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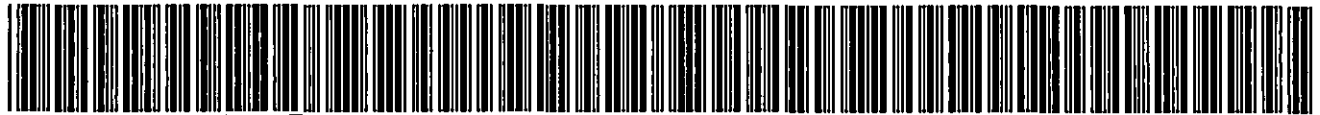
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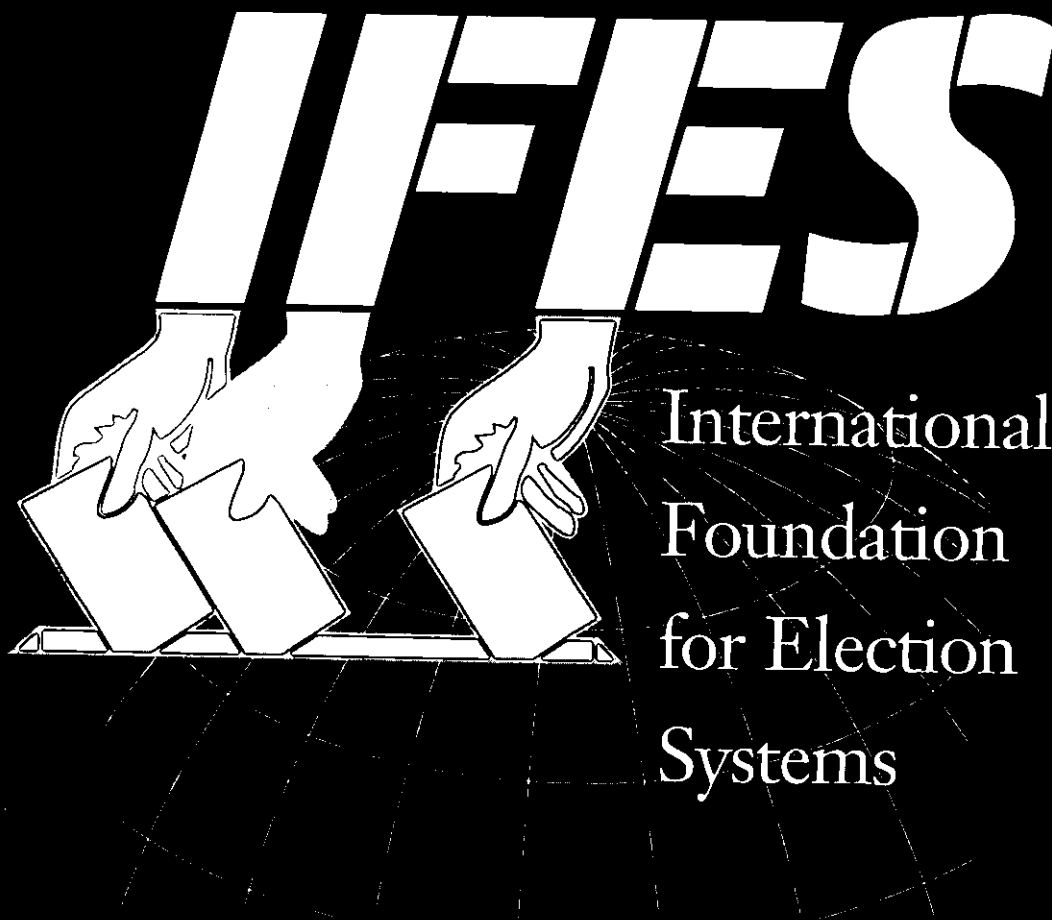
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**REPORT ON ISSUES IN PREPARATION FOR THE  
1999 GENERAL ELECTIONS IN MALAWI**

**14 February 1998**

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***International Foundation for Election Systems*  
Building a Democratic Infrastructure Project/Malawi**

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## Introduction and Summary of Recommendations

This report was prepared as a contribution to the long-term USAID-funded International Foundation for Election Systems Building Democratic Infrastructure Project (IFES Malawi/BDI) which has worked with the Malawi Electoral Commission since October 1996. The members of the team were Joe Baxter, IFES Senior Advisor for Election Administration based in Washington DC, USA and Vic Butler, a British-based elections consultant.

The team traveled to Malawi during the period 25 January to 16 February 1998. Their first few days were focused on reading and discussing material relating to the electoral process in Malawi and the work of the Electoral Commission in particular. Issues which required action, and the need for that action to be the subject of a strategic planning exercise without delay, were discussed with six members of the Electoral Commission at a "brainstorming" meeting in Blantyre on 31 January 1998. Also present and participating in that meeting were Laurie Cooper, IFES Senior Program Officer for Africa and the Near East, and Paul McDermott, IFES/BDI Project Manager.

During the second week the team traveled widely throughout the three Regions of Malawi, Mr Baxter to the Northern Region and Kasungu accompanied by Commissioner Mrs G Chikoko, and Mr Butler to Central and Southern Regions accompanied by Commissioner Mrs S Kambalamatore. The persons with whom they met and discussed the elections due in 1999 and the preparations for those elections are recorded in Appendix A.

Following these visits a period of deliberation and further contacts with people able to offer informed comment and guidance has led to the preparation of this report. Its findings and recommendations are, however, the authors' responsibility alone. The recommendations appear below as extracted from the report chapters to which they relate. The intention is that the reader may assess the recommendations as a whole in reading the introduction, but in order to properly appreciate how the IFES team came to a particular recommendation a full reading of the report is necessary.

### *Overall Recommendation:*

The team's discussions with political party leaders evidences that there may be lack of confidence in the independence and impartiality of the Commission. An overriding recommendation, therefore, that cuts across all chapters of the report and should be made a part of all deliberations of the Commission is:

*That the Commission begin immediately to meet with the political parties on a regular (at least monthly) basis to discuss issues with regard to the election process. Building credibility into the electoral process should be one of the main priorities of the Commission. In addition, political parties must have confidence in the integrity, independence, and impartiality of the Commission. Building that confidence requires*

dialogue. As this report illustrates there are many issues before the Commission. Reaching a consensus on these and other issues which will arise during the run-up to the 1999 elections requires that the political parties be engaged in the discussions and understand how and why the Commission reaches its decisions. Consultation with political stakeholders is critical to good democratic governance and should be made a regular part of the electoral process in Malawi.

*Recommendations That Appear in Chapters:*

- 1 That the Commission initiate, as a matter of urgency, discussions with the Government to seek formal amendment to the Constitution and other laws affected to remove the uncertainty concerning the dates of Presidential and National Assembly elections in 1999.
- 2 That an urgent section by section comparative review of all relevant legislation be carried out with a view to the harmonization of the current and proposed electoral laws and associated legislation, clarifying intention and removing contradictory and anomalous provisions so as to give a firm legislative platform for the work of the Electoral Commission.
- 3 That the Electoral Commission Bill, 1998 now before the National Assembly be amended to provide that the Chairman should on appointment and for the whole of his/her term of office be relieved entirely of any judicial responsibilities whilst retaining the salary and conditions of service attached to that judicial appointment, assuming full-time service as Commission Chairman. The current Chairman should have the choice to retain the appointment on this basis or step down with immediate effect in favor of a new appointee.
- 4 That, in addition to the urgent preparation of a budget for the entire period leading to the 1999 elections (once the due dates have been established) and the method of voter registration decided, negotiations take place with the Minister of Finance to ensure that the expenditure of the Commission is recognized as a recurring annual charge to Government as part of the cost of democratic institutions put in place by the Constitution.
- 5 That the Commission convene a meeting to consider and adopt a structure for its management on the model outlined in this report, subject to such modification as it may feel appropriate but preserving so far as possible the principles underlying the structure proposed: that is that individual Commissioners should assume specific areas of responsibility, both functional and geographic, providing leadership and a detailed overview of the process within those responsibilities and meeting as a Board to set policy, approve Committee and Officer recommendations and deal with such other business as they may decide to reserve for the Board. The meeting should also review the intentions of existing Commissioners and if appropriate take steps to ensure that a full active complement of Commissioners is in place at an

early date.

6 That the Organogram at Appendix B and the associated proposals contained in the report be adopted as the model for the management structure of the Commission and serve as the basis for recruitment of the full-time Commission Secretariat, such recruitment to be undertaken as a matter of urgency in order that preparation for 1999 may begin.

7 That discussions take place as soon as possible with the Minister responsible for District Administration to establish 1 June 1998 as the final date for movement of District Commissioners from one posting to another prior to the 1999 elections.

8 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.

9 That the Commission develop criteria for the re-demarcation of constituency boundaries that establishes the minimum deviation from the average population in each constituency so that the factors of population density, geography, communications and administrative areas can be taken into consideration and the plan still meet the equality of the value of the vote test.

10 That the Commission begin its work on the re-demarcation of constituency boundaries as soon as possible using the 1994 registration data and any other data from the Statistics Department that is available.

