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## CONSTITUTIONAL PERSPECTIVE

### CONSTITUTIONAL & INSTITUTIONAL CONTEXT

#### Background

In 1962, Malawi, then called Nyasaland had its first multiparty elections. This was in fact, a referendum

held by Rhodesia and Nyasaland. The Malawi Congress Party (MCP) won all the seats and thereafter, its leader, Dr. Kamuzu Banda, consolidated his authoritarian leadership. In April 1964, all members of the Parliament were returned unopposed and there were no

elections held as such. On 6 July 1964, Nyasaland became the independent state of Malawi. After attaining independence in 1964, Malawi installed a parliamentary system of government. A new Constitution was introduced in 1966. This new

constitutional arrangement led to the abolition of both the parliamentary system and the multiparty system. All constitutional powers were vested in Dr. Banda as executive State President, a position he held from 1971 to 1992. The end of the Cold War and the Wind of Change that ushered in historical transitions such as the ending of apartheid in South Africa, also signalled the end of dictatorship in Malawi.

The early 1990s saw the emergence of underground movements that later developed as political parties. The Catholic Church, as a legal and well established institution, played a pivotal role in initiating the transition. Internal pressures, supported by external factors, ultimately forced Banda to call for a referendum on the introduction of a multiparty political system. The referendum of June 1993 confirmed an overwhelming victory for multiparty democracy and set the stage for the first multiparty elections in three decades. Subsequently, several legal reforms were initiated, one of which was the legalisation and formation of political parties which facilitated pressure groups to legally establish themselves as political parties.

The Parliamentary & Presidential Elections Act 1993 that governed the preparations for the conduct of the two elections

scheduled for May 1994 was passed. A National Consultative Council was set up to make recommendations to the Parliament on the new electoral laws and procedures, constituency boundaries, and drafting a new Constitution that would come into effect immediately after the elections. The 1994 elections gave a clear victory to the United Democratic Front (UDF) replacing the MCP after three decades of authoritarian rule.

### **The Legal Framework**

Malawi is a unitary republic form of state, with its legal system based on British common law. A new Constitution replacing the amended 1966 Constitution was approved by the National Assembly in 1994 and took provisional effect for one year. The Constitution was subject to review during this period and the final version came into effect on 18 May 1995. This Constitution ranks among the most liberal Constitutions in the world. It provides for protection and promotion of basic rights and freedoms; it ensures the holding of periodic competitive elections and sharing of powers between the executive, legislative and judicial branches of the government. Though largely inspired by the US Constitution, the Constitution of Malawi does not differ from the rest of Africa in vesting excessive

powers in the hands of the President.

The President is directly elected by the people for a term of five years, renewable for another term by popular election. He is both the Head of State and Head of Government. Although the concept of separation of powers is enshrined in the country's Constitution, in actual practice the President wields considerable power. He is the Head of State, Head of Government and Commander-in-Chief of the Armed Forces; he appoints and dismisses Ministers, senior civil servants and diplomats abroad. The Constitution allows the President to select his Cabinet from both within and outside the Parliament and thus there is a large Cabinet with most Ministers occupying seats in Parliament.

### **Constitutional Amendments/Crisis**

The Constitution of Malawi fails to ensure accountability of the government. A case in point is the limits to the independence of the judiciary by virtue of granting the President the powers to remove any judge of the High Court from his position and reassign him to any position within the public service. Section 89 of the Constitution also makes the President a part of the legislature by virtue of the Head of State being free to approve or veto Bills. The

Constitution fails to establish clearly whether the system of government is parliamentary or presidential, or some kind of a mixed system. Thus it has come to be described as a “hybrid” incorporating the principles of the presidential and parliamentary types of government. It is worthwhile to note that the provisional Constitution that came into force in May 1994 was reviewed, and the dangers of hybrid governmental structures were clearly signalled. It stated that, “in attempting to craft distinctive mechanisms to strike the proper balance, there are a number of possible pitfalls, including the possibility that power will be diffused too widely and the government will not be able to function, the possibility that too much power will be left in the hands of one person or branch and the possibility that the structures will appear and perhaps be intended to disperse power but that in fact power will remain consolidated in the hands of one person or branch”.<sup>1</sup> Practices in the past seven years have unfortunately proved that these fears were not unfounded. A steady erosion of the spirit of the Constitution in the conduct of the government has emerged as one of the

leading concern facing Malawi’s democracy.

