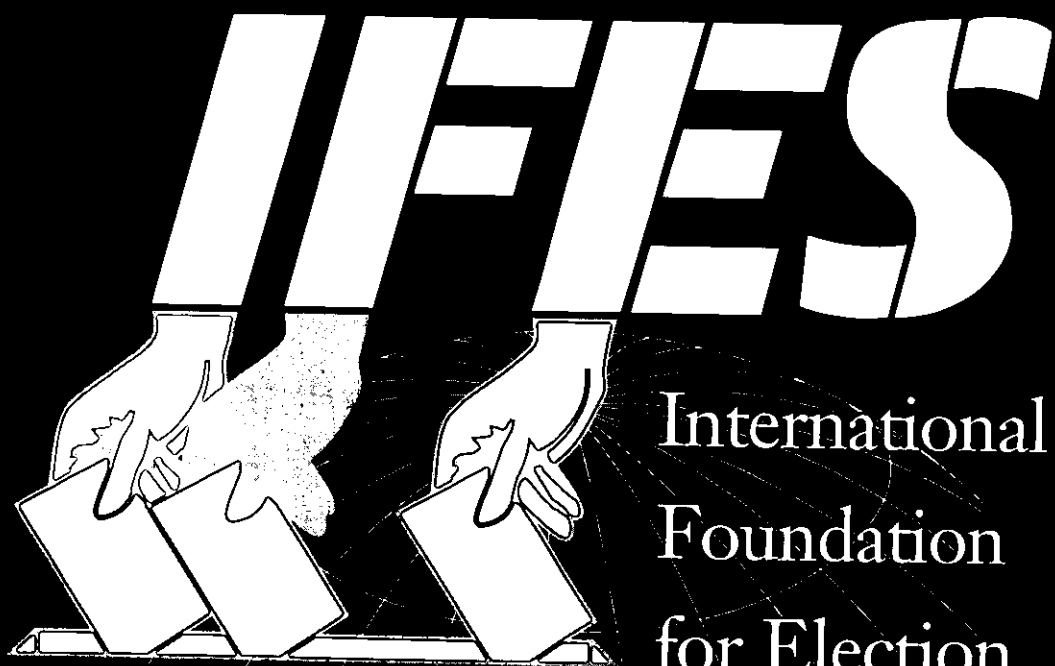


Date Printed: 11/06/2008

JTS Box Number: IFES_7
Tab Number: 18
Document Title: IFES Election Report: Malawi An Overview
of the 1999 Presidential and
Document Date: 1999
Document Country: Malawi
IFES ID: R01734



* 6 D 6 9 4 9 7 4 - B E 1 A - 4 8 7 A - 9 7 A 5 - 4 F 3 7 A 6 F 2 A D 6 3 *



International
Foundation
for Election
Systems

***DO NOT REMOVE FROM
IFES RESOURCE CENTER!***

**IFES ELECTION REPORT: MALAWI
AN OVERVIEW OF THE 1999 PRESIDENTIAL
AND PARLIAMENTARY ELECTIONS
JULY 30, 1999**

Prepared by

**Vic Butler, Technical Team Leader
Laurie Cooper, Senior Program Officer**

This report and project were made possible by a grant from the United States Agency for International Development (USAID). The opinions expressed in this report are solely those of the International Foundation for Election Systems. This material is in the public domain and may be reproduced without permission; citation is appreciated.

I.	EXECUTIVE SUMMARY	4
II.	THE 1999 ELECTIONS: ADMINISTRATION AND SUPPORT	6
	A Installation of Electoral Commission, July 1998	6
	B Partnership Between IFES and the Malawi Electoral Commission	6
	C Summary of Technical Support	6
	Calendar Setting	7
	Management and Personnel Support	7
	Voter Registration, Training & Media	7
	D Commodity Support	8
	Information Technology Support	8
	Forms, Manuals and Envelopes	8
	Training	8
III.	Legal Instruments and Issues	9
	Date of National Elections	9
	The Franchise	9
	Polling Procedures	10
	Regulations	10
	Majority	11
IV.	Management of the 1999 Elections	13
	A MEC: Chairman, Commissioners and the Committee Structure	13
	B Appointment of Secretariat Staff and Management Issues	13
	C Headquarters and Regional Offices	17
	D Adherence to Election Calendar	17
V.	Electoral Event Implementation	19
	A Voter Registration	19
	B Voter Education	20
	C Candidate Nomination	21
	D Procurement and Delivery of Supplies	22
	E Relations with the Media	23
VI.	Partisanship Divides the Electoral Commission	25
	A The Electoral Commission and Civil Society	25
	B Alliance Candidacy	25
	C Constituency Delimitation	26
	D Open Split Along Party Lines	27
VII.	Election Day Observations	29
	Pre-election observations	29
	Election Day	29
	Counting and Transmission of Results	30
	Announcement of Results	30
VIII.	Conclusions and Recommendations	32
	A Current Legal Challenges	32

B	Voter Registration Issues	32
C	The Political Divide in the Commission	33
D	Management of the Commission	33
E	Legislative Issues	34
F	Local Government Elections	35

I. EXECUTIVE SUMMARY

This report has been prepared as an account of the 1999 presidential and National Assembly Elections in Malawi. The International Foundation for Election Systems (IFES) has worked in Malawi since 1993 in support of peaceful, democratic and well-conducted electoral events. During the referendum and first multiparty elections in Malawi, IFES provided technical advice in the areas of voter registration, election worker training, and voter education. Funding for this project has been made available by the US Agency for International Development.

In late 1996, IFES established an office in Blantyre, less than a block away from the offices of the Electoral Commission. This was the first step in the institution of a major capacity-building project that was to be implemented in partnership with the Electoral Commission, led at that time by Justice Anastasia Msosa. The Commission, nominated in the last quarter of 1994 for a four-year term, was positioned to institute election reform on several levels, and to develop a working secretariat staff to manage significant tasks such as voter registration and register maintenance, boundary delimitation, and administration of local government elections. However, a lack of public support for consideration of election issues, and a series of controversial by-elections combined by mid-1998 to contribute to an image of the Electoral Commission as unable or unwilling to effectively manage the election process. The Commission remained without a secretariat. Members were unable to assume the full-time workload of the Commission because of their commitments to jobs elsewhere. This situation compromised IFES' ability to engage in the skill transfer that it undertook to provide. An interministerial task force was nominated in April 1998 with the mandate to manage the coming election process. The task force pushed and ultimately prevailed upon the President to dissolve the Electoral Commission several months ahead of its scheduled end of term, and less than twelve months prior to the 1999 general election period.

Based on its positive relationship with the 1994 Electoral Commission, IFES met with the new Electoral Commission immediately following its nomination to discuss the terms of their technical assistance agreement. The two institutions reaffirmed the basic tenets of the agreement, and agreed that the focus of the support would be the successful administration of the 1999 elections in the short term. It is in this spirit of cooperation and collaboration that the narrative and comments which follow are provided.

This report is based on the activities, experiences and observations of the IFES Technical Team Leader and seven specialist consultants who worked with the Malawi Electoral Commission in the period July 1998 through June 1999, together contributing some 44 person-months of input to the electoral process. Given its level of involvement, as summarized above, IFES Malawi considers itself well placed to comment upon the events leading to the Presidential and National Assembly elections on 15 June 1999 and the performance of the Malawi Electoral Commission. These comments and recommendations are offered in an attempt to ensure that lessons learned during this period inform the development of the legal framework and administrative structures to be used in future elections in Malawi.

Over the 12 months covered by this report, the Malawi Electoral Commission has been subject to repeated charges of bias, partisanship and political division. This report does not seek to make any judgement on this issue, but does record particular instances where these were the general perceptions of those involved closely with the process.

