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

Pre-Election Statement

15 May 2014

I. Introduction

1. The African Union (AU) deployed a team of Long Term Observers (LTO) to Malawi ahead of the 20 May 2014 Tripartite elections who arrived in the country on 12 April 2014. The LTOs were deployed to all the four regions of the country. They have since met with representatives of some political parties and other electoral stakeholders at national, regional and district levels. The team also met with the Malawi Electoral Commission including the relevant government agencies. Through these meetings, the team sought the perspectives and assessments on the electoral processes focussing specifically on preparations leading up to the forthcoming elections.
2. This Pre-election Statement is hence a culmination of four weeks of consultations with the aforementioned stakeholders. It is an assessment of the pre-election context and preparatory activities undertaken by the relevant authorities during the period preceding the arrival of the LTO team.
3. The African Union Election Observation Mission (AUEOM) notes that since the last elections held in May 2009, some commendable efforts towards strengthening the electoral legal and institutional frameworks have been undertaken. These include:
 - i. the review in 2012 of the electoral laws to provide for the holding of Presidential, Parliamentary and Local Government elections simultaneously;¹
 - ii. the review and adoption of the 2014 Electoral Code of Conducts for Political Parties and Candidates; and
 - iii. 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.
4. The forthcoming elections will serve as a test of this improved legal and institutional framework towards delivering democratic credible and transparent elections. They are also bound to test the resolve of Malawians in exercising their sovereign rights in choosing their leaders.

II. Political and Legal Context

5. The holding of democratic, credible and transparent elections is largely guaranteed by the existence of a legal and institutional framework that is acceptable and respected by all political and electoral stakeholders. Such elections require a culture of tolerance, coexistence and respect of electoral laws and commitment to resolve

¹ .This is why the 2014 elections are referred to as tripartite, and this is the first time the three elections are being held at the same time.

any grievances through the established mechanisms and institutions. The Republic of Malawi has therefore, made efforts to establish the legal, institutional and political context within which the elections are expected to take place.

6. The forthcoming elections will be guided by a comprehensive legal framework that includes, among others:
 - i. The 1994 Constitution of Malawi (as amended) which as a supreme law guarantees political rights to citizens, candidates and political parties;
 - ii. The 1993 Parliamentary and Presidential Elections Act (as amended), which regulates the conduct of elections for parliamentary elections;
 - iii. the 1998 Local Government Elections Act (as amended) that regulates the elections of local council elections;
 - iv. The 1998 Electoral Commission Act which establishes the MEC as an independent election management body;
 - v. The 1998 Communications Act that spells out obligations and conditions for ensuring equitable media coverage of political contestants during campaigns in an election and monitoring of broadcasting media;
 - vi. The 2014 Electoral Code of Conduct for Political Parties and Candidates, which outlines in detail the expected conduct of all political players contesting in the elections;
 - vii. The Code of Conduct for Chiefs; and
 - viii. The 2008 Malawi Media Code of Conduct, which sets out the obligations and required conduct by media houses to provide equitable coverage of all political players in an election, among others.²

7. In addition to the national legal framework, Malawi is formally a party to a number of international standards that govern democratic elections, notably the United Nations (UN) Universal Declaration for Human rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966, the Africa Charter on Democracy, Elections and Governance adopted in 2007 and which entered into force on the 15 February 2012; the OAU/AU Declaration on Principles Governing Democratic Elections in Africa adopted in 2002 and most importantly the Constitutive Act of the African Union adopted in 2000. Furthermore, Malawi is a party to the SADC Principles and Guidelines Governing Democratic Elections adopted by the Southern African Development Community (SADC) in 2004.

². The Traditional Authorities Act also has a bearing on ensuring level playing field during election campaigns.