With the adoption of the provisional Constitution in May 1994, the National Assembly passed several amendments to the Constitution that were in direct contravention with the spirit of the Constitution and thereby detrimental to democratic governance. These amendments have included the following:

- Creating an office of the second Vice President by replacement of s 79 of the provisional Constitution by Act No.31 of 1994. Fears were expressed that this could be an indication of a conflation of executive and judicial powers and therefore an attempt to return to dictatorship
- Repeal of section 64 of the Constitution, dealing with the recall of Members of Parliament by Act No.6 of 1995. Many sections of civil society and opposition parties expressed distress and concern over this Act and the issue continues to surface in all debates on the Constitution and governmental accountability.
- Abolition of the Senate by the Constitutional Amendment Bill No.4, 2000 –The abolition of the Senate bill was tabled for the second time after it was defeated during the previous sitting of the Parliament (Bill No.25 of

2000) The bill revoked the provision of the Constitution providing for the creation of the Senate in sections The bill was strongly condemned and opposed by the civil society and opposition parties as unconstitutional on the grounds that the Senate is protected under section 45 (8) of the Constitution which states that, ‘under no circumstance shall it be possible to suspend this Constitution or any part thereof or dissolve any of its organs, save as is consistent with the provisions of this Constitution.’ It was also raised in many quarters that the bill touched the substance or effect of the Constitution and therefore section 196 (3) can be invoked. It stipulates that any amendment which affects the substance or effect of the Constitution requires a national referendum.

- The NGO Act 2000 – This Act, passed as the Non-Governmental Organizations Act (Bill No.19, 2000), provides for the rights and obligations of Non-Governmental Organisations in Malawi, to promote the development and values of a strong independent civil society, to provide for the establishment, functions and powers of the Non-Governmental Organisations Board of

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<sup>1</sup> William Dodge, Mathew Frumi, Paolo Wright Carozza – A Commentary on the Provisional Constitution of the Republic of Malawi November 23, 1994, P.5, 6.

Malawi and the right of the public to access information with respect to registered organisations. The Act established the NGO Board of Malawi and designated the Council for Non-Governmental Organisations (CONGOMA) as the NGO co-ordinating body for the purposes of this Act. There was much discontent from the civil society over this Act as it was considered to be in contravention with the freedom of association. Further, not all NGOs were willing to accept CONGOMA as their representative body.

- One of the most controversial amendments was the amendment of Section 65 (Amendment No.2, Act 2001) of the Constitution. This purports to clarify what happens when a seat of a member of the National Assembly becomes vacant in accordance with that section. It proposed to amend section 65 of the Constitution in accordance with the recommendations contained in the report of the Law Commission in the Technical Review of the Constitution published in Nov 1998. The Commission noted that the issue of vacancy of seats where members, elected as members of

one party, voluntarily joined another party has been a matter of concern and debate and further that section 65(1) was the purported Constitutional justification for the spate of 'independent' Members of Parliament i.e. those members who had voluntarily left one party but who had not joined another party, did not fall within section 65 and thus the Speaker was not able to declare their seats vacant. The Commission noted that if a member was elected under a particular party banner and he/she subsequently resigned from that party, it was only appropriate that the said member should return to his/her constituency and seek a fresh mandate from the electorate.

The Commission thus recommended such changes to clarify that, either by voluntarily leaving the party under which a member was elected, or joining another party represented in the National Assembly without formally resigning from that party under whose banner he or she was elected, was sufficient for the Speaker to declare the seat vacant under section 65(1) of the Constitution.

However, much as this clarity of section 65 was absolutely necessary, the bill exceeded its limits to

propose that where a member, who at the time of his/her election was a member of a political party represented in the National Assembly, joins any other party or association or organisation whose objectives or activities are political in nature, his/her seat should be declared vacant. The bill seriously curtailed basic rights pertaining to the freedom of assembly and freedom of participation and was widely condemned by opposition parties and civil society. However, the National Assembly easily swung a two thirds majority and the bill became an Act, despite vociferous opposition.