The report is divided into eight sections. Section II deals with the induction of the Electoral Commission which conducted the 1999 elections, and a summary of IFES technical and material support to the process. Section III describes the legal framework for the administration of elections, and cites factors in the law that complicated the Commission's work during the period. Section IV details the Electoral Commission's structure and capacity to manage the elections. Section V provides an account of the electoral events leading to the 1999 elections. Section VI addresses the partisan split within the Electoral Commission, and its effect on election operations. Section VII describes Election Day proceedings and the observations made by the IFES technical team. Section VIII provides conclusions and recommendations in the immediate aftermath of the general elections.

II. THE 1999 ELECTIONS: ADMINISTRATION AND SUPPORT

A Installation of Electoral Commission, July 1998

The 1999 Presidential and National Assembly Elections in Malawi were conducted under the authority of an Electoral Commission nominated on July 1, 1998. The Commissioners were sworn in by the Minister of Justice on 4 July, and formally met for the first time on 15 July. The composition of the Commission is as follows: Justice William M.M. Hanjahanja, Chairman; G.T.N. Kamwambe; A. V. Nanthuru; Mrs. F.C. Chirwa; A.G.N. Mtendere, Ms. M.E. Ngwembe, and N.W. Mbekeani. Each member was nominated individually by the three political parties represented in the National Assembly. Besides the Chairman, the composition was 3 United Democratic Front (UDF) nominees, three Malawi Congress Party (MCP) and two Alliance for Democracy (AFORD). Only one of the nine had any background in election management, with the remainder drawn from private commercial and professional backgrounds, with substantial government sector experience.

B Partnership Between IFES and the Malawi Electoral Commission

Following the appointment of the new Commission, the Chairman requested the preparation of a document indicating the level of support proposed by IFES Malawi. The focus of IFES' assistance was the development of the capacity of the Secretariat plus professional support and skills transfer in: 1) voter registration, voting systems and procedures; 2) voter education programs; 3) relations with the media and development of a Press Office; 4) training for voter registration and polling staff; and 5) assistance with the establishment of regional offices. In respect of each area of support, it was made clear that IFES' intention was to work with secretariat staff to be appointed by the Commission.

This proposal was drafted and approved by IFES' Washington headquarters, and following consideration by the Chairman was accepted on 31 August 1998 as the basis on which IFES Malawi would work with the Commission in the period up to the 1999 elections.

C Summary of Technical Support

In addition to technical support through the IFES Technical Team Leader and consultants, as outlined below, the Commonwealth Secretariat and the United Nations Development Programme (UNDP) also provided advisors to the Commission. IFES established a good working relationship with the advisors from an early date in order to ensure that advice offered to the Commission was consistent and consensual.

Calendar Setting

The establishment of a calendar of events and operations began with the initial briefing of Commissioners in late July 1998 and continued until early March 1999. IFES and other advisors repeatedly sought to create a timetable based upon legal requirements, realistic estimates of how long various tasks would require for completion, and availability and delivery dates for supplies. The Calendar of Events went through five or six revisions over this period, with the one immutable date being May 18, 1999. This date (later revised to 25 May) remained a given until changed as the result of legal action in mid-May 1999. The Commission rarely adhered to the intermediate dates set for the completion of tasks, and seemed not to appreciate that the failure to meet an activity or supply deadline would affect subsequent activities or its ability to be ready for the election in May 1999. The build up of Secretariat personnel from mid-January did little to change the situation. The first salient effects of this approach were the particularly damaging results in respect of the Voter Registration exercise.

Management and Personnel Support

Efforts to establish management systems and consistent procedures of the Commission were essentially unsuccessful. Decision-making procedures and accountability measures were random and inconsistent. Despite the Commission's acceptance (in principle) of a devolved Regional Office structure, this was not completely implemented. This exacerbated many of the problems experienced during both Voter Registration and Polling. Nevertheless, the three Ghanaian consultants brought in by IFES to work with the Regional Election Officers were able to make a significant difference to the way in which these offices functioned, particularly with regard to the nomination and polling activities.

Voter Registration, Training & Media

IFES provided consultant support to the Commission in each of these three areas, but the Commission did not systematically appoint personnel to whom the consultants' skills and experience could be transferred. Appointed staff often failed to attend events (particularly planning and training sessions) where their knowledge could have been extended, or were assigned to other duties, leaving the consultants to undertake the work alone.

D Commodity Support

Information Technology Support

Computers, printers, fax machines and associated equipment worth \$75,000 were provided to the Commission by IFES in March 1999. This equipment represented a substantial improvement to the technical capability of the Commission at the Headquarters, Regional and District levels. Follow-up to ensure the operational status of fax machines was completed immediately prior to the 15 June 1999 election so as to ensure the best possible circumstances for the transmission of results from District Offices to the Comesa Hall Tally Center in Blantyre. The Tally Center, proposed by IFES, was designed and made operational with substantial support from IFES consultants, and co-sponsored by IFES and the German Democracy organization (GtZ) at a cost of \$42,000.

Forms, Manuals and Envelopes

The incidental forms required for accounting and reporting of voter registration and Polling Day activities were developed with input from IFES consultants working closely with other advisors. The IFES advisors also developed pollworker training manuals. Forms, Manuals, envelopes and packaging, and the distribution to Regional Offices was funded by IFES at a cost of approximately \$140,000.

Training

The development of a strategy and plan for (and materials to enable the effective delivery of) training to the several thousands of short-term staff required to undertake the work of Voter Registration and staffing of the Polling Stations was a major element in the assistance offered to the Commission by IFES. IFES consultants in Blantyre and Lilongwe conducted training of trainers courses for both Voter Registration and Polling. Briefing of Returning Officers prior to Election Day was supported by input from IFES consultants in Blantyre, Lilongwe and Mzuzu.

III. Legal Instruments and Issues

The legal provisions governing elections and associated events in Malawi are found in the following statutes:

- Parliamentary and Presidential Elections Act, 1993, Parliamentary and Presidential Elections (Amendment) Act 1994
- Republic of Malawi (Constitution) 1994 (and subsequent amendments)
- Local Government Elections Act, 1996
- Parliamentary and Presidential Elections (Amendment) Act, 1998
- Electoral Commission Act, 1998

A careful examination of this body of law reveals a number of anomalies and contradictions that were raised in a report prepared in February 1998 by IFES consultants Joe Baxter and Vic Butler. To provide a context for the manner in which the election process unfolded, some of the issues raised in that report are quoted below:

Date of National Elections

“The Constitution provides for a five year term of office for the President (S 83(1)), which will expire five years from the date of his swearing-in, on 19 May 1999. Elections to choose a successor must therefore take place *before that date*. The National Assembly will automatically stand dissolved five years from the date of its swearing in (S 67(1)), on 29 June 1999. A general election of National Assembly members must be held *within sixty days of the date of dissolution*. If, as happened in 1994, the elections for President and National Assembly members are to take place on the same day (and it is apparent from discussions that this is the universal assumption), then the Constitution requires amendment to either extend the term of office of the President or shorten that of National Assembly members. Moreover, the method of voting *prescribed* in the Parliamentary and Presidential Elections, 1993 presumes the conduct of both National Assembly and presidential elections at a single poll, despite the Constitutional difficulty referred to above.”

Action to resolve this conflict was taken by the National Assembly through an amendment to the Constitution in November 1998. This was as the result of a Constitutional Review by the Law Commissioner (with minimal input from the Electoral Commission). The Constitution was amended to provide that election of both President and National Assembly should be held every five years on the Tuesday in the third week in May or within seven days from that Tuesday.