11 That the Commission acquire the census maps that are being drawn for the September 1998 census for use in the re-demarcation of constituency boundaries.

12 That the Commission schedule the voter registration exercise to enable it to obtain the data and update its preliminary re-demarcation plans before the end of 1998

13 That the Electoral Commission, with respect to voter registration, take the following actions within the next two months:

1. Begin discussions with political parties on the various options, their limitations costs and constraints. Seek their input and support. Attempt to develop a consensus on the best course of action for the 1999 elections taking all factors into consideration.
2. Develop complete budgets for the options the Commission feels are most viable.
3. Meet with government officials and international donors both together



*and separately to discuss the options and enlist their support for the process.*

4. *Decide which option will be used.*
5. *Begin developing the process, procuring the supplies, developing civic education and training programs and generally getting the process off the ground.*

*14 That the Commission begin to address, as a matter of urgency, the issues outlined in this report and any others that will affect the development of a reliable and accurate election calendar. If changes in the law are necessary, the Commission should state clearly and publically what changes are needed. The Commission, over the next couple of months should also make the necessary decisions regarding voter registration and re-demarcation that will make the development of an election calendar possible.*

In making these recommendations the IFES team is conscious that it is setting the Electoral Commission a substantial challenge in terms of the workload entailed. However, with little more than fourteen months to go to the likely date of the 1999 elections, or at least the first of these, it is essential that the issues highlighted in the report be addressed without further delay if the Commissioners are to fulfill the duties of the office to which they were appointed in 1994. It may be that those currently serving as Commissioners will not continue beyond the expiration of their term of office in September 1998. Nevertheless they owe it both to themselves and to their fellow citizens to set in course the preparation for these elections without further delay. It is in the knowledge that once this process is begun help will be forthcoming from the international community that this report is presented.

The IFES team, however, makes no recommendations at present to IFES or USAID in respect of further assistance to the Commission. The team takes the view that with the present level of uncertainty concerning both legislative and technical issues (and with the Commission yet to begin discussion of these with the political parties), with no Chief Elections Officer or senior operational staff in place with whom consultants can work, and with no degree of certainty concerning even the date of any elections, no effective support can be offered. A demonstration of firm intent in addressing these and other issues on the part of the Commission could certainly trigger delivery of appropriate support through the IFES/BDI project.

## I. LEGISLATIVE ISSUES

Any electoral system in a democracy, coming as it does from the wishes of the people to choose a government in a fair, open, participatory and orderly manner, is enshrined in the constitutional and other legal provisions from time to time enacted by the legislature. These, together with such regulations as may be subsequently written to clarify, amplify and make clear the details of the system, form the basis for the mandate and operations of the body charged with the conduct of elections. In considering the legal basis for elections in Malawi it has become clear that there are issues which, unless resolved, will remain a source of confusion and controversy - confusion because of uncertainty and the potential for action in the courts which this brings, controversy because of the conflicting intentions which appear to underlie different statutes and current legislative proposals.

The legal provisions relating to elections and associated matters in Malawi are found in the following statutes:

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

Several important legislative measures relating to electoral matters are currently awaiting consideration by the National Assembly, and if passed will amend and expand the legal base on which the conduct of elections in Malawi is founded:

- ♦ Parliamentary and Presidential Elections (Amendment) Bill, 1997 (published October 1997)
- ♦ Electoral Commission Bill, 1998 (published January 1998)
- ♦ Local Government Bill (final draft currently with Cabinet for consideration)

From the information available it seems likely that all three measures listed above will come before the National Assembly sitting due to commence on 10 March 1998. In so far as the time available has allowed scrutiny of versions of these draft laws provided to the IFES team, and through discussions with various persons involved in the drafting process, it is apparent that serious anomalies, contradictions and a lack of clarity characterize both existing law and the Bills about to be discussed. Examples are given below:

- ♦ Date(s) of 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 (S 86, as proposed to be amended by S 13 of the Parliamentary and Presidential Elections Bill, 1997), continues to presume the conduct of both National Assembly and Presidential elections at a single poll, despite the Constitutional difficulty referred to above.

- ◆ Eligibility to Register as a Voter - 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 the 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.

- ◆ The Minister - the Parliamentary and Presidential Elections Act, 1993 (S 121) gives to "The Minister" power to make regulations to give effect to the Act. The Local Government Elections Act, 1996 (S 104) gives "The Minister" similar power for matters necessary or required to be prescribed under that Act. The Electoral Commission Bill, 1998 gives power to "The Minister", on the recommendation of the Commission, to make regulations for the better carrying out of that Act.

No indication of which Minister is intended is given in any of the above, nor is "The Minister" obliged to make such regulations as the Commission feels appropriate, or even (except in respect of the Electoral Commission Bill) to have any regard whatsoever to the Commission.

The Constitution, on the other hand, establishes the Electoral Commission as an integral element of the governance of Malawi, and the Bill provides that the

Commission shall perform its functions and exercise its powers independently of the direction or interference of "any organ of the Government" (S 6 (1)(A)).

- ◆ Local Government - the Constitution provides, albeit obliquely, for a three year term of office for Local Government Councillors: S 72 deals with the term of office of members of the Senate, specified as three years; S 68(1)(a) provides for the election of one Senator by each District Council within thirty days of each local government election; Ss 146 to 151 establish a local government system, but are silent on the term of office of councillors. The Local Government Elections Act, 1996 (S 23(1)) specifically indicates a three year term. The Local Government Bill, as originally drafted in 1994, and as its provisions are understood to remain, specifies a four year term, as had been the case under the now defunct legislation relating to local government.

From the four specific instances cited above it is clear that the legislative measures lack cohesion and clarity, and will continue to be vulnerable to litigation which could delay, and in the worst instance quite possibly negate the work now required to be done by the Commission in preparing for the elections due in 1999. Attempts to resolve these matters by executive action rather than by formal changes to the law appear to be the most probable reaction of the Commission. Aside from concerns over adherence to democratic principals and the rule of law, the possible reaction of politicians and public, in what was described at one meeting as "a volatile situation", to apparently arbitrary decisions on election dates, the franchise and other matters gives cause for concern.

The identification of these and numerous other legal issues was not the result of a detailed or exhaustive study, emerging instead as a result of the report team's need to familiarize themselves with the legislation. Together they constitute the grounds on which the IFES team recommends that:

*The Commission initiate as a matter of urgency discussions with the Government to seek formal amendment to the Constitution and any other law affected to remove the uncertainty concerning the dates of Presidential and National Assembly elections in 1999*

*An urgent section by section comparative review of all relevant legislation be carried out with a view to the harmonization of the current and proposed electoral laws and associated legislation, clarifying intention and removing contradictory and anomalous provisions so as to give a firm legislative platform for the work of the Electoral Commission.*

### *Regulations*

The Commission should also be aware of the need to avoid including prescriptive detail in primary legislation, since this fetters its ability to respond to changing circumstances and adopt new approaches as the situation dictates. One instance of this is the inclusion in the Parliamentary and Presidential Elections Act, 1993 (S 86) of a detailed description of the voting procedure. This statutory provision means that any changes necessary or advisable will require amendment of the Act. Such details, and

matters which 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 and capable of amendment or change without undue delay.

A second example illustrates the opposite situation, where the law provides insufficient detail: this is the absence of any detailed provision in the Act, beyond the basic reference to the right to make complaint (S 113), as to how and over what period of time such complaints shall be filed and dealt with. Regulations are of course subordinate to the primary legislation, and this must be born in mind when they are drawn up. A defective law cannot be corrected by the issuance of Regulations, since this invites legal challenge by interested political parties and others.

## II. STRUCTURE AND STAFFING OF THE COMMISSION

The Electoral Commission has for some time been aware of the need to establish itself on a permanent footing. In its Report on the 1994 Parliamentary and Presidential Elections it said:

"The Act should be amended to provide for establishment of a permanent independent secretariat which should be charged with the following responsibilities:

- (a) Election Administration - now that Malawi is in a multiparty democracy, elections including by-elections and local government elections will be more frequent than before. Therefore staff of the secretariat should be divorced from the civil service so that they can devote their full time and attention to the Commission and in the process develop expertise in election administration. This requires the recruitment of a Chief Elections Officer and his support staff by the Commission.
- (B) Finances - prepare the budget, properly and effectively manage the finances and submit accounts for audit as required by the Act. This would entail recruitment of qualified accounting staff and establishment of the Commission's own bank account.

The foregoing recommendations require the allocation of funds to set up and run permanent offices preferably in the Capital City."

The Electoral Commission Bill, 1998 which will come before the National Assembly in March 1998 gives effect to these recommendations, making provision for the Status and Membership of the Commission, its Functions, Powers and Meetings, Management, Staff and Finance. As drafted however, the Bill lacks certain provisions which would permit the Commission to more satisfactorily discharge its duties.