8. In keeping with the principles enshrined in the aforementioned international, continental and regional instruments for democratic credible and transparent elections, Malawi has put in place the following measures among others:
 - i. *A Comprehensive legal framework that includes the constitutional amendments, Acts of Parliament and Electoral Codes of Conduct that compel political and electoral stakeholders to conduct themselves in a manner that enhances a conducive environment for political competitiveness and the exercise of political rights; Review of the laws and Administrative policies:* The relevant authorities have worked to remove some of the restrictive media laws that had existed even during the 2009 elections, and reviewed the electoral laws to harmonize the holding of the Local Government elections alongside the Parliamentary and Presidential as Tripartite elections;
 - ii. *Media Regulation for election coverage.* Broadcasting Media Monitoring by the Malawi Communications Regulatory Authority (MACRA) seeking to check general compliance with the law regulating coverage of political campaigns during election time. The media in Malawi is relatively free to carry out their work as compared to the 2009 elections; and
 - iii. A framework for stakeholder consultative and dispute resolution is in place, comprising the National Electoral Consultative Forum (NECOF), the Multi-Party Liaison Committees (MPLC) as alternative dispute resolution mechanisms, and the Complaints Handling Unit in the Malawi Electoral Commission with legal experts to handle complaints hinging on litigation. The Judiciary is largely regarded as independent and impartial, and is a generally respected institution in the country.
9. Some stakeholders have expressed the concern that the state law enforcement agents have not always acted promptly to enforce the laws pertaining to complaints by different electoral stakeholders. As in for instance a DPP representative in the Rumphi District Multiparty Liaison Committee (MPLC) complained 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. The AUEOM notes, however, that while a comprehensive legal and institutional framework is in place for the elections, there are still limitations and alleged unevenness with regard to the enforcement of certain aspects of the provisions in the laws on political considerations. A significant number of stakeholders expressed concerns at the lack of action against violations of the law relating to fair coverage of

contestants during campaigns and violations of the provision in the 2014 Electoral Code of Conduct on '*abuse of public resources by incumbent for political party purposes*'. The AUEOM also notes that the playing field is also impacted by the nature of the electoral system in Malawi. Malawi operates the First Past the Post electoral system which provides for a simple majority victory.

11. The AUEOM commends all political and electoral stakeholders for having thus far maintained a generally calm and conducive atmosphere for electoral campaigns, which has been described as an improvement from the political environment that preceded the 2009 elections. Many stakeholders have welcomed the holding of the tripartite elections as a positive move in maximizing use of resources and logistics for elections.

The AUEOM mission recognizes that the measures in place are broadly in accord with the relevant provisions of the aforementioned international, continental and regional standards, for holding democratic elections;

III. Electoral Administration and Preparations

12. The role of an impartial and a capable elections management body is central to the successful conduct of any electoral process.
13. The MEC has secured funds to meet the requirements to conduct the elections. The government of Malawi has financed 60% of the election budget while the other 40% is financed by the development partners and international agencies.
14. Voter registration exercise was conducted successfully, despite the resource constraints experienced by the MEC which necessitated a reversion to the use of the Option Mark Recognition (OMR) system. At the end of the exercise, over 7,537,548 voters were registered out of the projected 8,000,000 eligible voting-age population, representing 94% registration success rate. Ample time was accorded to the eligible Malawian citizens to register as voters from 22 July 2013 through 18 December 2013.
15. The AUEOM notes the fact that voters will vote at those centres where they registered as a commendable development.

16. The AUEOM notes that MEC has taken measures to improve the openness and inclusiveness of the electoral process including the following, among others:

- a. The high number of voters that MEC was able to capture on its current voters' roll – acknowledged as the highest ever in the electoral history of Malawi. However, other stakeholders expressed concern over these figures as they were significantly above the national voting age population projections for 2014 released by the National Statistical Office. MEC had registered 7,537,548 voters, whereas the NSO projections for the 2014 VAP was 7,504,527 people, providing a variance of over 33,000 voters;
- b. To ensure transparency in the electoral process MEC has accredited international and domestic observation groups to observe and monitor the elections, and to this end, MESN will deploy 4,500 observers at polling centres, an additional 1,500 roving observers and also deploy 800 dedicated observers to undertake Parallel Vote tabulation (PVT);
- c. MEC has allowed stakeholders to conduct Parallel Vote Tabulation (PVT);

17. The voter register verification exercise was conducted in three phases, from 9 April to 5 May 2014

18. The AUEOM mission also notes the significant challenges and problems that characterised the voter verification exercise across the country, and the anomalies observed:

- i. The period of five (5) days allocated to each phase for verification was viewed by many stakeholders as not adequate, hence the poor turnout of below 30% in all regions;
- ii. The considerably significant number of errors on the voters roll has been cited as a great cause for huge concern by many political and electoral stakeholders: Many of the interlocutors are particularly worried at the reported high number of voters whose particulars were found to have either been omitted entirely, missing or misspelt names or particulars, maybe disenfranchised on Election Day – with the consequence of negating the positive gains attained with the high success rate during voter registration which resulted in 94% of projected eligible voters having been registered;