The Franchise

The Constitution (S 77(2)) grants qualification to register as a voter to *citizens and persons resident in Malawi for seven years who have already attained the age of*

eighteen and are either resident in, were born in, are employed in or carry on a business in the constituency where they seek to register. The Parliamentary and Presidential Elections Act, 1993 (S 15) restricts the right to register to *citizens residing in Malawi only*, but extends that right to all who will be eighteen *on or before polling day*. The Local Government Elections Act, 1996 (S 6) provides that *any person resident in Malawi* who will be eighteen on or before polling day is eligible to register as a voter.

Given these conflicting provisions, the Commission was advised to consider the intent of the law. The Chairman, despite the efforts of the other legally qualified member of the Commission to persuade him otherwise, chose to endorse the narrow interpretation of the law as embodied in the Constitution, and stated this position publicly in February 1999. An amendment to extend the franchise to all persons over eighteen years of age on polling day could easily have been incorporated into the legislation providing for constitutional amendment passed in November 1998. Bearing in mind that the 1993 legislation was put into effect without undue difficulty, the result of this action was to disenfranchise an undetermined number of citizens who had reached eighteen years of age on the day of the election – persons who would have been able to vote in 1994. It is unlikely that this was the intent of the Constitution.

Polling Procedures

Excessive detail in the Electoral Law hampers an electoral body's ability to respond to changing circumstances and adopt new approaches to reduce costs and streamline procedures. One instance of this was the inclusion of a detailed description of the voting procedure in the Parliamentary and Presidential Elections Act, 1993 (S 86). A simple amendment to the law in December 1998 or February 1999 (when the National Assembly met) would have saved millions of Kwacha in staff costs and purchase of materials.

Regulations

Matters that are administrative in nature such as the activities of registration staff and Returning Officers in fulfilling their responsibilities under the law, are best set down in Regulations made by the Commission. They could then be easily amended without undue delay. However, the Commission did not seek to revise or change any single element of the body of legislation so as to make its task easier, or to develop statutory regulations in this respect. Instead, administrative instructions lacking the force of law were developed and issued. In many instances these instructions were inappropriate or too late to be of value and assistance to field staff.

Majority

“Are second elections called for when no candidate receives a majority of the vote? The Constitution and the Parliamentary and Presidential Election Act seem to indicate so. No date, however, for any such second round election is mentioned in either document. The issue of the need for a majority the votes to be declared the winner of an election is raised in the following sections of the Constitution and law:

Constitution: Section 80(2) “The President shall be elected by a majority of the electorate through direct, universal, and equal suffrage.” The Constitution does not specify the votes needed to declare a winner of a parliamentary seat. This is only found in the Parliamentary and Presidential Elections Act of 1993.

Section 96(5) Subject to this Act, in *any* election the candidate who has obtained a majority of the votes at the poll shall be declared by the Commission to be duly elected. (*Emphasis added*)

Section 99(d) the total number of valid votes cast for each classification of votes as specified in section 91.

Section 91 “For the purpose of determining the results of the election at a polling station and, in particular, in counting votes thereat, the votes cast at a polling station shall be separately classified into:

- (a) Null and void votes;
- (b) Votes for each of the candidates for election as members of Parliament;
- (c) Votes for each of the candidates for election to the office of President.”

Nowhere in the legislation is the word “majority” defined. A simple majority would require that the winning candidate attract more votes than any other single candidate, whereas an absolute majority requires that the winner has more votes than all other candidates combined (50% + 1). Both definitions are in use in electoral systems around the world, with a run-off election for the two leading candidates usually being held where an absolute majority is required.”

The lack of clarity and therefore the uncertainty of intention in the law of Malawi gave rise to the possibility of post-election legal action that could be avoided by correction of that law. The report called for the Commission to give attention to this and other issues to enable a clear election calendar to be produced. However, the previous Commission took no action, and the new Commission did not consider this issue, although it was raised again in late July 1998. The Law Commission sought to address this with an amendment to Section 80 of the Constitution to specify that the President should

be "the candidate to whom the greatest number of votes has been given." The National Assembly rejected this proposal. As a result, uncertainty over precisely what is meant by "a majority of the electorate" remains part of the legislation. (Furthermore, the amendment should more precisely have referred to valid votes.)

IV. Management of the 1999 Elections

A MEC: Chairman, Commissioners and the Committee Structure

The 1998 Commission settled upon the following Committees early in its existence:

- Finance and Administration - Chairman Justice W M M Hanjahanja
- Civic Education - G T N Kamwambe
- Legal Affairs - A V Nanthuru
- Media and Public Relations - Mrs F C Chirwa
- Campaign Monitoring - A G N Mtendere
- Voter Registration and Demarcation - Justice W M M Hanjahanja
- Training - Ms M E Ngwembe
- Operations and Logistics - N W Mbekeani

Beyond the addition of the Clerk of Parliament to the Civic Education Committee, no attempt was made to recruit additional members (as provided by law) thus bringing in valuable skills and experience from both public and private sector. In practice, the committee structure was not utilized to facilitate the work of the Commission. This may have been because little basis of trust existed upon which any sub-group of Commissioners could carry out any task on behalf of the Commission as a whole. The Committees met intermittently in the period to January 1999 (with the exception of the Logistics Committee, which failed to meet at all). In February, the Chairman stated that the Committees created unnecessary problems and abandoned any attempt to use them to expedite Commission business. Instead, the Commissioners who had been appointed to Chair each Committee assumed responsibility for that area of the Commission's work, effectively creating a Cabinet-style management structure.

B Appointment of Secretariat Staff and Management Issues

In September 1998, a series of senior staff position descriptions were drafted for the Commission by the international advisors. These were based upon the former Commission's own ideal staffing structure developed at an international seminar held in Tanzania in August 1997, and on the February 1998 Butler/Baxter report recommendations. A timetable for accelerated recruitment was also prepared. These were submitted to the Commission in mid-September 1998, but action on advertising was delayed pending detailed consideration by the Chief Electoral Officer (CEO) when he assumed his duties on 1 October. Recruitment to that post was in itself a significant step: the appointment of

Stuart Winga, with a background in the Malawi Public Service at Principal Secretary level should have enabled the Commission to retreat from its initial hands-on role and concentrate on policy issues and management oversight. In theory, the CEO would develop the capacity of the Secretariat to deliver the professional service required.

The attention of the Commission through October and the early part of November was largely given over to a program of visits to each of the 27 Districts in the three Regions of Malawi. As a result, little attention during this period was given to the urgent need to make key appointments necessary to ensure continuing action to implement policy directives and progress operational matters on a day-to-day basis. This partly explained the delay in the appearance of the advertisement for second- and third-tier posts, and the further delay until the second week of December before interviews for these posts began. The short-listing process was followed by a protracted period of interviewing, which meant that the Commission (appointed on July 1) had succeeded in employing only the CEO by the end of December 1998. The Commission's delayed appointment of a Secretariat significantly reduced its ability to plan effectively, or to respond to donor and supplier approaches and inquiries in a positive manner during the last six months before the elections.

From mid-January 1999, the following senior staff took up their positions at the headquarters of the Secretariat: Deputy CEOs responsible for both Operations and Finance and Administration, Division Heads leading the Electoral Services, Civic and Voter Education, Administration and Personnel and Finance and Procurement Divisions, plus Information and Public Relations, and Logistics Officers. Appointments were also made to the three Regional Election Officer posts. In the absence of the necessary subordinate staff within each of the main operational divisions, the Division Heads were involved in the day-to-day execution of action to the point where little or no work was done on policy development or planning. During the period under review, the Secretariat had no proper Conditions of Service or clear staff regulations. The lack of positive direction for the senior staff combined with the absence of junior staff led to further loss of time and a low level of staff morale. (In mid-March, the Information and Public Relations Officer resigned after less than six weeks in the job partly as a result of the failure to properly use her professional expertise in support of the CEO and Commissioners.) The leadership vacuum was reflected, particularly from February 1999 onwards, in the tendency for all available staff to focus their attention on the current crisis (whether procurement of cameras, acquisition of vehicles or development of the Voter Registration Form format) to the exclusion of every other activity.