### *The Chairman*

The most important of these relates to the office of Chairman. The Constitution specifies (S 75(1) that the Chairman shall be a Judge nominated by the Judicial Service Commission. However, the appointment is at present undertaken on a part-time basis, and the incumbent Chairman retains his/her judicial duties in addition to the substantial workload imposed in leading the Commission. In order to ensure effective leadership and direction of the Commission and the discharge of its mandate, and in keeping with the importance of the role of the Commission as a Constitutional body having responsibility for the democratic process, the full-time commitment of the Chairman to the work of the Commission is considered essential. Electoral Commissions in Africa widely recognised as providing a high level of service and making a significant contribution to the development of stable and democratic governance generally provide for full time service of the Chairman. A major role for the Chairman is the handling of those sensitive and politically charged issues which face any Commission in a newly established democratic

environment. Accordingly the IFES team recommends that:

*The Electoral Commission Bill, 1998 now before the National Assembly be amended to provide that the Chairman should on appointment and for the whole of his/her term of office be relieved entirely of any judicial responsibilities whilst retaining the salary and conditions of service attached to the judicial appointment, assuming full-time service as Commission Chairman. The current Chairman should have the choice to retain the appointment on this basis or step down with immediate effect in favor of a new appointee.*

#### *Budget and Financing of the Commission's Work*

With regard to the status of the Commission, a further requirement to enable it to discharge its responsibilities effectively and protect its independence of other branches of Government, is that its core financing should be assured. In order that it may proceed in its ongoing task; Government must accept the need to fund the work of the Commission on an annual basis, rather than responding only to the need to fund up-coming elections. This will enable the Commission to begin the institutionalisation of the electoral process, developing and refining systems and procedures appropriate to the circumstances of Malawi rather than ad hoc short term measures put in place with undue haste. An annual budget prepared having regard to the need for development of the Commission's services and continuing expenditure on recurring elections should ensure the ability of the Commission to discharge its constitutional role. Moreover, a sound budget provides the foundation on which to plan the ongoing activities of the Commission. The IFES team, therefore, recommends that:

*In addition to the urgent preparation of a budget for the entire period leading to the 1999 elections once the due dates have been established and the method of voter registration decided, negotiations take place with the Minister of Finance to ensure that the expenditure of the Commission is recognized as a recurring annual charge to Government as part of the cost of democratic institutions put in place by the Constitution.*

#### *The Role of Commissioners - Committees*

At the present time the Commission meets as a board on an ad hoc basis and with no regular cycle of meetings to which it adheres. To provide for effective use of the Committee structure which should be created under the provisions of the Bill (S 7), such a cycle is considered appropriate, indeed essential, for the efficient handling of business and the co-ordination of the activities of the various Committees. During the 1994 elections the Commission established the following Committees:

Media, Civic Education, Violence and Intimidation

The team suggests that the Commission consider the appointment of the following Committees in addition:

Demarcation, Voter Registration, Training, Operations and Logistics, Legal,

## Administration and Finance

Each Committee would be chaired by a Commissioner and be able to draw on both the public and private sectors for its membership. Committees would need to meet more frequently than the full Commission to discharge their duties under the above broad heads, which would include development of policy for adoption by the full Commission, advice, guidance and direction to the Officers of the Commission and a general oversight of the aspect of the electoral process for which they were responsible. These Committees would become a permanent element in the management structure of the Commission, reporting to the full Commission at six-weekly intervals through the Chief Elections Officer who would provide the necessary secretarial service through his support staff.

### *The Role of Commissioners - Regional Oversight*

In addition to their duties as Chairman of a Committee, each Commissioner should assume a responsibility for one of the three Regions of Malawi, working with his/her two colleagues and the Regional Elections Officers (see below) to address particular issues and problems of that Region and providing appropriate guidance to the Commission and its Committees in that regard.

At the present time the Commission has ten nominal members, but it appears that all are not active in their roles. For the effectiveness of the management structure proposed it is essential that all those appointed as Commissioners should diligently perform their duties and not expect their more active colleagues to assume an additional workload. Those concerned should therefore consider whether they wish to continue in office until their term expires in September 1998 or, in the interest of a democratic Malawi, step aside now in favor of new appointees who are willing to make the necessary commitment. The IFES team, accordingly recommends that:

*The Commission convene a meeting to consider and adopt a structure for its management on the model outlined above, subject to such modification as it may feel appropriate but preserving so far as possible the principles underlying the structure proposed: that is that individual Commissioners should assume specific areas of responsibility, both functional and geographic, providing leadership and a detailed overview of the process within those responsibilities and meeting as a Board to set policy, approve Committee and Officer recommendations and deal with such other business as they may decide to reserve for the Board. The meeting should also review the intentions of existing Commissioners and if appropriate take steps to ensure that a full active complement of Commissioners is in place at an early date.*

### *Management - The Chief Elections Officer and Staff Requirements*

Having provided for effective leadership, corporate management and a degree of financial independence in carrying out its duties, the Commission should, as a matter of urgency, proceed to make the senior appointments to its secretariat without which it cannot function effectively.



The appointment of a Chief Elections Officer is to be a statutory requirement under the Electoral Commission Bill, 1998 (S 12), and it is essential that his/her job description is carefully framed to meet the requirements of the Commission for high-caliber management. As the Commission's chief executive officer it will be his/her responsibility to motivate and lead the staff of the Commission and to ensure that the appropriate systems and procedures to enable the delivery of a high standard of service to the Commission and the public are put in place without delay.

The Commission, at the East African Election Administration Symposium in Arusha, Tanzania on 3 - 7 August 1997, developed an "ideal" structure for its organization, and in making the following suggestions the IFES reporting team has followed this structure as closely as possible having regard to the current circumstances. This is reflected in the Organogram at Appendix B. The principal departures reflect:

- ♦ the detailed recommendations covering the responsibilities of Commissioners
- ♦ the view that legal services may be provided most cost-efficiently on a retainer basis through a private legal practice
- ♦ the desirability of Information and Public Relations Services being directly responsible to the Chief Elections Officer
- ♦ the more precise definition of the Divisions which will be created under the Deputy Chief Elections Officer (Operations)
- ♦ the need initially to create a Regional presence rather than posts at District level.

Below the level of Deputy Chief Elections Officer each Division will be staffed by a Divisional Head and such additional staff as the Commission shall determine having regard to the anticipated workload of that Division. The post of Regional Election Officer for each of the three Regions of Malawi is intended to form a link between Commissioners and the Commission's headquarters' staff and the Returning Officers at District and District Council level. These Regional Election Officers will play a vital role in the management of Parliamentary, Presidential and local government elections in 1999.

#### *District Election Officer*

The original intention to appoint District Election Officers should not be abandoned, but may require further thought in light of the intended decentralization of Government services and the replacement of District Administration and the District Commissioners by new structures and relationships at the district level. In any event it is likely that for 1999 the District Commissioners will still play the central management role as Returning Officers in their districts. The co-ordination of their work by Regional Election Officers, who will work closely with both the Commissioners having responsibility for that Region (see above) and the Deputy Chief Elections Officer (Operations) to whom they will report, will provide the two-way communications and consultative machinery by which the Commission will

manage the day-to-day operational task.

The above staffing proposals create a total of no more than twelve full-time senior positions within the Commission's Secretariat. The detailed proposals for support staff at all levels should be carefully designed to maximize the use of resources, with staff able to move from one Division to another to provide flexibility as workload dictates. At times of maximum workload temporary staff should be taken on as required for the appropriate period of time.

It is envisaged that the full-time permanent staff of the Commission should not need to exceed forty persons at any time under the above proposals. Subject to further detailed study it is considered that the vehicle requirement to service the work of the Commission should be no more than five at headquarters and three each at the Regional capitals. The IFES team, accordingly, recommends that:

*The Organogram at Appendix B and the associated proposals detailed above be adopted as the model for the management structure of the Commission and serve as the basis for recruitment of the full-time Commission Secretariat, such recruitment to be undertaken as a matter of urgency in order that preparation for 1999 may begin.*

#### *The Returning Officer*

The ability of the District Commissioner to fulfill the role of Returning Officer is seriously impaired if he does not know his district well. In discussions with District Commissioners in all Regions it became apparent that there is substantial movement between districts, and that many of those now in post have not been in their District for more than six months. Unless some stability can be established during the period leading to the 1999 elections the wisdom of relying on the District Commissioner to act as Returning Officer must be in question. There is also reason to afford protection to the District Commissioner from undue political pressure whilst carrying out his election duties. For this reason the IFES team recommends that:

*Discussions take place as soon as possible with the Minister responsible for District Administration to establish 1 June 1999 as the final date for movement of District Commissioners from one posting to another prior to the 1999 elections.*

#### *Headquarters of the Commission*

Finally, having regard to the recommendation set out in the last paragraph of the extract from the 1994 Commission Report (see above), consideration should be given to the requirements of the Commission for a permanent headquarters site. With the movement to Lilongwe of the National Assembly now likely, with the change from part-time to full-time service of the Chairman recommended above (removing the need to be close to the Department of Justice and senior Courts of Law), with the presence of political party headquarters' and the offices of Government Ministries and Departments, and the location of the Diplomatic and Donor community in Lilongwe, serious consideration should be given

to relocation to an appropriate site in the Capital. In this consideration, regard should be had to the needs of the Commission both in terms of Commissioners, permanent headquarters and Central Region staff, temporary staff and usage (eg computer personnel during registration, training sessions), and the need to park Commission vehicles and store sensitive materials in bulk with due security. The IFES team supports the view expressed by the Commission in 1994 and recommends 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.*

#### *Additional Issues for Consideration*

Although not having the same degree of urgency as those matters discussed above, a number of points emerged from the discussions which the IFES team held which it is felt should be the subject of attention by the Commission as it begins its preparations for 1999.

