MEC also conducted a verification exercise in three (3) phases, from 9 April to 5 May 2014. In its pre-election statement, the AUEOM noted that the 5-day period provided for verification per phase was quite limited and it noted the concerns of stakeholders about errors in the register. The AUEOM commends the steps taken by the MEC to further clean up the voter register

which led to a final 7,470,806 registered voters⁶. The AUEOM also notes the efforts made by MEC to prevent the disenfranchisement of voters whose details may have been omitted in the electronic version of the register by providing the 'Part A' of the register which is the original voters list from the data capture process. The AUEOM however notes that the review of the register was done up until the week of the elections, thus raising concerns and speculations about the accuracy of the register.

24. The AUEOM gathered that the last minute review of the register delayed the distribution of the finalised register to political parties.

d. Gender and minority rights

25. The AUEOM commends MEC for the 20% reduction in nomination fees granted to female candidate. However, the statistics on nominated candidates for the 2014 elections shows that Malawi still falls short of the minimum of 30% representation of women in elective positions as stipulated in the 1995 Beijing Declaration and Platform for Action, the 2003 AU Parity Principle and the SADC Gender Protocol. Specifically, in the 2014 elections, women constituted 18% of the total number of nominated candidates for parliamentary and local council elections.
26. The AUEOM commends the MEC for providing tactile ballots and voter education materials in braille for visually impaired voters.

e. Party nominations and campaigns

27. Candidates were required to submit documentation for their nomination over a 5-day period from 10 to 14 February 2014.
28. At the end of the nomination process, 12 presidential nomination applications were received, of which one candidate was declared by the MEC as ineligible to contest but this decision was overruled by the High Court⁷. A total of 1,285 candidates were nominated for the parliamentary elections and 2,411 candidates were nominated for the Local Council Elections.

⁶This reduced the initial figure by 66,742 voters on account of some errors in the provisional voters' roll

⁷Professor John Chisi of the Umodzi Party (UP) was barred from contesting on the basis of Section 80 (7) (e) of the Constitution which stipulates that 'No person shall be eligible for nomination as a candidate for election as President or First Vice-President or for appointment as First Vice-President or Second Vice-President if that person- (e) is a holder of a public office or a member of Parliament, unless that person first resigns;

29. The death of some candidates before Election Day necessitated the cancellation of elections in one (1) constituency⁸ and two (2) wards respectively.
30. Official campaigns began on 21 March and ended on 18 May 2014. The campaigns were relatively peaceful, in spite of isolated incidents of violent confrontations especially before the commencement of the official campaign period on 21 March. Such incidents occurred in some places like Thyolo, Rumphu,⁹ Nkhata-Bay Central¹⁰ and Karonga as highlighted in the AUEOM pre-election statement. The AUEOM notes with satisfaction the compliance of all parties with the 48 hours period of campaign-silence as required by the law.

f. The media

31. The important role of the media in an election cannot be overemphasised. There has been extensive media coverage of the election preparations. The media have provided in-depth coverage of processes and institutional arrangements of the elections by MEC, political parties and candidates.
32. The AUEOM gathered that in comparison with previous elections, the public broadcaster has been relatively more open in its coverage of opposition parties and candidates. It is acknowledged by many interlocutors, and the Malawi Communications Regulatory Authority (MACRA) that the media coverage of campaigns and political events was for the greater part of the campaign period skewed in favour of the incumbent to the disadvantage of other parties. The AUEOM however, notes the steps taken by MBC in redressing the imbalance in media coverage following the intervention of MEC and MACRA.
33. The AUEOM also notes with satisfaction the live national coverage of the presidential candidates' debates hosted during the campaigns.

g. Civic and voter education

34. Malawians voted in a Tripartite Election for the first time on 20 May 2014. With the introduction of new tripartite voting procedures, the conduct of voter education was a crucial aspect of the electoral process.

⁸ MCP Parliamentary candidate for Blantyre North Constituency died during the campaign period

⁹ The DPP representative on the MPLC for the Rumpi District formally presented a complaint to the MPLC that the Police were reluctant to take action against ruling party supporters who severely beat up and assaulted a DPP supporter during physical clashes over campaign venue.

¹⁰ Between supporters of AFORD and DPP.