The CEO also vetoed the appointment of a Recruitment and Training Officer to head the Division responsible to recruit and train the large numbers of short-term staff needed for Voter Registration and

Polling. Instead, he directed the Head of the Civic and Voter Education Division to take on this additional work. This compromised the ability of the Commission to undertake either Voter Education or Training effectively. The result was that the whole task of training - devising a training strategy and plan, developing the training materials (and in that process settling procedures and issues of policy), and the training of the core trainers to deliver the training in the Districts - was carried out by consultants with virtually no input from the Commission.

From November 4-7, 1998, the Commissioners and CEO met with stakeholders including representatives of the Police and Defense Force; NGOs concerned with the election process, and the media. The group agreed that one area requiring early action was the building of a good working relationship with the District Commissioners (DCs) who would be responsible for the conduct of Voter Registration. The Commission was offered assistance to set up and conduct a workshop for this purpose in mid-November, but repeatedly delayed a final decision. Eventually, on February 1 and 2 1999, the Commission met for two days with all District Commissioners. They were briefed on the plans of the Commission for the Voter Registration exercise, but little discussion took place on other aspects of the election. Questions and issues raised by the DCs were brushed aside or received only cursory attention, although it was clear that the DCs had considerable experience in the practical difficulties of running elections in Malawi. Little effort was made by the CEO or other Commission speakers to build any sense of teamwork or cooperation with the DCs. The late convening of this meeting and the failure to embrace the DCs as partners in the conduct of the 1999 elections led to many of the difficulties experienced later by the Commission in their communications with the Districts.

In December 1998, the Commission advertised for 27 District Election Officers. The appointment of DEOs was deemed necessary by the Commissioner to counteract accusations of political bias, and to assist the DCs, who were perceived by some Commissioners to be too political. However, the arrival of the DEOs generally created more problems than it solved. Many DCs viewed the DEOs with suspicion, and the lack of definition of their role meant that with a few exceptions, no cooperative relationship was established.

As the controversy surrounding the Voter Registration exercise developed in February and March, and particularly as the mismanagement of the exercise became apparent to the Commissioners as well as civil society, there were calls for the dismissal of the CEO. The CEO cited the donors for delaying funding of VR forms and additional cameras in explaining the registration problems. The Electoral Commission was not in a position to discuss changes to the registration period, since this would have led to a postponement of the election (despite recommendations to that effect by the international

advisors). The situation prompted the drafting of the Clerk of Parliament (who prior to the appointment of the new CEO had also held that position) into the Secretariat in mid-March. His role was not clearly defined; for almost six weeks he was effectively marginalized, having only a limited input into management decisions and policy advice. The Chairman and CEO, now both embattled by the rising level of criticism, closed ranks and began to make decisions without consulting other Commissioners.

This situation continued until early May, when the findings of the UN International Observer team (who had arrived on 18 April to examine the progress of Voter Registration in response to donor concerns), were presented to President Bakili Muluzi and senior members of Cabinet.) The UN team indicated that the management of the electoral process was full of weaknesses, and recommended improvements to ensure that polling did not suffer from the same problems that had beset registration. A group consisting of five Principal Secretaries, two Assistant Clerks of Parliament and their secretarial staff, all appointed by the President's Task Force on Elections (headed by the Minister of Information and the Attorney General) was installed in the offices of the Commission on May 3 in an effort to unify the Commission's members and expedite the final preparations for the election. The CEO was moved aside and given the task of supervising ballot paper production at the printers in England. With the removal of the CEO, the Chairman, whose health had been poor for some time, was prevailed upon to use the occasion of his admittance to hospital to offer his resignation. On May 13, Supreme Court Justice James Kalaile was announced as Justice Hanjahanja's replacement. On his return in mid-May, the former CEO was briefly seen again at the headquarters of the Commission. It did not become clear that he had been dismissed until the end of June, at which time he was reported to be taking legal action against the Commission in this respect.

The impact of the Management Team was immediate, and to these able public servants is due much of the credit for the relatively satisfactory conduct of the polling process on 15 June. They proved ready to listen to advice, absorb information and take decisions, and gave the Secretariat the direction and focus which it had lacked, both at headquarters and regional offices. However, with their return to their Departments from 21 June the Commission was left with no head of the Secretariat and the prospect of a difficult legal action to defend. In the meantime the Deputy Chief Elections Officer (Operations) is acting CEO, and this situation could continue for some time.

At no time in the run-up to the 1999 Elections was the Commission Secretariat fully staffed with the numbers of subordinate personnel necessary to properly undertake the range of responsibilities charged to the Commission. During this period little if any attempt has been made to introduce effective management, control, organization and accountability.

C Headquarters and Regional Offices

The Commission's headquarters offices in Blantyre do not properly accommodate such an important constitutional body. A search for alternatives was made during August and September, but by October the Commission had by default elected to continue in its existing accommodation in Development House, Blantyre. Retaining its original portion of the 6th floor space, the Commission opened some offices on the 1st floor, which was also occupied by two tenants, one of whom was a prominent UDF supporter. The resulting split accommodation was (and remains) both inadequate and ill adapted for the needs of the Commission. The current premises will continue to handicap both the Secretariat in its attempts to organize and work effectively as well as the Commission in any effort it may make in the future to be regarded as a body with a serious approach to its duties.

Similarly, although Regional Election Officers were appointed and in post by late January, no action had been taken to locate either office or warehouse accommodation for their use. The Secretariat appeared to prefer bypassing the regional level and dealing directly with 27 separate District Commissioners (the Returning Officers), demonstrating a lack of understanding of or sympathy for the ROs' circumstances and problems. The last of the three Regional Offices to open, in the Southern Region, did not do so until late March 1999. Once they had been established these offices provided a valuable resource for the Commission, but their use was sporadic and inconsistent. Much of the day-to-day detail that could have been handled at this level was instead referred to a headquarters ill equipped in terms of either staff or information to respond.

D Adherence to Election Calendar

The Commission asked advisors in early December to provide a "Calendar of Events," and this was duly presented. In preparing the calendar, the advisors considered an assessment produced for UNDP by Dr. Horacio Boneo, principally to address the announced intention of Government to conduct local government elections at the same time as the Presidential and National Assembly polls. As a result of this work, the advisors had come to the conclusion at the end of the first week of December 1998 that "the point at which the national elections using the present intended process of Voter Registration cannot be delivered in May is very close."

Between 8 February and 5 March repeated attempts were made to convince the CEO, and through him the Chairman, that the date set for the election, 18 May 1999, was no longer feasible in view of both practical and legal difficulties, and that the extension of one week (to 25 May 1999) permitted by the Constitution did not provide sufficient extra time to make any significant difference. The view

of the advisors, expressed to the donors privately in a note dated 12 March 1999, was that 15 June 1999 was the very earliest date which could reasonably be set (for polling) considering: I) the need to satisfy legal requirements in respect of Voter Registration prior to the closing of candidate nominations, ii) the uncertainty over likely levels of Voter Registration in the face of the absence of any effective pre-registration voter education campaign, and iii) the inability of the Electoral Commission, demonstrated on a daily basis since early December 1998, to achieve target dates set, or even to appreciate that these have not been achieved, and the corresponding failure of suppliers to deliver commodities and materials in a timely manner.

It is a matter of record that the election did indeed take place on 15 June 1999. Had the Commission not adhered to an unfeasible date until forced by legal action to revise it, many of the shortcomings of the election process could have been avoided.