19. The MEC reported on 9 May 2014 during the NECOF meeting that as of 5 May 2014, the Commission had started distributing *non-sensitive election materials*³ to the respective district councils where they will be delivered to the polling centres before the polls. Moreover, the AUEOM takes note that the printing of Local Government, Parliamentary and Presidential Ballot Papers has been completed. All the Ballot Papers were delivered to the MEC on 10 and 11 May 2014. The printing of

³ . The non-sensitive materials include generators, ballot booths, gas lamps, gas cylinders and tents.

the ballot papers was observed by the Centre for Multi-party Democracy (CMD) on behalf of all the political parties.

20. The AUEOM notes that the recruitment and training of all election personnel for polling stations is on course and some of these trainings have been witnessed by AU LTOs.
21. With all the above preparations so far put in place by the MEC, the AUEOM is of the view that MEC has made significant progress towards the conduct of the elections on 20 May 2014. The AUEOM further notes that MEC commands a considerably high level of confidence and trust among stakeholders. However, the AUEOM is of the view that the Commission needs to bear in mind the complexity and logistical challenges involved in holding multiple elections on the same day, and should put in place measures to ensure successful, participatory and inclusive polls. .

IV. Civic and Voter Education

22. Voter education is an essential part of the electoral process. It is an important means of ensuring citizens participation and a peaceful electoral process. It is particularly significant in the case of Malawi given the multiple number of ballots to be cast in the tripartite elections.
23. The AUEOM notes that while MEC accredited 107 service providers to complement its voter education efforts, most civil society organisations have been limited in their quest to providing civic and voter education by lack of financial resources, leaving the National Initiative for Civic Education (NICE) as the most prominent player in providing voter education. The focus in civic education has mainly been on the tripartite elections, the voting steps, how to vote and where to place your mark as well as the identification needed to be permitted to vote.
24. Civic and voter education programmes have been underway with an increase in political debates by candidates at constituency level. The debates are bringing together candidates from various political parties as well as those that are independent contesting for parliamentary and local government positions.
25. The voter education conducted by MEC has largely been restricted to the use of the media though mechanisms were put in place to have activities at community level.

26. The AUEOM commends MEC for providing a media person in all their district offices to disseminate electoral information in the wake of skewed and polarized coverage of electoral activities by the media.

V. Political Parties and Candidates

27. The AUEOM notes that 12 political parties from the 54 registered political parties have fielded presidential candidates. The candidate nomination process was conducted in a satisfactory manner by the MEC. For parliamentary and local government elections, 193 parliamentary seats and 462 local government seats will be contested for respectively.

28. The AUEOM notes the high number of independent candidates constituting more than 33% of the contestants. Most of the independent candidates were as a result of some disaffection that resulted from the internal political party adoption processes.

29. The political parties contesting the residency are:

- i. People's Party (PP);
- ii. Malawi Congress Party (MCP);
- iii. People's Transformation Party (PETRA);
- iv. Umodzi Party (UP);
- v. New Labour Party (NLP);
- vi. Chipani Cha Pfuko (CCP);
- vii. People's Progressive Movement (PPM);
- viii. United Democratic Front (UDF);
- ix. Democratic Progressive Party (DPP);
- x. Malawi Forum for Unity and Development (MAFUNDE);
- xi. National Salvation Front (NASAF); and
- xii. United Independence Party (UIP).

30. The AUEOM notes that two of the running-mates at presidential running-mates have since resigned from their political parties and the MEC has made its position that the law does not provide for reopening of the nominations, hence the resignations will not affect the conduct of the elections, and they will proceed with the same ballot papers bearing their names as running mates.