35. One of the functions of the MEC is the conduct of voter education. The AUEOM noted that the coverage of the Commission's efforts in this regard were insufficient, though complemented by civil society efforts.
36. National Initiative for Civic Education (NICE) was the leading institution in the conduct of voter education programmes for the 2014 elections due to limited funding for other civil society organisations. The AUEOM in its consultations with stakeholders was informed of the limited coverage of the voter education programmes as it was left to very few institutions.

h. Preparedness of MEC

37. The AUEOM commends the MEC for the increased transparency of the electoral process in Malawi. Specifically, the establishment of the National Elections Consultative Forum (NECOF), a platform for multi-stakeholder engagement of the electoral process. The AUEOM also notes the role of the Multi-Party Liaison Committees (MPLCs) in opening up the political space and promoting the culture of inter-party dialogue.
38. The AUEOM gathered from its consultations with MEC that it recruited election personnel who were trained up until the week before Election Day. In view of the increased number of voters and the anticipated length of time required for voting in three elections simultaneously, the Commission established 4,445 Polling Centres with 11,624 Polling Streams restricted to a maximum of 800 voters per polling stream. Tally centres were established at district and national levels with a clearly mapped out plan for results management. The AUEOM was present at MEC's presentation of its results management system.
39. Going by the logistical and operational challenges experienced on Election Day the AUEOM notes that there were gaps in the planning and implementation processes for the 2014 elections.
40. In the days before the elections, AU observers were granted access to observe the distribution of non-sensitive election materials at district and constituency levels. The AUEOM notes that the logistics for the distribution of these materials was timely and effective with the exception of some

districts such as Nsanje¹¹, Blantyre among others where materials did not arrive as scheduled.

IV. ELECTION DAY FINDINGS

41. AU observers visited 262 polling stations on Election Day to observe the opening, voting, closing and counting procedures in their areas of deployment. Below are their findings in this regard:

a. Opening the poll

42. Election Day began to a slow start in 23 of the 25 polling centres where AU observers were present for the opening of the poll. The delayed opening was due to late delivery of election materials in most cases. In isolated cases, such as in the Eastern Region, delays were due to poor weather conditions. The Mission noted that some polling stations opened as late as 14:00 due to non-availability of essential materials.

43. We also note that logistical challenges with transportation of materials in time to the polling centres were experienced, but MEC was able to address these challenges to allow voting to start. The MEC allowed voting to continue in the evening to compensate for the time lost on account of the delays in opening the polls.

44. In the polling centres where voting was postponed until 21 May 2014, AU observers noted that the process commenced late as the election materials were again not delivered on time. For instance, this was the case at the Matope Centre and Ndirande Community Hall. In other centres such as Namalimwe School where elections materials were destroyed on Election Day, polling was once again delayed due to non-availability of materials.

b. Election materials

45. Besides the late delivery of election materials, the AUEOM also noted that there were further challenges with the quantity and quality of election materials after they were delivered. These include:

- Shortage in the supply of ballot boxes in some stations in Machinga District.

¹¹In Nsanje district of Southern Region, divers hired by MEC boycotted transporting materials demanding payment as they were not sure that MEC would honour its promise of paying them their allowances at a later date

- Interruption of the voting process in some polling stations due to shortage in supply of ballot papers. For instance in Monkey-Bay School, Nkisi School and St Augustine III polling centres in Mangochi.
- Non-availability of the voter register at some polling stations such as Domasi Government School Polling station in Zomba.

c. Polling stations

46. Polling centres were located in public facilities which were easily accessible to all voters including the aged and persons with disability.
47. Most of the polling centres visited by AU observers were laid out in a manner that allowed easy flow of voters and guaranteed the secrecy of the ballot. The AUEOM however noted that some polling centres were overcrowded and the use of outdoor facilities without barrier demarcations made crowd control particularly difficult. This was noted at polling centres such as Blantyre Secondary School.

d. Election personnel

48. AUEOM observed with satisfaction the efforts of election personnel to manage the operational challenges experienced on Election Day. The AUEOM further commends election officials for consistently applying stipulated procedures throughout the voting process.
49. The mission also noted that 43% of election personnel in the polling stations visited were women.

e. Independent observers and party and candidate agents

50. AU observers noted the presence of independent citizen observers at most polling stations visited. Party and candidate agents were also present and they were able to conduct their duties without inhibition or interference.
51. The AUEOM noted that 35% of polling agents and 29% of citizen observers encountered were women. The AUEOM commends these efforts to ensure the participation of women at different levels.

f. Voting procedures

52. The AUEOM noted that voting was generally conducted in compliance with procedures stipulated in the legal framework.
53. The voting procedures were simple and easily understood by voters although the procedures were not time effective. AU observers noted that the time required to process each voter was lengthy.