- ◆ The local government elections: the Commission will need to meet officials of the Ministry of Local Government and Housing to establish their thinking on when these elections should take place. Unless this is done there is a distinct possibility that the responsible Minister will simply announce a date, creating a difficult situation that will require the expenditure of valuable time to resolve. From the views expressed to the team there is a substantial majority which feels that to conduct these elections at the same time as Presidential and National Assembly elections would be extremely difficult for the voting public to comprehend, and that even the best of voter education programs could not overcome this difficulty. A better option seems to be for local government elections to follow the Presidential and National Assembly vote within a relatively short time so that the need for further staff training is minimized and the logistical machinery put in place can be used again.
- ◆ Local government ward boundaries: the offer was made, in discussion with a senior local government official who speaks with authority on behalf of his colleagues throughout Malawi, to provide assistance to the Commission when the creation of new ward boundaries for City, Municipality and District Councils is considered. This would be a sensible and cost-effective means of carrying out this work, and the Commission should follow up this offer as soon as the Local Government Bill is published.
- ◆ Election logistics: in almost every discussion the issues of communications and vehicles - the difficulties of the former and the shortage of the latter - was stressed by officials in the districts. When preparing for 1999 the Commission should give special attention to these matters in developing strategic and logistical plans.
- ◆ By-Elections: in discussion with various officials it was clear that the rural voter was often confused and even irritated by the need to conduct by-elections. They are

moreover a substantial financial burden on the Malawi Government, as the number is running considerably higher than what would seem reasonable having regard to the size of the National Assembly and experience in other countries - 27 since June 1994 in a National Assembly of 177. One option which the Commission could explore with the political parties would be a change in the law to eliminate by-elections in favour of a process of nomination by the party holding the seat to fill any vacancy caused by death or resignation. By-elections would then only be required where an independent member was concerned or when a member crossed the floor.

### III. RE-DEMARCATON OF CONSTITUENCY BOUNDARIES

Perhaps the most difficult and politically charged event in the run-up to the 1999 elections will be the re-demarcation of constituency boundaries. First completed in 1993 for the 1994 elections, the Electoral Commission must re-demarcate the boundaries before the 1999 elections as proscribed in Section 76(2) of the Constitution. Most political leaders with whom the IFES team spoke expressed the desire that this process be completed before the end of 1998 to enable the political parties to identify candidates and develop campaigns prior to the expected period for nomination of candidates that will take place toward the end of February or beginning of March 1999. Before beginning a discussion of the issues involved in re-demarcating constituency boundaries in Malawi, we review the history and the purpose of demarcation.

#### *Background*

When the Constitution of the United States<sup>1</sup> was ratified over 200 years ago, one of its basic principles was equal citizen representation in the U.S. House of Representatives. The principle of political equality in the national legislature has been made a feature of every modern democratic constitution since that time. A refinement of the principle of political equality was made in 1963 when the U.S. Supreme Court ruled that political equality meant *one person, one vote* (Gray v Sanders, 372 U.S. 368 (1963). In later cases (see e.g. Wesberry v. Sanders, 376 U.S. 1 (1964) and Reynolds v Sims, 377 U.S. 533 (1964)) the Court ruled that one person, one vote meant that legislative constituencies must be composed of approximately equal population totals.

The principle of political equality is enshrined in Malawi's Constitution in Section 76, which states (in pertinent part):

"(2) The duties and functions of the Electoral Commission shall include —

- (a) to determine constituency boundaries impartially on the basis of ensuring that constituencies contain approximately equal numbers of voters eligible to register, subject only to considerations of --
  - (i) population density;
  - (ii) ease of communication; and
  - (iii) geographical features and existing administrative areas;"

In 1993, the Commission does not appear to have placed great weight on the mandate that constituencies contain approximately equal numbers of voters eligible to register. It chose not to draw constituencies boundaries that crossed regional or district

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<sup>1</sup> The U.S. has the longest legislative and judicial history of any nation on the issue of demarcation of constituencies. Examples from the United States are used for illustrative purposes only. Their use is not meant to suggest that Malawi adopt the U.S. system.

boundaries. The Commission further gave a great deal of consideration to geographic areas and subdivided large constituencies rather than re-demarcating all constituencies within many districts. This resulted in the smallest constituency (Nkhata Bay East) having only 3,407 registered voters and the largest (Machinga North) having 59,494. This means that the votes of the people of Nkhata Bay East have 17 times more value than the people of Machinga North in the National Assembly. Before the 1999 elections the Electoral Commission must re-demarcate the boundaries of the constituencies in accordance with Section 76(2)(b) of the Constitution. In most countries, re-demarcation has three basic steps.

- A. Apportionment of seats among regions (or states) based on the population of each;
- B. Apportionment of constituencies within the regions based on the population of administrative areas (districts); and
- C. The equalization of constituency populations within the administrative areas based on population.

These steps result in constituencies that are approximately equal in total population throughout the country and ensure that no region, district or person has more than a fair share (based on the principle of political equality) of influence in the national legislature.

#### *Issues in Re-Demarcation in Malawi*

In re-demarcating the constituency boundaries for the 1999 election, the Electoral Commission must address several factors that are important to the people of Malawi but work against the principle of political equality and constituencies of approximately equal populations. These factors include:

1. Lack of understanding among political leaders and the general population of the political equality principle as it applies to representation in the National Assembly;

In speaking with local political leaders and local government officials, the team was struck by the lack of understanding of the principle of political equality as it applies to representation in the National Assembly. The IFES team visited 14 districts throughout the country speaking to District Commissioners, local political leaders and local government officials. No one with whom the team spoke felt that his or her District should lose any constituencies. In fact, most felt that more constituencies should be created in their areas.

2. Large areas of the country that are sparsely populated and difficult to reach; and
3. Large areas of the country that have poor communication infrastructure;

The size of the current constituencies and the lack of transportation and

communication infrastructure were the two reasons most cited by people with whom the team spoke as reasons for increasing the number of constituencies in their areas. The idea of balancing these concerns with the requirement of political equality was not seen as important. There was an overwhelming feeling that geography and communications should be the standard by which constituencies should be re-demarcated.

4. Traditional authorities that are resistant to sharing a Member of Parliament or having his/ her traditional area split into two or more constituency areas.

The power of traditional authorities to disrupt the election process if their demands are not addressed was evident in all of the team's conversations with political leaders and government officials. That one Member of Parliament could adequately represent two or more traditional areas is not accepted by traditional leaders. Neither is the concept that traditional areas, no matter how large, can be adequately represented by more than one Member of Parliament. It is the general feeling of traditional leaders that each of their areas should have one member of Parliament.

These factors, plus the desire of the Commission not to cross either Regional or District boundaries make the equalization of populations among the constituencies very difficult.

In addition, the lack of accurate population data hampers the Commission in the performance of its mandate. No census has been conducted since 1987 — more than 11 years ago. While the IFES team has learned that a census is planned for September 1998, it is unlikely that the population of the census enumeration areas will be available prior to the time that the Commission must re-draw the constituency boundaries. The earliest date that the information is expected to be available is December 1998 when the re-demarcation exercise should have been completed. It is likely, therefore, that the Commission will be required to rely on updated voter registration statistics as an indicator of where people are to re-demarcate the constituency boundaries.

#### *Example of the Re-Demarcation Process*

The problems facing the Electoral Commission can best be illustrated by utilizing the 1994 voter registration statistics as the basis for a population only based re-demarcation — not taking into consideration any of the factors outlined above which *may* bear on any final decisions the Commission makes.

## A. Apportionment of Constituencies Among Regions

If regional boundaries are not to be crossed, the first step in re-demarcation is to apportion the available Parliamentary constituencies among the three regions based on the total population (or registration) of each. The table below illustrates how the constituencies would be apportioned among the regions utilizing 1994 registration data as the basis for calculating the 1999 Apportionment.

Example of 1999 Apportionment Based on 1994 Registration Numbers Only <sup>2</sup>							
Region	Registered Voters 1994	1994 % of Total	Constituencies 1994	1994% of Total	1999 Constituencies	1999 % of Total	Gains/Loses
Northern	545,195	14.4%	33	18.6%	26	14.7%	-7
Central	1,461,367	38.7%	68	38.4%	68	38.4%	0
Southern	1,768,694	46.8%	76	42.9%	83	46.9%	7
National	3,775,256		177		177		

As the table shows, the percentage of constituencies apportioned to each region in 1999 approximately equals each region's proportion of registered voters in 1994. The table also shows that the Northern Region would lose 7 constituencies to the Southern Region while the Central Region would retain its 68 constituencies.