V. Electoral Event Implementation

A Voter Registration

Development of a voter registration system using photographic identification of each voter, with the capability to be computerized for use at future elections, had been in progress since August 1998. However, vital decisions on the precise information required on the VR form, and other aspects of the process, were delayed into January 1999. Delays in the commencement of the Voter Registration exercise, first as a result of unrealistic dates announced by the Commission, and then as a result of foreseeable delivery difficulties, eventually led to a start on 16 March 1999, some six weeks later than the original target date. Even so, this date preceded the delivery of all necessary materials. Ongoing shortages of supplies and the inability of the Commission to effectively manage the distribution of materials throughout the country brought registration to a halt at many centers during the first week and at various times throughout the twice extended registration period. People went to the nearest registration center, unaware that the Electoral Commission had planned a phased registration, which occasionally led to chaotic scenes at some centers. These problems were a considerable setback to preparations, had a serious impact on the credibility of these elections, and led to calls for the resignation of the Chairman from both the opposition parties and civil society.

It is worth quoting at length from the report prepared by Commissioner G T N Kamwambe following an extended visit he made to the Northern and Central Regions between 11 and 24 April 1999 to assess the progress of voter registration. He visited all five districts in the North and seven of the nine in Central Region. The report is dated 26 April 1999:

“As at April 21 1999 there exists in the Northern and Central Regions a very serious and disturbing paralysis of the registration exercise mainly occasioned firstly by the Commission’s use of wrong figures which do not have even the remotest resemblance to the data situation on the ground and, secondly, by total inability on the part of the Electoral Commission Secretariat to estimate correctly and maintain a steady flow of co-operant materials normally require for sustenance of continuing registration chores. The dilemma and the mess in which the Electoral Commission Secretariat has immersed itself is that except for the initial supplies of registration materials distributed before March 16 1999, which in fact lasted for a week or so, almost all subsequent supplies have tended to be so badly planned and distributed that the omission of either one or the other of co-operant materials expected to sustain registration chores for a continuous period, has rendered the majority of so-called opened centers in fact operationally dysfunctional since the end of March 1999. For the most part, the extension of the voter registration period from 16 April to 3 May 1999 has been a total waste of valuable time for, by and about the end of March 1999 there was already a countrywide outcry about the acute shortage of registration materials - which meant that the majority of the centers had been rendered dysfunctional.”

This criticism of the performance of the Secretariat by a member of the Commission brought no significant improvement in the Secretariat's distribution performance, though it certainly influenced the Commission's decision to extend Voter Registration once more, this time from 3 May to 14 May 1999. While this undoubtedly enabled many more people throughout the country to register it also created the basis for a successful legal challenge to prevent polling proceeding on 25 May, since the law provides for a 21 day period between the close of Voter Registration and polling day.

The opposition presidential candidates were joined in the lawsuit action in the High Court, which found in their favor on Sunday 16 May 1999. The Court instructed the Commission to report the matter to the State President so that he might "form an opinion on whether or not a constitutional crisis or grave emergency has arisen which requires urgent legislation or consideration by the National Assembly." The outcome was an emergency session of the National Assembly on Friday 21 May 1999 at which the Constitution was amended to provide that for 1999 only the elections should be held "not later than 15 June."

This resolved the issue of the 21-day lapse between registration and polling. However, the call by the National Assembly for the Commission to open those Registration Centers which had not opened at all, or had not been able to complete the statutory period of fourteen days registration was rejected by the Commission. In the Northern Region, a Commission survey following the final close of registration on 14 May 1999 found that of the 789 voter registration centers established in the Region, 318 (40%) had not opened for the statutory minimum period of 14 days, with 236 of these in Mzimba District alone. In contrast, by 3 May 1999 all voter registration centers in the Southern Region had already been open and supplied with all materials for the minimum period of fourteen days as required by law. Some centers had registered voters for as long as 40 days. The failure to ensure that all centers *nationwide* were open for the required period fueled claims of bias and has led to protests since polling day. Whether or not the claims are true, the Voter Registration experience left many citizens of Malawi firmly convinced that the Commission is not merely incompetent but in the pocket of the ruling party. This is regrettable, since the voter registration *process* worked effectively in eliminating almost entirely complaints on polling day concerning double voting and voting by "foreigners" and was welcomed by the public as a great improvement.

B Voter Education

The Mangochi Stakeholder Workshop in early November 1998 was in many respects an opportunity for the development of a sound voter education policy. This forum brought together (among other participants) representatives of the Commission, civil society and political parties to discuss a variety

of topics relating to the 1999 elections. Recommendations on Voter Education reflected the need for the Commission to take a lead in providing clear information on detailed procedures, and to coordinate the plans of NGOs working on the delivery of Voter Education. The absence of the Commissioner responsible for Civic and Voter Education and the subsequent breakdown of the relationship between that Commissioner and the NGO community in November and December 1998 effectively ended any prospect of positive cooperation in this regard.

The absence of timely and accurate information for the NGO community to use in developing voter education programs concerning the voter registration exercise was a serious setback. When voter registration started on 16 March there were virtually no posters to be seen in the cities and towns of Malawi giving public information on where and how to register, and only the bare minimum of information available on radio. The press carried some information on voter registration centers during that week, but did not explain that this would be a phased registration and that all centers would not be open at the same time. This served only to confuse the public and brought complaints of incompetence and deliberate attempts to rig the election, particularly in the Northern Region. Press notices are not in any event effective as a means of reaching the majority of the people in a country where more than 85% of the population lives in rural areas and where levels of literacy are among the lowest in the world.

As the National Consultative Group (NCG) became more vocal in its criticism and calls for dialogue through March, April and early May 1999, the Commission sent members to meetings with little authority to speak or give assurances on its behalf, eventually withdrawing completely from this forum. Despite the willingness of donors to support the NGOs in this consultative process, little of lasting value was achieved. As Polling Day approached, it was evident from the level of Commission activity that nothing had been learned during the voter registration process. The voter education which eventually took place to alert the public to the new voting procedure was achieved by the NGO community with only minimal input from the Commission, and by the staff at the Polling Stations who explained to the voters the new procedure for casting their vote.

C Candidate Nomination

Despite the clear intention in the law that the nomination process should follow the completion of the Voter Registration exercise, the Commission and Secretariat chose to ignore this in the face of the time constraint which their own pace had created. Nominations for National Assembly seats were to be received at the District headquarters on 12 and 13 April, before the original date for the close of Voter Registration. Given the slow pace of registration, many nominees had difficulty registering, and even

more problems in finding ten signatories that were registered voters in the constituency that they sought to contest. This problem was greater for presidential nominees, who needed the signatures of ten registered voters from each District for their nomination on 15 April.

Several candidates in the High Court again challenged the Commission on 10 April. The outcome was an agreement that nominations would not be rejected on the grounds that the candidate was not a registered voter, although following the close of registration they would be required to submit their VR certificates or risk losing their candidature. This verification was never carried out, despite a clear directive to that effect from the High Court.

The Presidential nomination process, at Comesa Hall in Blantyre, was chaotic. Thanks to poor security control, what should be a purely administrative process was turned into a political rally with supporters of the major parties spilling into the Hall singing, chanting and booing. The potential for an ugly confrontation was only averted by the calming influence of senior political figures, principally from the ranks of AFORD and the MCP. Here, the Commission again failed to comply with the law. At the close of nominations it was found that four of the five nominations were technically incorrect, lacking signatures and party endorsements. By law, the informal correction of these nominations after the deadline could have been challenged had this information come to light.

D Procurement and Delivery of Supplies

The handling of procurement by the Commission and Secretariat was flawed in two major respects. First, no procedures for tendering or bids analysis were put in place by the Commissioners or Secretariat, leading to a lack of transparency which laid the Commission open to accusations that its procurement activities were corrupt. The CEO sought to correct this in December by retroactively advertising for the stationery supplies required for Voter Registration, since the VR system selected by the Commission was a package only offered by one supplier. As the time pressure built, even the semblance of competitive tendering was abandoned and it became difficult to know where, in what quantity and under what terms supplies of additional cameras and film were being sourced.