54. The AUEOM also noted that priority was given only to aged voters and voters requiring assistance such as persons with disability and unlettered voters. Such priority was however not extended to expectant mothers and women with infants in most polling centres visited. Voters requiring assistance were granted such assistance.

g. Closing the poll

55. An extension of voting hours was necessitated to remedy the delays experienced at the opening of the poll.

56. AU observers were present at the close of polls and also observed the counting at 24 polling centres. Observers noted that the counting took place in mostly poorly lit facilities.

57. The AUEOM also noted that counting procedures were not uniformly applied in all the stations visited. Specifically, election personnel in some stations did not undertake a thorough reconciliation of the ballot before counting, this led to challenges in the counting process.

h. Security

58. The visible presence of security personnel was observed by AU teams in all the stations visited. The observers noted however that the number of security personnel deployed per polling centre in comparison with the number of voters assigned to the polling centres, was inadequate for effective crowd control. This limited security coverage necessitated the deployment of the military to intervene in areas where violence was recorded, for instance in Blantyre.

59. An incident was reported of protests on the eve of Election Day in Lilongwe. The protest was over election materials found in an office which were suspected to be ballot papers but these turned out to be Transfer Forms. These materials were publicly burnt by MEC officials in the presence of stakeholders to calm down the situation.

60. On Election Day, there were reports of violent protests in some areas such as Blantyre at Makata, Kadere, Matope and Community Hall Polling Centres in Ndirande. Some materials were reportedly burnt by irate voters angered by late start of voting; this necessitated a postponement of voting till 21 May 2014.

V. RECOMMENDATIONS

61. Based on its observations and findings, the AUEOM makes the following recommendations:

a. The Government of Malawi should:

- i. Support the MEC in delivering its mandate by ensuring adequate and timely approval and disbursement of the election budget.

b. The MEC should:

- i. Revise and finalise the current voter register to reduce the cost of conducting a fresh registration exercise during the next elections. The AUEOM also calls on the relevant government departments to cooperate with MEC to ensure that registered deaths are taken off the register and the register is reviewed on a continuous basis. The continuous review of the register in this regard will contribute to the credibility of the register for the next elections.
- ii. The AUEOM further recommends that the verification of the register should be done in a timely manner ahead of Election Day and copies of the finalised register availed to political parties in ample time.
- iii. Sensitise election personnel on the need to comply with the guidelines on giving priority to expectant mothers and voters with infants in the voting process.
- iv. Intensify its voter education initiatives and collaborate with relevant government agencies and civil society groups.
- v. Develop capacity building programmes for its staff

c. The parliament should:

- i. Develop a plan of action for the implementation of the National Gender Policy and the Gender Equality Bill to create an enabling environment for the participation and representation of women in all levels of governance. This is inline with article 29 of the African Charter on, Democracy, Elections and Governance; the SADC Protocol on Gender and the AU Parity Principle enshrined in its Constitutive Act
- ii. More specifically, the AUEOM urges the parliament to undertake reforms of the electoral framework to include special provisions for affirmative action for women's representation.

- iii. Amend the legal framework to provide a timeframe within which election disputes should be resolved. This will ensure timely dispensation of electoral justice.
- iv. Amend the legal framework to provide funding to parties represented in Parliament on equal basis. This is in line with article G of section III of the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa¹².
- v. Amend the legal framework to provide clear guidelines on party and campaign financing that will mandate parties to disclose their sources of funding, provide ceilings on campaign expenditure and mandate an independent institution to supervise party financing. This will protect the electoral process from the undue influence of money in politics.

d. The security agencies should:

- i. Ensure adequate security of the elections, by developing a coordinating mechanism that will enable the MEC and security agencies to harmonise their planning and deployment efforts. This will ensure that the appropriate ratio of security personnel per voting centre is deployed.

VI. CONCLUSION

62. While the tabulation of election results is ongoing, the AUEOM hereby concludes that the 2014 elections provided an opportunity for Malawians to choose their leaders at the polls. The elections were conducted in a largely transparent manner in accordance to the legal framework of Malawi and international standards.

63. The AUEOM also calls on electoral stakeholders to continue in the peaceful and orderly manner that characterised the pre-election context. We urge parties and candidates to seek redress for disputes that may arise from these elections through the legal systems provided.

¹²Ensure the availability of adequate logistics and resources for carrying out democratic elections, as well as ensure that adequate provision of funding for all registered political parties to enable them organise their work, including participation in electoral process.'