If the Commission wishes to accede to the desire that no region wishes to lose any constituencies and maintaining the principal of political equality, the following table shows how many constituencies must be added to the National Assembly if the Northern Region were allowed to keep its current number of constituencies.

Example of 1999 Apportionment with Balanced Population & No Region Losing a Constituency <sup>2</sup>							
Region	Registered Voters 1994	1994 % of Total	Constituencies 1994	1994% of Total	1999 Constituencies	1999 % of Total	Gains/Loses
Northern	545,195	14.4%	33	18.6%	33	14.7%	0
Central	1,461,367	38.7%	68	38.4%	87	38.7%	19
Southern	1,768,694	46.8%	76	42.9%	105	46.7%	29
National	3,775,256		177		225		48

As the table shows, in order to allow the Northern Region to keep its current 33 constituencies and stay true to the principal of political equality (or one person, one vote), the Commission would be required to add 48 constituencies to the National Assembly. Under Section 5(a) of the Parliamentary and Presidential Elections Act, the Commission has the power to set the number of constituencies. The reason that 19 constituencies must be added to the Central Region and 29 to the Southern is because of the small relative population of the Northern Region. In the first table, the average constituency would contain 21,329 ( $3,775,256 \div 177 = 21,329$ ). In the second table, because of the lower relative population of the Northern Region the average constituency contains 16,779 ( $3,775,256 \div 225 = 16,779$ ).

<sup>2</sup>Total percentages do not equal 100% due to rounding.



## B. Apportionment of Constituencies Among the Districts within the Regions

If district boundaries are not to be crossed and having apportioned the constituencies among the regions based on population, the next step for the Commission would be to apportion each region's constituencies among its districts based on the total population (registration) of each district. The table below shows the affect of using 1994 Registration data to apportion the 1999 constituencies.

Apportionment of Constituencies Among Districts within Regions								
Region	District	Registered Voters	1994 % of Total	1994 Constituencies	1994 % of Total	1999 Constituencies Registration Based	1999 % of Total	Gains/ Loses
Northern	Chitipa	53,462	9.8%	5	15.2%	3	9.8%	-2
Northern	Karonga	84,501	15.5%	5	15.2%	4	15.5%	-1
Northern	Rumphi	62,273	11.4%	4	12.1%	3	11.4%	-1
Northern	Nkhata Bay	72,051	13.2%	7	21.2%	3	13.2%	-4
Northern	Mzimba	272,908	50.1%	12	36.4%	13	50.1%	1
		<b>545,195</b>	<b>100.0%</b>	<b>33</b>	<b>100.0%</b>	<b>26</b>	<b>100.0%</b>	<b>-7</b>
Central	Kasungu	180,462	12.3%	9	13.2%	8	12.3%	-1
Central	Nkhotakota	87,841	6.0%	5	7.4%	4	6.0%	-1
Central	Ntchisi	56,893	3.9%	4	5.9%	3	3.9%	-1
Central	Dowa	148,090	10.1%	7	10.3%	7	10.1%	-0
Central	Salima	92,950	6.4%	5	7.4%	4	6.4%	-1
Central	Mchinji	124,806	8.5%	6	8.8%	6	8.5%	-0
Central	Lilongwe	457,595	31.3%	17	25.0%	21	31.3%	4
Central	Dedza	182,812	12.5%	8	11.8%	9	12.5%	1
Central	Ntcheu	129,918	8.9%	7	10.3%	6	8.9%	-1
		<b>1,461,367</b>	<b>100.0%</b>	<b>68</b>	<b>100.0%</b>	<b>68</b>	<b>100.0%</b>	<b>0</b>
Southern	Mangochi	256,162	14.5%	10	13.2%	12	14.5%	2
Southern	Machinga	258,690	14.6%	10	13.2%	12	14.6%	2
Southern	Zomba	214,253	12.1%	8	10.5%	10	12.1%	2
Southern	Chiradzulu	98,812	5.6%	5	6.6%	5	5.6%	-0
Southern	Blantyre	267,599	15.1%	10	13.2%	13	15.1%	3
Southern	Mwanza	49,192	2.8%	4	5.3%	2	2.8%	-2
Southern	Thyolo	174,357	9.9%	7	9.2%	8	9.9%	1
Southern	Mulanje	257,006	14.5%	11	14.5%	12	14.5%	1
Southern	Chikwawa	121,318	6.9%	6	7.9%	6	6.9%	-0
Southern	Nsanje	71,305	4.0%	5	6.6%	3	4.0%	-2
		<b>1,768,694</b>	<b>100%</b>	<b>76</b>	<b>100.0%</b>	<b>83</b>	<b>100.0%</b>	<b>7</b>

While the apportionment of constituencies among the regions had little impact, moving seven constituencies from the Northern to the Southern Region, the impact within regions among districts is much more pronounced. Even though the Northern Region loses seven constituencies overall, Mzimba District would actually pick up one constituency from its sister Districts. In the Central Region, that would neither gain nor lose overall, Lilongwe District would pick up four constituencies from its sister Districts. In the Southern

Region, which picks up seven seats overall, two of the Districts would lose two constituencies each to their sister Districts.

The team chose not to calculate the number of constituencies that would need to be added to the National Assembly if, as is the desire of local political leaders, no district should lose a constituency and in most cases add constituencies while maintaining the principal of political equality — suffice to say that the number would be in the hundreds.

### C. Re-Demarcation of Constituency Boundaries within Districts

The final step in the re-demarcation process is the re-drawing of the boundaries that separate constituencies in accordance with the considerations outlined in the Constitution. Utilizing the plan outlined in the previous tables, this would mean the elimination of a number of constituencies from several districts and the splitting of several constituencies in other districts. Because of the inattention paid to the principal of political equality in 1993, the re-demarcation of constituency boundaries for the 1999 elections will result in a major re-alignment of the political boundaries of the country and seriously affect the political fortunes of many politicians.

#### *Recommendations*

The best recommendations for the re-demarcation of constituency boundaries for the 1999 elections come from the Electoral Commission itself. In its report on the 1994 Presidential and Parliamentary Elections (and on which six of the ten current Commissioners sat) the Commission made five specific recommendations for improvement of the process. They are:

- “(a) While several factors specified in the constitution may be taken into account, the overriding criteria for demarcating constituency boundaries *must be the population of the areas* as this complies with the democratic principle of “equality of the value of the vote”.  
(*Emphasis Added*)

*Comment:* No re-demarcation exercise results in constituencies with exactly equal populations. In addition the Commission is empowered to take into consideration geography, communications, and administrative areas. *The team recommends that the Commission develop criteria that establishes the minimum deviation from the average population in each constituency so that these factors can be taken into consideration and the plan still meet the equality of the value of the vote test.* In the United States, in a series of decisions over the years, the Supreme Court has determined that generally a deviation from the average of 5% will not be questioned. A deviation of more than 5% but less than 10% will be tolerated if there is reasonable justification (i.e. mountains, rivers, forests and the like). Any deviation of more than 10% is constitutionally suspect and will likely not pass muster on the equality of the value of the vote test. The US is a country where most geography and communication problems have been solved. For Malawi, given the problems that geography, and lack of transport and communication infrastructure create,

the Commission might want to consider something in the neighborhood of a 10% general deviation but no more than 20%. For example, if the average population of the constituencies was 20,000, a 20% deviation would mean the largest constituency could be no more than 24,000 and the smallest 16,000. The maximum variation from smallest to largest would be 8,000, or a total maximum deviation of 40%. As communication and geography become less and less a problem in the future, these limits would be reduced. The advantage of establishing deviation criteria is that the Commission can apply the standard equally and fairly nationwide and need not negotiate with political actors over how many constituencies are apportioned to a region or district in developing its demarcation plan. In drawing constituencies within districts (or even between districts) the criteria could be applied fairly.

Whatever criteria the Commission establishes, it must be fair to all Malawians equally. The plan developed by the Commission can be challenged by any citizen in the courts if that citizen believes that the Commission has deviated from political equality in drawing the boundaries. The filing of lawsuits challenging the fairness of the Commission's demarcation before the election can throw the entire election process in to disarray.

Also critical to the re-demarcation process is the Commission's mandate to "adopt measures necessary to guarantee that the election is free and fair." (Parliamentary and Presidential Elections Act, Section 5(j)). No measure could be more fundamental than the fair re-demarcation of constituency boundaries. One of the tests of a free and fair election is whether the election system by which candidates are elected treats all citizens equally. Political Parties, NGOs and the international community will have a keen interest in the re-demarcation plan and whether it is "fair" to all Malawians.

- (b) At least one year should be set aside for the demarcation of constituency boundaries to enable surveys to be conducted by the Surveys Department and maps drawn and distributed. This would avoid the reliance upon descriptive boundaries which can be confusing.