Reduction of Quorum –Bill No.5 of 2001 impacting upon Section 50 (1) of the Constitution dealing with quorum, states that the quorum of each Chamber shall be formed at the beginning of any sitting of at least two thirds of the members of the Chamber entitled to vote, not including the Speaker or a presiding member. An Amendment was made to this section by an Act of the National Assembly, through the adoption of Bill No. 5 of 2001 that deleted the words 'one third' and substituted it by the words 'half plus one.' The purpose of the amendment was stated to be the requirement of the presence of 50 percent plus one of the total membership of the House, as the

benchmark for quorum. In other words, to require that no less than 50 percent plus one other member of the total membership are present before the House can commence business. However, this amendment only applies to the normal business of Parliament and does not change the requirement of two thirds majority or a referendum, as the case may be, under section No. 196, 197 of the Constitution relating to constitutional amendments.

Malawi's Parliament has come into focus in the wake of the constitutional crises generated by the tabling of several constitutional amendments in quick succession, as well as other legislation. The controversial application of section 65 of the Constitution also generated a heated debate that relates to the autonomy of Parliament. Taken together, these matters have raised public concerns over the future of democracy and constitutionalism. They brought into sharp focus the credibility of Parliament in discharging its responsibilities of holding the executive to account and generated suspicion about its capacity to stand firm and safeguard its independence. A perception has spread that Parliament is a mere pawn in the political game or a rubber stamp of the executive's decisions.

### **Challenge to Judicial Independence**

The executive has also posed a severe challenge to judicial independence, in the form of a petition for the removal of three judges that was engineered through Parliament. Over 113 out of the 193 members of the House signed the petition in the November 2001 sitting of the Assembly. The removal of the judges was sought on alleged grounds of misconduct and incompetence. The action of the Assembly generated wide condemnation from within and outside the country. The legal adviser to the International Commission of Jurists (ICJ) stated, 'the action to dismiss the judges flies in the face of the 1994 Constitution of Malawi, the African Charter on Human and People's Rights and the United Nations basic principles on the independence of the judiciary which recognises the value of an independent judiciary as necessary to uphold the rule of law.' The finding of the ICJ was that some politicians have been over-sensitive to judicial pronouncements and this over-sensitivity led to the action for 'removal of judges' whose decisions were found to be unpalatable.<sup>2</sup>

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<sup>2</sup> International Commission of Jurists, Mission to Malawi: Preliminary Report 2002

### **The Electoral System**

Since the independence of the country, election of representatives to the National Assembly has been based on the 'First- Past-The-Post' system. Under the former regime, the Malawi Congress Party (MCP) nominated candidates who competed in the elections in constituencies and those who won the largest number of votes were declared elected. Malawi, being a former British colony, has inherited a number of British practices and conventions and the electoral system is one of them.

The same electoral system continued after the change to multiparty system and the 1994 elections were held on the same basis. This was done by a process of deliberation between two bodies- the National Consultative Council (NCC) that was formed by an Act of Parliament in 1993, and the National Executive Council that was the reflection of the Cabinet. Both the bodies were made up of equal number of representatives of the seven political parties which were registered as of 1 November 1993. The NCC was responsible for preparing a new Constitution that was to come into effect 'immediately after the first multiparty elections. At the National Constitutional Convention held in 1995, it was resolved that Malawi should maintain the 'First-

Past-The-post' electoral system for both parliamentary and presidential elections.

## **THE MALAWI ELECTORAL COMMISSION (MEC)**

### **Status and Composition of the Commission**

The Electoral Commission Act of 1998 established the legal personality of the Commission.

*A body corporate with perpetual succession and a common seal, and capable of acquiring, holding and disposing of real and personal property, sue and be sued in its own name, and perform all such acts and things as bodies corporate may by law do or perform.*

The appointment of the members of the Commission is made in accordance with the procedure laid down in Section 4(1) of the Electoral Commission Act No.11 of 1998 which states that:

*The President shall, subject to the Constitution and in consultation with the leaders of the political parties represented in the National Assembly, appoint suitably qualified persons to be members of the Commission on such terms and conditions as the Public Appointments Committee of Parliament shall determine.*

The Chairman of the Commission is a Judge, who

is nominated by the Judicial Service Commission. The actual composition of the Commission reflects the presence and participation of the different political parties represented in the Parliament.