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VI. Electoral Campaign

32. The official campaign period started on 21 March and will end on 18 May 2014. The AUEOM notes that the electoral campaigns ahead of the 20 May tripartite elections has so far been relatively peaceful, in spite of isolated violent incidents and confrontations especially before the commencement of the official campaign period on 21 March. For example:

- i. violent protests were recorded during one of the Development rallies addressed by the incumbent president in Thyolo, where two people, including one police officer died;⁴
- ii. wrangles over venues for meetings and campaigns and pulling-off posters among rival political parties as reported in Dedza and Ntcheu districts in central region;
- iii. the clashes over the disruption by DPP supporters of a rally organised by an independent aspirant in Chiradzulu district of the Eastern region, in which one PP supporter was stripped of his PP party T-shirt and forced to wear a DPP party T-shirt;⁵
- iv. One case of provocation, intimidation and violence that occurred on Sunday 13 April in Mwanza district between supporters of the PP and the People's Progressive Movement (PPM) following the disruption of a PPM meeting by the PP supporters; and⁶
- v. Three cases of violent acts in, Rumpi⁷ Nkhata-bay central⁸ and Karonga where confrontations among supporters of different political parties were noted.

⁴ The violence in Thyolo erupted on 17 March, 4 days before the start of official campaigns after the Development Rally held by President Joyce Banda. This was after some government officials made derogatory statements against DPP leader Peter Mutharika (who comes from Thyolo), and in retaliation the DPP supporters pelted stones at the PP supporters, prompting the Police to fire teargas to disperse the protesters. In the process, one civilian was shot dead by the police, in what the police described as 'self-defense'. The killing of the civilian aggravated the already angry protesters who in return took hold of the police officer and hacked him to death.

⁵ Formal complaint presented to the MPLC meeting on 13 May 2014 in which the AU LTO were in attendance.

⁶ According to Inkosi (chief) Khanduku.

⁷ 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.

⁸ Between supporters of AFORD and DPP.

33. The first ever series of Presidential Debates, which were covered live on state broadcaster MBC and other electronic media, were successfully conducted and allowed for all political parties contesting the presidency to reach out to the electorate across the country. Such an initiative is commendable since it created an equal opportunity for candidates to convey their message to the electorates. These debates edified the general focus of the campaigns which have been issue-based rather than personality-based.
34. While the electoral laws do not compel political parties to disclose their sources and limits of campaign finance, the Electoral Code of conduct for Political Parties and Candidates, under Section 7(16) prohibits the abuse of public resources by the incumbent for political party purposes⁹. Stakeholders, in particular opposition parties and civil society, have raised concerns about the violation of this law on the use of public resources for campaigns by the incumbent. The pre-election environment was impacted by the ongoing investigations over the fraud in the public sector commonly referred to as '*cash-gate scandal*'¹⁰ which is still being investigated in which huge amounts of public funds are unaccounted for.

VII. The Media Environment

35. 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 and political parties and candidates.
36. The AUEOM notes that compared to preceding elections, the public broadcaster is relatively more open in its coverage of opposition parties and candidates. However, it is acknowledged by many interlocutors, and the state media regulatory agency, the Malawi Communications Regulatory Authority (MACRA) that the media coverage of campaigns and political events has for the greater part of the campaign period been heavily skewed in favour of the incumbent to the disadvantage of other parties, contrary to the provisions of all the electoral laws. For instance, the monthly Media Monitoring report for March conducted by MACRA showed that the incumbent's party enjoyed 94% of coverage on Malawi Broadcasting Corporation (MBC), while all other political parties shared the 6% of the coverage. This imbalance prompted the MEC and MACRA to urge MBC to ensure action is taken to redress the situation in order to help achieve balanced coverage.

⁹ Section 7 (16) of the Electoral Code of Conduct.

37. The AUEOM however, notes the steps taken by MBC in redressing the imbalance in media coverage following the intervention of MEC and MACRA. Interlocutors acknowledged during the month of May that the MBC had improved marginally in terms of increasing coverage to opposition parties and candidates, despite there still being an unequal share in coverage. The MACRA Media Monitoring report for the period of 20-26 April 2014 showed that the ruling PP's coverage had dropped from 94% to 51% during the said period. The MBC has acknowledged this imbalance and assured the team that the corporation was striving to allocate an equitable share of airtime to all political parties and candidates.

VIII. Women Participation and Candidates

38. The AU EOM recognizes the strides that the Malawi government has taken with support from development partners to rectify the gender imbalance that is prevalent in the country. The ongoing 50/50 campaign whose aim is to agitate for gender equality at all levels has encouraged more female participation in the electoral process. Furthermore, the AU EOM applauds the MEC for the 20% discount on the nomination fees for women candidates as an incentive to attract more participation from this group.