*Comment:* Obviously the Commission will not have a year to develop its re-demarcation plan. *The team recommends that the Commission begin its work as soon as possible using the 1994 registration data and any other data from the Statistics Department that is available.* Following either the revision of the electoral register or the census (if the data is timely available), the Commission can then adjust whatever preliminary calculations it has made to reflect the updated data. The team also recommends that whenever possible the Commission also utilize existing geographical features such as rivers, streams, mountain ranges, roads, park boundaries, etc. that are generally known as boundaries. This will avoid some of the confusion as to where boundaries actually lie. The Survey Department may not be able to provide the Commission with the maps it requests prior to the beginning of the exercise. *The team recommends that the Commission acquire the census maps that are being drawn for the September census.* By identifying the locations of polling centers on these maps, they will make an excellent tool for the re-demarcation exercise.

- (c) The Commission should be free to prescribe a reduction or increase in the number of seats allocated to a district.

*Comment:* This recommendation speaks to a process that is, in fact, required under the equality of the value of the vote principle and should be adhered to. Several of the current districts simply have too many constituencies based on the population as the table above shows.

- (d) A redistribution of seats within districts rather than mere sub-division of existing constituencies should be carried out to enable the creation of totally new constituencies. (It became apparent during the demarcation of constituency boundaries that a total review of constituency boundaries would have resulted in a fairer representation within a number of districts.)

*Comment:* In a re-demarcation exercise it is often the case that there is such a distortion of populations within an area that it is simply easier to throw out the old constituencies and start anew. This, according to the Commission's report, would have been preferable in 1993. Given the projections above from the 1994 registration data, this may be the case again in several districts in 1999. The constitution fully empowers the Commission to enact this recommendation.

- (e) A review of boundaries should follow rather than precede the compilation of the electoral register."<sup>3</sup>

*Comment:* The reason why this recommendation was made in 1994 is not immediately clear as most re-demarcation plans are based on new census data. For the 1999 elections, however, voter registration data may be the only up to date information available. *The team recommends the Commission schedule the registration exercise to enable it to obtain the data and update its preliminary plans before the end of 1998.*

### *Conclusion*

As we noted at the beginning of this chapter, the re-demarcation of constituency boundaries will perhaps be the most difficult and politically charged event in the run-up to the 1999 elections. Many people will be interested in the outcome and the process by which the re-demarcation plan is developed.

- ♦ Political parties and political actors will be interested as they will be directly affected by and have a vested interest in the plan;

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<sup>3</sup>1994 Parliamentary and Presidential Elections Report, Electoral Commission, pages 19 - 20.

- ♦ Civil society organizations that are involved in the political process in Malawi will be interested as they work closely with Members of Parliament on building democratic governance in the country.
- ♦ The international community will be interested as it weighs the progress Malawi is making in its democratic development, whether the process is fair and decides how much support it wishes to contribute to that process.

All of these interests pale in comparison, however, to the interest the average citizen of Malawi has in the re-demarcation process. The quality of democracy that each citizen enjoys will be directly affected by how the Electoral Commission applies the equality of the value of the vote test to its re-demarcation exercise. The Commission made excellent recommendations following the 1994 General Elections for improvement of the process. The Constitution fully empowers the Commission to implement those recommendations. It should start soon in doing so!

#### IV. VOTER REGISTRATION

The compilation of an up to date voter register will be the single largest event for the Electoral Commission outside of Election Day 1999. In fact, voter registration is, in many ways, more difficult than Election Day because it requires much the same if not more logistic resources and extends over a longer period of time. There are several options open to the Commission in compiling an up to date voter register for the 1999 General Elections. These range from a simple revision of the current register to a completely new computerized register with technically sophisticated voter ID cards. Before discussing the options open to the Commission, we review the concerns about the current register raised by the Commission and other people with whom the team spoke:

The Commission, local political leaders, and local government officials raised the following concerns about the current voter register:

1. **Impersonation:** This was a concern raised by almost everyone with whom the team spoke. Allegedly, the impersonation of voters stems from the buying of voter certificates or the "safekeeping" of voter certificates by political campaigns. The most frequent use of this tactic has been in parliamentary by-elections where people who are unlikely to vote are asked to sell the certificates for use by someone else or individuals are asked to turn over their voter certificates for safekeeping by political campaigns. Those campaigns then give the certificates to their supporters and tell them to go vote.
2. **Underage Voters:** The registration of persons under the age of 18 years seems to be a problem throughout the country. Generally, individuals as young as 15 years are permitted to register. Lacking any positive mechanism to establish the age of applicants, registration officials must rely on the word of sometimes suspect local leaders for corroboration of age.
3. **Counterfeiting of Voter Certificates:** The team heard allegations that in Parliamentary by-elections some campaigns have engaged in counterfeiting voter certificates and arranging for the person to vote before the legitimate voter appears at the polls.
4. **Disenfranchisement Through Safekeeping:** According to some people with whom the team spoke, campaigns have been known to collect voter certificates in areas where they do not have support under the pretense of keeping the certificate "safe" and the promise to return the certificate before Election Day. The certificate is never returned and the person, lacking the certificate, decides not to go vote.
5. **Alien and Refugee Voting:** Allegedly during parliamentary by-elections in constituencies along the nation's borders, the practice of encouraging aliens and refugees to cross the frontier and register to vote is common. This is usually done for pay.

6. **Crossing of Constituency Boundaries:** The encouragement of people to cross constituency boundaries to register and vote is allegedly common in parliamentary by-elections.

When asked for a solution to these problems, most people pointed to the introduction of a national ID card. Even in the unlikely event that a national ID card will be introduced before the 1999 General Election, such a card would only prevent the impersonation of voters at the polls and possibly counterfeiting. The same problems of underage, aliens/refugees, and the crossing of constituency boundaries would face those issuing a national ID card as in the voter registration. Despite the fact that most of the problems outlined above have taken place during by-elections and most admitted that they would not be problems in a general election, there is widespread belief that, if not a national ID card, a voter ID card bearing the photo of the voter is warranted.

#### *Constraints on Voter Registration*

Regardless of the system of voter registration the Commission decides to implement and whether or not it will issue a photo voter ID card, the Commission is faced with two major constraints on its decision making process — time and money. The most optimistic election time line (or calendar) points to compiling an updated voter register before the end of this year, 1998. An updated voter register by the end of 1998 is required if the Commission intends to (1) rely on updated registration data for the re-demarcation of boundaries and (2) complete the process and issue its demarcation plan before the end of the year as all the political parties seem to want.

The fact that the Electoral Commission has not, thus far, met with the political parties, the government or international donors to discuss its registration system options is unfortunate. The plain and simple fact is that the development of consensus around a program in which the Malawians have confidence and can afford, the securing of funding, the procurement of equipment and supplies and the implementation of the registration program takes time. Just the time it takes to obtain funding and procure equipment and supplies may have already closed off some of the options available.

#### *Voter Registration Options*

Below, the team discusses some of the registration options available to the Commission and provides approximate deadline dates for a decision to implement the option, especially the procurement of equipment and supplies. These dates, however, pre-suppose that funds for the procurement will be made readily available and that no more than 4.5 million people will register. All the options also pre-suppose completion of the process by not later than 15 November 1998 to enable the Commission to utilize registration data in developing its final re-demarcation plan by 31 December. Cost estimates do not include salaries, per diems, logistics, voter education, training, etc. The team has included options which would entail a completely new register. The original register was compiled almost five years ago. No revision of that register has taken place since that time except in those constituencies which have had by-elections. Almost five years of deaths, people coming of age, and people moving from one location to another. The Commission may decide, in consultation with the political parties, that given the

amount of accumulated "deadwood", to ensure a credible register for the 1999 elections, and completely new register is preferable.

*Option A: New Computerized Registration System, Technically Sophisticated Photo Voter ID Card*

This option is the most technically sophisticated and the most expensive. The process closely resembles the issuance of a national ID card. The time to implement such a program (6 - 7 months) and the cost (about US \$11 million for equipment and supplies alone) means that the time has already passed for the Commission to consider this option for voter registration. This option would also require amending the law (PPE S. 29) to allow for a longer period of voter registration than the current 30 days.

*Option B: New Computerized Registration System, Basic Photo Voter ID Card with Minimal Security Features*

The option would require a new voter registration exercise. Basic photo equipment, cards and cold laminates would be utilized for the production and issuance of photo ID cards. Computers would be purchased for entering the data into a computerized database. In order for this option to be viable, the law requiring a 30 day registration period (PPE S. 29) would need to be amended to provide for a shorter period or interpreted to mean that the entire process nationwide must be completed in 30 days but that the period at any registration center could be shorter. The difference relates to the number of cameras needed to complete the process at the 2400 centers. If registration must take place in all centers for the full 30 days, at least one camera would need to be placed in each center at a cost of about US \$1.1 million. Reducing the number of cameras to 300 and rotating them at registration centers during the period would lower the cost of the cameras to about \$150,000. Other supplies and computer equipment would cost about US \$ 3.4 million. The factor, other than cost, that weighs against this option is time. It will take approximately 6 months to perform data entry on the 4.5 million registrations working with 50 computers and two shifts 8 hours each. Given the 6 months needed to complete the project, the 30 days of registration plus about 120 days to procure the equipment and supplies, it appears that this option is also closed. This option becomes viable only if the Commission collects basic registration data from each polling center for use in re-demarcation and extends data entry through to mid-March 1999. If that were the case, the Commission would need to make the decision and secure the funding by 1 March 1998.