Secondly, the ordering of supplies and materials was based on inaccurate or incomplete estimates of voter age population, numbers of Registration Centers and Polling Stations. This was not in every instance the fault of the Commission (particularly in respect of the population estimate upon which orders for voter registration materials were based). However, the tendency to unrealistically estimate when discussing requirements was a source of further difficulties. Thus the Chairman in January 1999

began to speak about 7,000 Voter Registration Centers being opened, while at the same time orders were being placed for materials to service a maximum of 4,000 centers.

The prime example of the difficulties over procurement was the printing of ballot papers. Voter registration finally closed on 14 May 1999, three weeks after the initial order for both Presidential and National Assembly ballots had been sent to the printers in England. The need to place the order at that time was the lead-time required to print and deliver some ten million ballots. For the National Assembly constituencies, numbers of registered voters were still being compiled by the Secretariat late in April 1999 in order that additional ballots could be ordered for those constituencies (around 20% of the total) where there would otherwise have been a shortfall. Even though final orders were placed at the end of April for urgent delivery, there were many constituencies that experienced shortages of ballots on polling day, having barely sufficient to meet the high turnout of voters. The final delivery of ballots did not arrive until a few days before polling, compounding already difficult distribution and assembly activities. The additional numbers of voters also had on a domino effect on supplies of Polling Station kits and forms, and extra quantities had to be ordered late in the day.

The difficulties created by the poor management of procurement naturally affected the distribution of supplies and equipment, with partial delivery of one item of supply causing a general problem throughout the process. The only items that arrived as complete orders were the ballot boxes and Registration kits, both handled by the donors responsible for funding their provision. Other supplies arrived and were distributed piecemeal, with no system or order apparent in the decisions made by the Secretariat.

E Relations with the Media

The Commission was advised early that in order to avoid adverse criticism it should adopt a proactive and transparent stance in its dealings with both print and electronic media. With the assistance of an expert advisor a Media Policy document was developed to provide guidance to all Commissioners and Secretariat staff on the approach to be adopted in communicating with the media. From late November 1998, a regular weekly Press Briefing was instituted in order that the Commission could both present its positive message about the electoral process as it progressed and explain any problems which it was experiencing and how these were being dealt with. Together these actions would have enabled the Commission to face the media with some confidence.

By January 1999 the Commission had abandoned both the Media Policy and the Press Briefing. Although the incoming Media and Public Relations Officer made some attempt to revive both, her

departure and the failure to replace her marked the end of any attempt to interface in a positive way with the media. Media criticism began to increase, as the shortcomings in the Voter Registration exercise became obvious. Individuals within the Commission, both Commissioners and Secretariat responded (when there was any response at all) in an uncoordinated and often contradictory attempt to defend the Commission. By the time the new Chairman and CEO were in place, the image of the Commission had already been damaged considerably by a substantial segment of the media. Efforts to repair this negative perception throughout the remainder of the election period were limited. At the conclusion of the announcement of the election results at Comesa Hall, the Commission refused to answer the questions of the international and local media representatives present because, according to the Chief Electoral Officer, "we are tired."

The Commission fared no better in its attempts to ensure that the Malawi Broadcasting Corporation provides balance in its election-related coverage, as required by the Communications Act passed in December 1998. The Commissioner responsible showed a marked tendency to uncritically accept any explanation offered by MBC representatives for the continuing failure of that organization to "level the playing field". The record of MBC in this respect from March to June 1999 has been documented in detail by Article XIX.

VI. Partisanship Divides the Electoral Commission

A The Electoral Commission and Civil Society

The National Consultative Group was established as a forum for representatives of civil society, the political parties and the Electoral Commission. From the outset the Commission was wary of involvement with the NCG, and did not take the opportunity presented to take the initiative and lead the consultative process. The reasons were twofold: a reluctance to be seen to meet with any political representatives, and a distrust of the NGO community as being politically motivated. As time went by and the calls by the NCG for debate and discussion of the various issues arising during the preparations for the elections became more vocal, the Commission's position hardened. By the middle of March 1999 the Chairman stated that he would no longer attend meetings of the NCG because AFORD/MCP sympathizers dominated it. The MCP and AFORD-nominated Commissioners attended on an irregular basis to voice their own concerns, but the opportunity for constructive dialogue was allowed to wither. The incoming Chairman of the Commission, in discussing the need for a post-election review of the process, was adamant that he would not wish to attend any meeting where the NGO community was present because he also perceived them as being politically motivated.

B Alliance Candidacy

The pressures generated by the Chairman's unilateral ruling on the issue of the MCP/AFORD alliance candidacy for President and Vice-President led to a clear split between those Commissioners appointed as nominees of MCP and AFORD, and the Chairman and nominees of the UDF, during March 1999. Accusations that the Chairman took instructions directly from the President were hard to refute in the light of his adherence to a dubious legal proposition first put forward by President Bakili Muluzi.

In a speech at the end of September 1998 the President argued that a proposal to field a joint MCP/AFORD candidacy for President and Vice-President would be unconstitutional. He claimed that running mates must come from the same party. At this time the Chairman refused to comment on the issue, saying that it was the Commission's role to conduct elections, not to interpret the Constitution. The issue was then overtaken by an attempt by the government to prevent both the MCP and AFORD leaders from standing for office because of previous criminal convictions. This effort was abandoned at the end of January 1999, and the running mate issue was revived.

In the face of the previously expressed government view, the lawyer for the Alliance sought clarification from the Commission in early March 1999 on whether its two party symbols could appear on the presidential ballot next to the photograph of the Alliance candidate. The Chairman, citing both

the Constitution and the Parliamentary and Presidential Elections Act 1993, argued that the candidate and his running mate must come from the same party. This view supported the September 1998 position of the President, and was regarded at the time as an extremely contentious and partisan reading of the law. The President, at the same time as the Chairman's ruling became known, also referred to the matter at a public event. His remarks made it clear that he had been aware of the correspondence between the Chairman and the Alliance lawyer before it became public, leading to claims by the Alliance that "the Chairman maintains direct and daily contacts with the President, from whom he receives instructions." (MCP press release, Daily Times, 03/19/99)

The perception that the Chairman was supportive of the UDF was reinforced by information that the Commission's alleged position on the Alliance was a personal decision by the Chairman, and that the Commission had not sat as a body to consider the matter. The Law Society expressed its view that the Chairman had erred in his ruling. By the end of March an open break between the two groups of Commissioners (Alliance- and UDF- nominated) was being reported in the media, with four Commissioners writing to the Chairman to dissociate themselves from his ruling and informing the Alliance of this action. The rift within the Commission was further reflected by the increasing tendency of the Chairman to make policy decisions without consulting all other Commissioners. The Commission met only infrequently after this time, and Commissioners publicly contradicted each other on a number of occasions.

The subsequent history of this matter is of limited concern, since the damage to the Commission's credibility as an independent body has been done. However, the Alliance successfully overturned the Chairman's ruling in an action in the High Court on the morning of 15 April 1999, a short time before the presentation of Presidential nominations was due. The Commission then appealed this decision to the Supreme Court. The action continued even after Supreme Court Justice James Kalaila replaced the Chairman on 13 May 1999. The new Chairman withdrew the action on 27 May 1999; the Supreme Court in any event indicated that it would have ruled that there was no impediment in law to the Alliance candidacy. The appeal removed any remaining doubt in the minds of most observers that the previous Chairman was acting in the interest of the ruling party.