39. During the *Nominations*, female candidates were accorded a 20% reduction on the nomination fee which was a positive move enhancing women participation in the elections;

40. There is female presidential candidate, 261 female parliamentary candidates and 419 female local government candidates out of an overall total of 2,412 aspirants. These statistics indicate an average of 20% parliamentary female candidates and 15% female candidates at local council level. In addition, The AU LTOs observed that women continued to be the majority at rallies and political campaigns. Generally, there was a higher number of women than men who turned up for the voter registration exercise as well as platforms for civic education. Hence, the majority women play a supportive role rather than an active role in electoral processes.

IX. Electoral Dispute Resolution

41. An effective and expeditious electoral dispute resolution is necessary for enhancing political rights and ensuring that disputes in the electoral process are resolved in a timely manner. The legal provisions relating to pre-election dispute management are contained in the Constitution of Malawi, the Parliamentary and Presidential Elections Act, and the Code of Conduct for Political Parties, to which all political parties have

committed to. These legal provisions make room for the peaceful resolution of conflicts.

42. As highlighted under paragraph 6 above, MEC has put in place an elaborate dispute resolution system. A framework for stakeholder consultative and dispute resolution is in place, comprising the NECOF, the MPLC as alternative dispute resolution mechanisms, and the Complaints Handling Unit in the MEC with legal experts to handle complaints hinging on litigation. The Judiciary in Malawi is largely regarded as independent and impartial, and is a generally respected institution in the country.

X. Election Security

43. Election security is a crucial element in guaranteeing a conducive environment in which citizens can freely exercise their right to vote and for safeguarding the integrity of the vote. The Malawi authorities have put in place an electoral security arrangement with the Malawi Police Service (MPS) charged with the primary responsibility of providing security at all polling stations and counting centres. In view of the limitations of personnel to cover all centres, the MPS has put in place mechanisms to work in conjunction with the Malawi Defence Forces (MDF) to ensure that adequate security is deployed to polling centres. MEC has scheduled the training of security personnel on electoral security at all levels.

44. The AUEOM notes with concern the non-presence of Police at major rallies of the opposition to provide security.¹¹

XI. Conclusions and Recommendations

45. In conclusion the AUEOM implores all Malawians, particularly political parties and candidates to exercise utmost restraint to ensure that the prevailing peaceful environment that has characterised much of the campaign period is maintained and that violent clashes are not allowed to sprout. As the campaigns heat up in the last few days before the end of the official campaign period on 18 May 2014, political parties and candidates ought to urge their supporters to exercise maximum restraint in order to maintain the peace.

46. The AUEOM is also takes note of assurances by the MEC to deliver credible free and fair elections and therefore urges the Commission to stick to its commitment.

¹¹ .The DPP manifesto launch rally by the Party President held in Blantyre 21 April, did not have police presence. The MCP rally at Mzuzu grounds addressed by the Party President on 11th May 2014 was not provided police security. However, the DPP rally addressed by the President in Mzuzu on 12th May 2012, was policed because the Republican Vice President was in attendance to give solidarity.

47. The AUEOM offers the following recommendations towards the holding of democratic, credible and transparent elections:

- i. The MEC need to step-up efforts in ensuring quality-control and cleaning up the significant errors noted in the voters roll during the voter verification process, particularly as pertains to the omitted names and erroneously captured particulars, to avoid the possibility of a very significant number of voters being disenfranchised. It is equally of critical importance for MEC to ensure that the voters' roll has an accurate number of registered voters;
- ii. The MEC should continue with its confidence-building measures to increase public trust in the electoral process;
- iii. The MEC should put in place adequate logistical and administrative measures and contingencies to avoid any challenges that may arise from administering multiple elections on the same day;
- iv. Security agencies should be professional and impartial in the discharge of their duties throughout the entire electoral process;
- v. The leaders of political parties and candidates should continue to urge their supporters to abide by the Electoral Code of Conduct and to refrain from any acts that could mar the peaceful conduct of the elections, before, during and after the elections;
- vi. The MPLCs should continue their efforts aimed at ensuring peaceful resolution of electoral disputes by all stakeholders;
- vii. The electoral stakeholders, particularly political parties, MEC and civil society should step up civic and voter education; and
- viii. In the remaining few days to the elections, it will be important for the media, particularly the Malawi Broadcasting Corporation (MBC), to be balanced and equitable in the coverage of all political parties and candidates in keeping with the provisions under the Malawi Media Code of Conduct and the Communications Act.