*Option C: New Computerized Registration System, Good Quality Non-Photo ID Card.*

This option has the same time problem as Option B. The major difference is that the cost of photographic equipment would be eliminated. Funds for the purchase of laminates and computer equipment (about \$US 1.5 million) would need to be secured. Also, as in Option B, if the decision is not made to extend the period for data entry, the deadline for this option has passed.



*Option D: New Computerized Registration System, No ID, Current Registration Certificate*

Six months of data entry time also plagues this option. Without extending the data entry period to mid-March 1999, the registration process will have to begin by mid-May to allow for completion by 15 November. In order to procure the supplies, a decision must be taken before the end of mid-March 1998. Extending the period of data entry, would allow the registration process to begin in mid-August. The cost of the computer equipment needed for data entry and data storage would be about \$300,000.

*Option E: New Registration, No Computerization, Photo ID Card*

The elimination of the need for a computerized registration database would allow the registration process to take place as late as 1 October 1998. The procurement of the laminates and photo equipment and supplies would take about 120 days. A decision to use this option must be made by mid-May 1998 so that specifications can be developed. But as in Option B, the cost is dependent on the number of camera's purchased. Computerization of the register could take place for future elections. However, the 1999 election would not be dependent on the computerized list.

*Option F: New Registration, No Computerization, Non-Photo ID Card*

As in Option E, The elimination of the need for a computerized registration database would allow the registration process to take place as late as 1 October 1998. The procurement of the laminates and supplies would take about 120 days. A decision to use this option must be made by mid-May 1998 so that specifications can be developed. But as in Option B, the cost is dependent on the number of camera's purchased. Computerization of the register could take place for future elections. However, the 1999 election would not be dependent on the computerized list. The savings in this option also come from not buying photo equipment and supplies.

*Option G: New Registration, No Computerization, Current Registration Certificate*

This option would create a completely new register using the current system. Computerization of the register could take place for future elections. However, the 1999 election would not be dependent on the computerized list.

*Option H: Revise the Current Computerized Register, No ID Card, Current Registration Certificate*

The savings from Option G in this option would be the cost of the ID card supplies (about \$US 1.2 million). As in option D, the voter registration exercise would need to take place in August.

*Recommendations*

The IFES team has chosen not to make any recommendation on which option would be best for Malawi. The fact that the Commission has not spoken with political parties, the

government or international donors and received feedback from them about what is acceptable both politically and fiscally prevents us from making a recommendation that the team feels would be realistic. On the whole, and if funds can be found soon, it appears that Option E might offer the most viable alternative at the present time particularly given the fact that everyone with whom the team spoke wanted some sort of photo ID. In that regard, the sample election calendar in Chapter VI, uses this option as the basis for calculating dates.

Given the pressing issues of time and money, the team is very concerned about any further delay in the Commission addressing squarely the issue of voter registration and making a decision on the type of voter registration program it intends to conduct for the 1999 elections. *The team, therefore, recommends that the Electoral Commission take the following actions within the next two months:*

1. *Begin discussions with political parties on the various options, their limitations costs and constraints. Seek their input and support. Attempt to develop a consensus on the best course of action for the 1999 elections taking all factors into consideration.*
2. *Develop complete budgets for the options the Commission feels are most viable.*
3. *Meet with government officials and international donors both together and separately to discuss the options and enlist their support for the process.*
4. *Decide which option will be used.*
5. *Begin developing the process, procuring the supplies, developing civic education and training programs and generally getting the process off the ground.*

## V. 1999 GENERAL ELECTION CALENDAR

The election calendar is the most valuable tool any electoral commission has in administering an election. The calendar tells the commission what must be done and when in order to keep the election on track. It is also a valuable tool for political stakeholders as it helps them in their own planning and is a tool to monitor election developments.

There are several constraints to making an accurate election calendar for Malawi's 1999 General Elections. These include:

1. Inconsistencies and ambiguities in the law. Chapter I already discusses many of these issues. Until the Commission knows which elections are to be held and when they are to be held it is difficult to develop the calendar.
2. 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."<sup>4</sup>

Parliamentary and Presidential Election Act:

**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."

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<sup>4</sup>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.

- (3) The qualification period for candidates for the National Assembly presents the Commission with a problem limiting its ability to print and deliver ballots for the polls. Section 36 of the Parliamentary and Presidential Election Act, when read in its entirety limits the time the Commission has to print ballots to the 14 days before the election. Given the time required to do the pre-printing preparation and to deliver the ballots to the District, the time for printing is cut to about 7 days (See Sample Election Calendar on following pages). This is clearly not enough time and if adhered to will throw the election into chaos. According to the General Election calendar, it appears that in 1994 the Commission simply ignored Section 36 and followed the same dates for National Assembly candidates as prescribed for Presidential candidates in Section 48 of the Act. It is unlikely, however, that ignoring the law will be tolerated in 1999.
- (4) The Commission has not decided what type of registration process it will conduct nor how it will conduct the re-demarcation of constituency and ward boundaries. Until these two major issues are decided, no accurate election calendar can be made.

On the following pages is a sample election calendar for the 1999 General Elections. It is not complete, there are many more tasks and events that need to be added based on the decisions that the Commission makes over the next couple of months and changes (or the absence of changes) to the law. The team recommends that:

*The Commission begin to address, as a matter of urgency, the issues outlined in this report and any others that will affect the development of a reliable and accurate election calendar. If changes in the law are necessary, the Commission should state clearly and publically what changes are needed. The Commission, over the next couple of months should also make the necessary decisions regarding voter registration and re-demarcation that will make the development of an election calendar possible.*

## Sample Calendar of Events and Tasks for the 1999 General Elections

Assumes 17 May 1999 Election and Presidential Inauguration 21 May 1999

EVENT/TASK	Duration	Start Date	Finish Date	Law Citation
Enactment of Enabling Legislation	30 Days	10-Mar-98	08-Apr-98	
Meetings with Political Party Representatives				
Discussion of Voter Registration Options	1 Day	24-Apr-98	24-Apr-98	
Discussion of Re-Demarcation/Voter Registration Plans	1 Day	28-May-98	28-May-98	
Update on Voter Registration/General Discussion	1 Day	25-Jun-98	25-Jun-98	
Discussion of Plans for Adoption of Regulations	1 Day	30-Jul-98	30-Jul-98	
Discussion of Criteria for Re-Demarcation	1 Day	27-Aug-98	27-Aug-98	
Discussion of Voter Registration Update	1 Day	24-Sep-98	24-Sep-98	
Discussion of Completion of Voter Registration Process	1 Day	26-Nov-98	26-Nov-98	
Release of Final Re-Demarcation Plan	1 Day	31-Dec-98	31-Dec-98	
Open Discussion	1 Day	28-Jan-99	28-Jan-99	
Discussion of Presidential Nomination Process/Formal Campaign	1 Day	25-Feb-99	25-Feb-99	
Discussion of Campaign/National Assembly Nominations	1 Day	25-Mar-99	25-Mar-99	
Discussion of Completed N.A. Nominations/Campaign	1 Day	29-Apr-99	29-Apr-99	
Adoption of Regulations on Voter Registration and the Election	1 Day	07-Sep-98	07-Sep-98	
Civic Education/Registration of Voters				
Development of Civic Education Program	30 Days	20-May-98	20-June-98	
Procurement of Civic Education Materials	60 Days	25-Jun-98	25-Aug-98	
Implementation of Civic Education Program	90 Days	1-Aug-98	30-Oct-98	
Registration of Voters				
Decision on Registration Process	1 Day	15-May-98	15-May-98	
Development of Specifications for Supplies/Equipment	15 Days	01-Jun-98	16-Jun-98	
Procurement of Supplies and Equipment	120 Days	17-Jun-98	14-Oct-98	
Distribution of Materials to Districts	4 Days	20-Oct-98	24-Oct-98	
Recruitment of Registration Officials	15 Days	06-Oct-98	20-Oct-98	
Distribution of Registration Materials to Officials	3 Days	25-Oct-98	27-Oct-98	
Training of Registration Officials	3 Days	25-Oct-98	27-Oct-98	
Registration Period	30 Days	01-Oct-98	30-Oct-98	PPE S. 29
Compilation of Registration Data for Demarcation	14 Days	01-Nov-98	15-Nov-98	
Exhibition of the Voter Register	6 Days	03-Nov-98	09-Nov-98	