C Constituency Delimitation

The political difficulties that the Commission created were also demonstrated by its handling of demarcation. The need to carry out a review of National Assembly constituency boundaries in accordance with statutory requirements led to the presentation of a report to the Clerk of Parliament in mid-January 1999. The Commission claimed that the report was based upon and reflected the

views expressed to them during the six-week national tour undertaken in October and November 1998. Advisors who attended a number of these District meetings heard nothing to substantiate this claim. In fact, information received from England indicated that the Malawi Deputy High Commissioner in London (a UDF political appointee) knew the detail of the Report *before* it was presented to the National Assembly. The distribution of the proposed increase in seats (from 177 to 247) favored the ruling UDF and resulted in a crisis which distracted the Commissioners and Secretariat from making key decisions regarding voter registration. The rejection of the Demarcation Report by the National Assembly in early February, and the subsequent horse trading between the Commission and senior politicians to arrive at an agreed increase of sixteen seats, significantly challenged the claims of the Commission to be an independent and impartial body. The most salient aspect of this process was that MCP- and AFORD-nominated Commissioners had been persuaded to support the original report. The delay caused by the need to re-examine the proposals and negotiate a compromise with the parties was a major factor in delaying the start of voter registration, since any boundary changes had to be taken into account in the coding of constituencies and registration centers within each constituency. The National Assembly achieved consensus on the addition of 16 seats on 24 February 1999.

D Open Split Along Party Lines

As the Commission began 1999, differences of opinion, and concerns over the working relationship of Chairman and CEO, had begun to emerge. Concerns included the order of a vehicle for the CEO at a cost of MK2.5 million with the approval of the Chairman but no consultation with other Commissioners, and the apparent attempts of the CEO to overturn Commission decisions on senior appointments in order to select known supporters of the governing party. The issue of the Alliance candidacy was perhaps the single most divisive factor. The speed and level at which the Chairman dealt with concerns raised by several Commissioners, relating to what were represented as attempts to deny people in the Northern and Central Regions the opportunity to register to vote, also divided the Commissioners along party lines.

The Commissioner responsible for Media and Public Relations reinforced perceptions of personal bias. At the end of April 1999, she explained privately that she had instructed the MBC to edit recorded messages by opposition parties encouraging Malawians to vote the Alliance presidential ticket "because the comments were disruptive to the process." Early in May 1999 two Commissioners stated at a meeting of the NCG that they had no knowledge of, and were therefore not a party to, the decisions and actions of the Chairman. The split continued into June, and was still apparent following the announcement of the election results on 18 June 1999. The Commission has yet to comply with

the legal requirement to gazette the results within eight days of the last polling day. This was understood to be at least partly due to disagreements within the Commission over the validity of some of the polling figures.

With the Management Team and temporary CEO now withdrawn from the Commission, the situation at the end of June is critical. The political split within the Commission remains unresolved, its credibility damaged and its independence compromised. At present, the Secretariat is neither staffed nor structured to provide the support that might restore some credibility.

VII. Election Day Observations

Over the period 13 - 18 June 1999 four IFES two-person teams were deployed in the Northern, Central and Southern Regions of Malawi to monitor the election. One team traveled to Mzuzu and covered polling in Mzuzu City, Mzimba and Nkhata Bay. One team covered Nkhotakota South and Southeast constituencies. One team concentrated on constituencies in the Blantyre urban area, but also made a visit to Mwanza Central constituency, for which new ballots had been printed. The fourth team looked at polling in Chiradzulu District. The purpose of the teams was twofold: to provide both IFES Malawi and the Malawi Electoral Commission with basic information which will be used to evaluate the outcome of the IFES input to the process, and to contribute to the work of the International Observers in providing assurance to the people of Malawi as they cast their votes in the second multi-party elections since the end of the one-party system in 1993. In addition IFES had consultants in place at each of the three Regional offices and at the National Tally Center, and their comments also inform this section of the Report.

Pre-election observations

The teams all made visits to the offices of Returning Officers. As during Voter Registration, the MEC failed to effectively utilize their Regional Offices, choosing instead to distribute many of the required materials, including ballots, directly to the Districts. This created serious problems having regard to the extremely limited supply of ballots. Constituencies in Dedza, Kasungu and Nkhotakota were sent the wrong National Assembly ballots, but these problems were in many instances resolved by action at the Regional level in co-operation with the Returning Officers.

Election Day

The IFES teams visited a total of 45 polling centers on June 15. Returning Officers in the Districts visited generally performed effectively, taking action to deal with identified problems so far as possible within their resources. They had good relationships with the Police and Defense Force personnel providing security cover in their Districts. Returning Officers in the Southern Region seemed to have significantly more problems than their colleagues in the other regions in organizing their Voter Registers in numerical order prior to send them to Polling Centers. The failure to do this was a major factor in the slow processing of voters and the confusion that prevailed at a number of the centers visited. In Mzimba West a number of Polling Stations failed to open on 15 June because of a lack of ballot papers. Polling took place in those areas on June 16th. Mwanza Central constituency received ballot papers with the photographs of the UDF and MCP candidates reversed, and action to correct this was taken using a Blantyre printing company on the evening of 14 June. Polling Stations in several locations in the South ran out of ballots well before the close of poll, and voters were denied the opportunity to exercise their right to vote. This has invited legal challenges to the results.

Training of Polling Station staff was generally well done, with polling procedures well understood. Additional training on completion of accounting forms and closing procedures, together with clearer instructions on the counting procedure to be followed and the physical organization of the counting place, should be provide in future. Polling Centers were adequate and well organized. The staff was co-operative, helpful and adapted well to local circumstances. However, when crowds of waiting voters became restive this put additional pressure on personnel already stretched by an unnecessarily complicated set of procedures. In a number of centers in Chiradzulu District the IFES Team noted party agents standing at the polling booth and attempting to influence voters. The Presiding Officers were not taking effective action to prevent this.

In the absence of extensive voter education, the Ballot Issuers provided clear and unbiased instruction on how to fill out the ballot. This was reflected in the low level of Null and Void ballots. The Voters contributed in no small measure to the success of the elections by their generally calm and patient approach to the often-lengthy wait to cast their votes.

Counting and Transmission of Results

Counting was slow, partly due to the very low light levels under which it had to be carried out, but was nonetheless adequately done. Ballot reconciliation principles and procedures were poorly understood, and the filling out of forms (in particular MEC 065 and the Public Declaration of Result) was not well done. Forward preparation of these forms would have reduced the time staff had to spend on duty. Transmission of results to the Returning Officers also proceeded slowly. The internal MEC target of transmission to the National Tally Center within 24 hours of the close of poll proved wholly unrealistic given the practical constraints of limited transport over difficult rural roads, and placed unnecessary pressure on Returning Officers.

Announcement of Results

At the National Tally Center at Comesa Hall in Blantyre, the accumulation of both National Assembly and Presidential results reflected the logistical problems of results transmission, with the bulk of results not being available until early on Friday 18 June. The announcement of the presidential poll result came after 5pm on that day. The Commission stated erroneously that the result had to be announced within 72 hours of the close of poll. In fact, the law specifies that this announcement should take place no later than 72 hours after the last results have been received.

Polling went relatively smoothly despite the problems and incidents noted by the IFES Teams and other international observers and local monitors. Two factors were principally responsible for this. The first was the Principal Secretary Management Team established early in May 1999 (see above), whose efforts to rescue the situation deserve due recognition. The second was the determined effort made by Returning Officers, Presiding Officers and their staff to ensure that, despite the constraints and frustrations, polling proceeded in a proper and efficient manner.

VIII. Conclusions and Recommendations

A Current Legal Challenges

The Commission has begun the process of assembling affidavits, sworn by the officials involved, to enable an effective response to be mounted to the legal challenge in respect of the Presidential election now before the High Court in Lilongwe, and due for hearing in mid-July 1999. A memorandum was also sent to all Returning Officers requesting that they submit a record of the results from each Polling Station. It is hoped that the Commission will be able to sustain its position with respect to the figures announced on 18 June 1999, since any failure to do so will further undermine its credibility. The examples of Lesotho, where the outcome of the 1998 elections were successfully challenged not in the courts but in the streets of the capital, and of Guyana, where a full national recount was necessary to satisfy political party and public doubts following the 1997 elections, give cause for concern. At least one action concerning a National Assembly result is also before the High Court at the time of this writing.