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<b>EVENT/TASK</b>	<b>Duration</b>	<b>Start Date</b>	<b>Finish Date</b>	<b>Law Citation</b>
<b>Re-Demarcation of Constituency Boundaries</b>				
Publication of Notice of Meetings on Re-Demarcation Meetings to Determine Views of Public	1 Day	01-Oct-98	01-Oct-98	
Northern Region	14 Days	15-Oct-98	01-Nov-98	
Central Region	14 Days	15-Oct-98	01-Nov-98	
Southern Region	14 Days	15-Oct-98	01-Nov-98	
Period for Development of Preliminary Plan	15 Days	15-Nov-98	01-Dec-98	
Deadline to Complete Preliminary Plan	1 Day	02-Dec-98	02-Dec-98	
Update of Preliminary Plan based on Updated Reg. Data	15 Days	15-Dec-98	30-Dec-98	
Final Plan Released to Parties, Public and Press	1 Day	31-Dec-98	31-Dec-98	
Submission of Final Plan to National Assembly	1 Day	07-Jan-99	07-Jan-99	
"Know Your Constituency" Civic Education Program	60 Days	07-Jan-99	10-Mar-99	
<b>Nomination of Candidates/President</b>				
Publication of Notice in Gazette	1 Day	12-Mar-99	12-Mar-99	PPE S. 48(a)
Nomination of Candidates	1 Day	02-Apr-99	02-Apr-99	PPE S. 48(b)
Formal Campaign Period	60 Days	15-Mar-99	15-May-99	PPE S 57
<b>Nomination of Candidates/National Assembly</b>				
Publication of Notice in the Gazette	1 Day	19-Apr-99	19-Apr-99	PPE S. 36(1)
Nomination of Candidates	1 Day	04-May-99	04-May-99	PPE S. 36(2)
<b>Civic Education/General Election</b>				
Development of Civic Education Program	30 Days	1-Jan-99	30-Jan-99	
Procurement of Civic Education Materials	60 Days	31-Jan-99	31-Mar-99	
Implementation of Civic Education Program	45 Days	01-Apr-99	17-May-99	
<b>Election Day Preparations</b>				
Materials Procurement/Distribution				
Development of Specifications for Supplies Materials	19 Days	04-Jan-99	22-Jan-99	
Procurement of Supplies and Materials	90 Days	25-Jan-99	25-Apr-99	
Distribution of Materials to Districts	5 days	06-May-99	10-May-99	
Distribution of Supplies/Materials to Polling Stations	2 Days	16-May-99	17-May-99	
Ballot Printing and Distribution				
Pre-Printing Ballot Preparation (President)	2 Days	03-Apr-99	05-Apr-99	
Pre-Printing Ballot Preparation (National Assembly)	7 Days	05-May-99	12-May-99	
Ballot Printing (President)	38 Days	06-Apr-99	14-May-99	
Ballot Printing (National Assembly)	7 Days	07-May-99	14-May-99	
Distribution of Ballots to Districts	3 Days	12-May-99	15-May-99	
Distribution of Ballots/Supplies to Polling Stations	2 Days	16-May-99	17-May-99	
<b>Election Day</b>	1 Day	17-May-99	17-May-99	PPE S. 36(3)

## PERSONS MET BY THE IFES TEAM

The team would like to express their thanks to all those listed for their assistance, comment and readiness to provide the local data and background information required during our visits to selected districts throughout Malawi. Thanks are also due to the Under Secretary for Administration at MAEC, Mr P J S Mpaso, for his able organization of these visits. Lastly we are grateful for the support, guidance and insights offered by the Commissioners with whom we traveled, Mrs G Chikoko and Mrs S Kambalamatore.

### **Mchinji District**

T T Gondwe, District Commissioner; W S G Nyondo, Assistant DC; R J A Mateuma, Mchinji District Council Clerk

### **Salima District**

Mrs B Muva, District Commissioner; WC Kalinda, DC's Secretary; C Pande, representing Chief Executive Officer, Salima Town Council; I Kamira, Salima District Council Clerk, M Nkoma, District Development Officer

### **Dowa District**

S J Nankhuni, District Commissioner; T G Zinga, Executive Officer to DC; G M Chisasula & A M Bonga, Police; B K Makoto, Dowa District Council Clerk & P S Chalema, Deputy Clerk; J Banda, Information Dept; C K Gunchi, Works Dept; I L Msyamboza Phiri, Education Dept

### **Dedza District**

F N Mkandawire, District Commissioner & A J Chibondo Assistant DC; H W Shaba, PVHO; DM Chauma, Police; F S Nihero, Magistrate; B F Chinkhande, Education Dept; M C Nyoni, Works Dept; S W Kasulo, Information Dept; K W Chipitu, District Development Officer; MR Chanansi, Community Services Officer; P Chikalamo, Commerce and Industry Dept; C K T Khoswe, Telecoms; G T Macheke, Dedza District Council Clerk; Ms A Mwale, Malawi CARE

### **Lilongwe District**

Mrs S Kalimba, Acting Chief Executive Officer, Lilongwe City Council, Mr Golosi, Commissioner of National Statistical Office, Mr G Nyasulu, MP for Rumphu East -AFORD, L. J. Chimango, MP (MCP) Lilongwe Mpeni, Dr. H. M. Ntaba, MP (MCP) Lilongwe South-East.

### **Machinga District**

P Sikonde Phiri, District Commissioners Executive Officer; D R Mambala, Assistant District Education Officer; R E Mulongoti, Machinga District Council Clerk

### **Zomba District**

S K Sayenda, District Commissioner, Roosevelt Gondwe, Clerk of Parliament

**Chikwawa District**

H Mpangula, District Commissioner; DM Banda, Chikwawa Dist Council Clerk; A N Chisaka, District Education Officer; M K Chinkota, Community Development Officer; M K Kaonda, Works Dept

**Blantyre District**

D R D Alufandika, Town Clerk and Chief Executive Officer, Blantyre City Council, F. Mphepo, MP (UDF) Blantyre City East, UDF Regional Secretary

**Mzuzu**

Mr Mbewe, District Commissioner; Mr Mzumara, Acting Town Clerk; Mr Nundwe, Assistant District Education Officer; Assistant Superintendent Chitsotso, Police; Mr Nyasulu, Officer - Information Dept., Mr Harry Mkandawire, Regional Governor - UDF

**Nkhata Bay District**

Mr J Manyetera, District Commissioner; Mr Nyanje, Police; Mr Nyachongwe, Assistant District Education Officer; Mr Zungene, Town Clerk; Mr Nkhata, Information Officer.

**Rumphi District**

Mr Paseka, District Commissioner, Mr Patrick Mwafulirwa, National Organizing Officer - AFORD; Mr Hazwell Gumbo, District Chairman - MCP.

**Mzimba District**

Mr M Mayenje, District Commissioner; Mr Raposo, Assistant District Commissioner; Mr Nkuziwaduka, Police; Mr Yotamu, Town Clerk; and 22 other participants from various government institutions in the district.

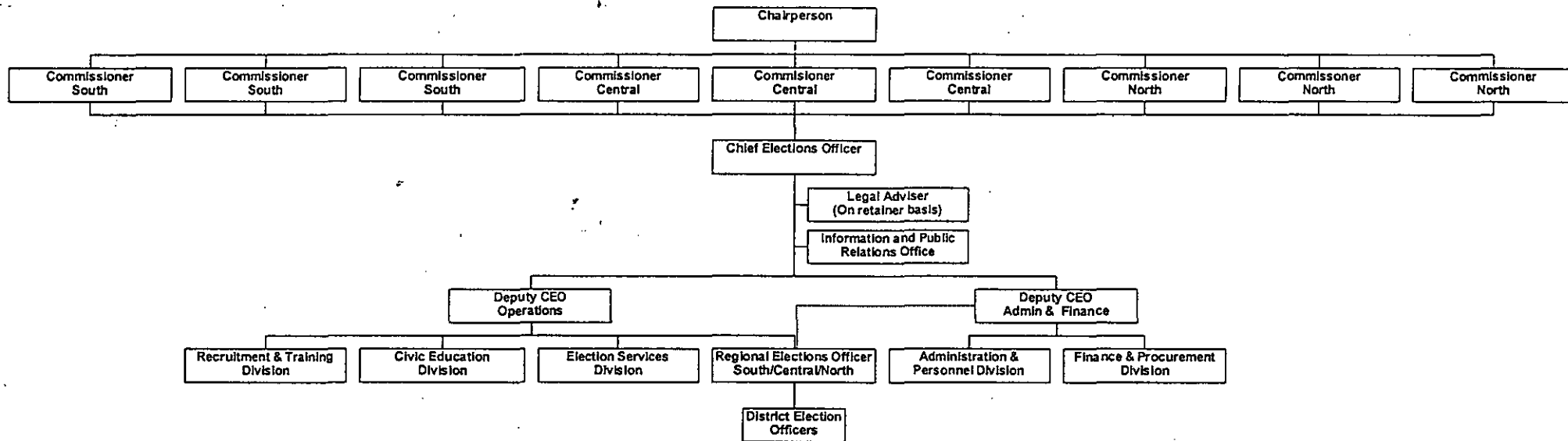
**Kasungu District**

Mr Magwira, District Commissioner; Mr Gondwe, Town Clerk; Mr Phiri, Police; Mr Khonje, Town Council, Mrs Kapanda Phiri, L.L.L (2<sup>nd</sup> Deputy Speaker of Parliament and MP for Kasungu West -MCP)



Appendix B

Malawi Electoral Commission - Management and Senior Staff Structure and Responsibilities





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