B Voter Registration Issues

The intent behind the development of the Voter Registration documentation in the particular form that it took was always to move on to a computerized Voter Register. The completion of the VR form at the Registration Center and the attachment of the voter's photograph to that form constituted Phase 1 of this exercise.

The scanning of both the VR form and the photograph, so as to capture this data electronically (Phase 2), is an exercise which will require careful planning, the equipping of suitable premises and the recruitment and training of a number of computer-literate personnel. Once begun, it will run at least three months for the VR forms and nine months for the photographs.

After this exercise is completed, a powerful computer database is required to store and manipulate the data in order to produce a printed Voter Register. This part of the exercise (Phase 3) has not to date attracted donor support. Without phase 3, the data captured from forms and photographs cannot be stored or manipulated to produce Voter Registers by Local Government Ward or District, which is a principal benefit of the system design. In addition, it is an essential element in preparations for the District Assembly elections now projected to take place some time in 2000. A further benefit of the capture of data in this system would be the opportunity to develop the National Identity Card to which the Government has committed itself. Such an ID could eventually replace the Voter Registration Certificate now issued to voters at registration.

Given the considerable problems which beset voter registration in the period 16 March to 14 May 1999, as mentioned in this report, and the concerns that in some areas of Malawi substantial numbers

of people were unable to register, it is essential that voter registration be reopened prior to the District Assembly elections. This will also enable the registration of young voters who were not yet eighteen as of June 15, 1999 (although this definition of eligibility should be reviewed).

Recommended: 1) *that the Commission give urgent consideration to moving forward with phases 2 and 3 of the computerization of the Voter Register without delay.*

 2) *That Voter Registration is re-opened not less than six months prior to the District Assembly elections.*

C The Political Divide in the Commission

The damage done to the credibility of the Commission as a result of the lack of transparency in the conduct of business, public differences of opinion, and the adoption of clear political positions by members of the Commission must all be addressed if the Commission is to move forward. In order to restore public confidence in its neutrality and objectivity in fulfilling its responsibilities, this issue must be addressed as a matter of urgency. Unless action is taken, and is seen to be effective in dealing with this matter, the Commission will be unable to discharge its duties for the remainder of its four year term of office.

Recommended: that the Commissioners, under the leadership of the Chairman, consider as a matter of urgency how to restore the confidence of the public in the credibility and neutrality of the Commission, and publicly announce clear action steps to be undertaken within a specific timeframe in order to accomplish this goal.

D Management of the Commission

Accusations of a lack of transparency and inability to cooperate have marred the management record of the Commission and its Secretariat in the twelve months of its existence. The Commission must now act to bring that chapter to a close.

The Commission needs to consider its role in setting policy and exercising managerial oversight of the Secretariat and every aspect of its work. If the structures now in place, particularly the Committees established in July 1998, cannot be made to work effectively to discharge the business of the Commission, then they should be replaced by some alternative means to ensure the corporate responsibility of the Commissioners for their work. If the management structure of the Secretariat is inappropriate it must be revised. If staff members are not performing then they must go; if they are

corrupt they must be reported to the Police or Anti-Corruption Bureau. The Secretariat must be staffed by adequate numbers of subordinate staff to enable the on-going work of the Commission to be discharged. In seeking the means to re-build, the Commission may look beyond existing Public Service practice and regulations, which have only limited relevance to the need to create an independent, dynamic and cost-efficient organization. Employment with the Commission, and even more so appointment as a Commissioner, must be seen as an opportunity to serve.

A rebuilt Secretariat will require proper accommodation. Two partially-occupied floors separated by four intervening floors, with an inadequate lift between the two, have proved both inadequate in size to permit the Secretariat to be fully staffed, and unsuitable in layout to permit the various functional Divisions to be organized to maximize efficiency. The offices include no room suitable for meetings of the Commission. The Butler/Baxter report recommended "that the Commission immediately establish a Working Party to consider and make proposals for the requirements of the Commission for office accommodation and associated storage and garaging facilities in Lilongwe, with a view to the move being made at the time of the appointment of the Chief Elections Officer." This recommendation remains valid: the Commission should operate from the capital city and seat of Government, Lilongwe.

Recommended: 1) that the Commission institute as a matter of urgency a full review of the means by which policy is established and implemented, considering every aspect of the performance of Commissioners and Secretariat in the period July 1998 to June 1999.

2) That the review, together with clear and detailed recommendations for such changes as are considered necessary and a timetable for implementation, shall be published and widely circulated as a confidence building measure not later than 31 October 1999.

3) That the search for suitable office and warehouse space in Lilongwe begin without delay, with a view to all aspects of the Commission's operations to be headquartered there by the end of 1999.

E Legislative Issues

The existing laws governing the conduct of elections in Malawi require a thorough review. Many, but by no means all, of the infringements of the legal provisions that have characterized the Commission's conduct during the last year, were deliberate. The explanation given, where one has been offered, has been administrative convenience or necessity. The Commission has not sought changes to these

inconvenient or unworkable legal provisions, and has appeared on occasions to have considerable difficulty in understanding the meaning of the law as written.

Recommended: that the Law Commission undertake a thorough review of all legal provisions relating to the conduct of elections in Malawi, including the Constitution, with a view to producing a single, consolidated and harmonized body of law permitting the conduct of elections for all levels of government in a cost-effective, transparent and straightforward manner.

F Local Government Elections

Considering the above recommendation on the need to review the law, the Local Government Elections Act 1996 and the Local Government (LG) Act 1998 appear to be in conflict with regard to the term of elected representatives. The LG Elections Act (S 23) clearly indicates a three year term, the LG Act (7 (2)) appears to contemplate five years. This apart, the conduct of Local Government Elections will require a similar, possibly more complex, organizational and logistical exercise to the national elections of 1999.

The Chairman has already set aside the tentative agreement to conduct the LG polls within three months of the just-concluded national polls, stating that they would now take place in 2000. Having regard to the need for the Commission to set its house in order, with regard to both image and substance, and undertake further Voter Registration, it is unlikely to be able to successfully conduct these elections earlier than the middle of 2000. Moreover, there is little knowledge or understanding of the new system proposed, and civic education will be a priority if the citizens of Malawi are to properly play their part in the restoration of representative local government structures.

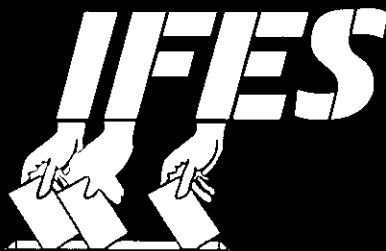
Recommended: 1) that the Local Government elections to choose representatives to the new Assemblies take place in July 2000.

2) That an intensive civic education campaign take place to sensitize the public with regard to the new system of local government which will be introduced following these elections.

Members of the Technical Support Team

International Foundation for Election Systems

Name/Nationality	Position	City Base
Vic Butler/UK	Technical Team Leader	Blantyre
Samuel Aidoo/Ghana	Regional Election Specialist	Lilongwe
Kwame Boateng/Ghana	Regional Election Specialist	Mzuzu
Annie Longley/UK	Training/Voter Education Specialist	Blantyre
Renata Tardioli/Italy	Training Specialist	Blantyre
Stephen Telford/Australia	Voter Registration Specialist	Blantyre
Deborah Williams/USA	Media/Public Relations Specialist	Blantyre



International Foundation for Election Systems
1101 15th Street, N.W.
Third Floor
Washington, D.C. 20005
TEL (202) 828-8507 FAX (202) 452-0804