The Electoral Commission Act establishes the independence of the MEC on the condition that the members perform the functions and exercise their powers independently of interference from:

- any public office;
- any organ of the Government;
- any political party;
- any candidate; and
- any person whosoever or organisation whatsoever.

### **Functions and Powers of the MEC**

The MEC, as per the Electoral Commission Act, exercises general direction and supervision over the conduct of every election and also has the following specific functions:

- to determine the number of constituencies for the purposes of elections;
- to undertake or supervise the demarcation of boundaries of constituencies;
- to undertake the demarcation of wards for the purposes of local government elections;
- to organise and direct the registration of voters;

- to devise and establish voter registers and ballot papers;
- to print, distribute and take charge of ballot papers;
- to approve and procure ballot boxes;
- to establish and operate polling stations;
- to establish security conditions necessary for the conduct of every election;
- to promote public awareness of electoral matters through the media and other means; and
- to take measures and to do such other things as are necessary for conducting free and fair elections.

### **Evaluation of the MEC's Performance**

The performance of the MEC in the 1994 election was commendable. Given the tension and pressures surrounding the 1999 elections where the Chairman of the Electoral Commission had to be replaced barely a month before the polls, it is heartening that elections were held peacefully and a new government was put into place. Since 1994, efforts have been made to strengthen the legal, logistical and personnel areas of the Commission to enhance its performance. However, the fact that the MEC is appointed by the President leaves grounds for

differences between the opposition parties and the Commission. The opposition parties have hotly contested by-election results since 1994.

The technical review of the Constitution that took place in early 1999 debated the issue of how to ensure the independence of the Commission. It was proposed that the Constitution should ensure the impartiality of persons proposed to be appointed as members of the Commission. They felt that the present mode of appointment was unsatisfactory as it was simply specified in an Act of Parliament, bestowing

powers to appoint members of the Commission on the President. The 1999 elections raised serious doubts about the impartiality of the Commission. In the run up to the 2004 elections, several complaints and cases have already been registered against the current Chair of the MEC questioning his political neutrality and competence to head the Commission.

The disputed credibility of the MEC came under further scrutiny when the MEC proposed a list of ten amendments to be passed by Parliament towards the end of 2003. While some recommendations were

worthwhile, there were others that raised suspicion on the motives of the MEC, such as the amendment seeking to empower the Minister of Justice, on recommendation of the MEC, to make regulations at least 60 days before the polling day with respect to the manner of voting and determination of null and void votes. Further, the bill also proposed reduction of political parties' representatives at a registration centre to not more than two people.

*These proposed amendments of the MEC were vehemently opposed and turned down by the Parliament.*

## PRE-ELECTIONS

### POLITICAL SETTING

#### Review of Previous Elections and Elections Results

General elections in Malawi attract a large voter turnout and are mainly peaceful and orderly. Indeed, they have been declared free and fair by local and international observers. However, the conduct of the electoral process is not efficiently managed. The 1999 elections were faced with numerous logistical and administrative inadequacies arising out of lack of adequate planning and co-ordination with the

various stakeholders. This undermined the efficiency and public confidence in the whole process. The elections have also brought to the forefront, the need to restore the credibility of the Electoral Commission and to build the capacity of the Commission's secretariat.

According to section 80 (2) of the Constitution, the election of the President and those of the members of the National Assembly are held concurrently on the basis of direct, universal and equal suffrage. The Presidential and Parliamentary elections of 1994 and 1999 were held on this basis and the results are presented below.

**Table 1: 1999 Presidential elections results**

CANDIDATE	TOTAL VOTES	% OF VOTES
B. Muluzi	2,442, 6885	51.37
G. Chakuamba	2, 106, 790	44.30

Source: *Electoral Commission Report 1999*

**Table 2: 1994 Presidential Election Results**

CANDIDATE	TOTAL VOTES	% OF VOTES
H.K. Banda	996353	33.45
C. Chihana	562862	18.90
B. Muluzi	1404754	47.16

Source: *Electoral Commission Report 1994.*

**The National Assembly:** Election to the National Assembly is based on the first past the post electoral system. Section 62 of the Constitution relates to the composition of the National Assembly and provides that:

“[t]he National Assembly shall consist of such number of seats representing every constituency in Malawi, as shall be determined by the Electoral Commission.” The number of seats (which is also the number of constituencies) has been growing constantly for a number of years as the following table illustrates:

**Table 3: Number of Parliamentary Seats/Constituencies 1992-1998**

Year	No of Parliamentary Seats/ Constituencies
1992	141
1993	177
1998	193

The seats/constituencies in the three regions of the country have been distributed among the political parties as follows:

**Table 4: 1999 Parliamentary Elections: Distribution of Seats**

REGION	Political Party				TOTAL
	MCP	UDF	AFORD	Independent	
North	4	1	28	0	33
Centre	54	16	1	1	72
South	8	77	0	3	87
<b>Total</b>	<b>66</b>	<b>94</b>	<b>29</b>	<b>4</b>	<b>193</b>

Source: *Electoral Commission Report 1999*

**Table 5: 1994 Parliamentary elections: Distribution of Seats**

REGION	Political Party				TOTAL
	MCP	UDF	AFORD	Independent	
North	0	0	33	0	33
Centre	51	14	3	0	68
South	5	71	0	0	76
<b>Totals</b>	<b>56</b>	<b>85</b>	<b>36</b>	<b>0</b>	<b>177</b>

Source: *Electoral Commission Report 1994*

The statistics above indicate that, although the United Democratic Front won the largest number of seats, it failed to get a majority in both elections. Therefore, in 1994 it had to form a coalition with AFORD for the purposes of gaining a Parliamentary majority.

**Table 6: Number and Regional Distribution of Votes- Referendum 1993**

(Figures in brackets for single party and double party)

No Registered by Region	Total No Voted (for Single party)	Total No voted (for multi-party)	Null & Void
629,339	444 196 (47, 103)	444 196 (392,569)	4,526
North			
2,236,350	1,438,371 (208, 959)	1, 438, 371 (392,569)	28,017
South			
1,833,820	1,270,881 (832, 413)	1, 270, 881 (400,032)	38,436
Central			
4,699,509	3,153448 6 1,088,475	3,153448 6 (1,993,996)	70,979

Source: *International Observer Briefing Manual for the Parliamentary and Presidential Elections, 1994*

**Table 7: Number and Regional Distribution of Votes: 1994 and 1999 Elections**

(the figures in brackets are for 1994 and those outside for 1999)

Number Registered by region	Number Voted	Null & Void	Valid.
North (545,195) 678,906	(459 708) 652, 505	(6,758) 5,096	(452,950) 647, 409
Centre (1,461,367) 1, 975,203	(1,168,473) 1,839, 032	(30,506) 37,876	(1,137,967) 1,801,209
South (1,768,694) 2,417,713	(1,376,654) 2,263,885	(33,286) 48,759	(1,343,368) 2,215,126
<b>Total (3,775,256) 5,071,822</b>	<b>(3,004,835) 4,755,422</b>	<b>(70,550) 91,731</b>	<b>(2,934,285) 4,666,751</b>

Source: *Electoral Commission Report 1994 and Electoral Commission Report 1999.*

Voter turnout has been progressive from the time of Referendum to the 1999 elections. 67 % of total registered voters voted in the Referendum, 80.54 % in

the 1994 elections, and 93.76 % in the 1999 elections. What has been difficult to establish is what percentage of the eligible voting population registered as voters. From the above table, we find that the Referendum registration figures are much higher than the 1994 elections registration figures. An explanation for this has been given in the 1994 Electoral Commission report, which states that, “The Commission decided to register voters afresh throughout the country because of; firstly, the unreliability of the 1993 National Referendum figures due to alleged multiple registrations and, secondly, the need to introduce a new registration system which would ensure security for the entire electoral process and also enable computerisation of the electoral register.”

The 1999 registration figures indicate a much higher registration figure, yet about 100,000 or so potential voters were still left unregistered due to the lack of adequate registration materials. The Inaccurate population figures were responsible for the shortages. Therefore, it is not possible to give an accurate assessment of registered voters out of the eligible voting population, though it is possible to assess the voter turnout. People have exercised their political rights by coming forward willingly with enthusiasm

and vigour to participate in the registration and voting process in the elections held so far. There have been incidents of threats and intimidation, but it appears that these have not been on such a scale as to substantially affect voter registration and turnout.

During the 1994 elections, cases of alleged confiscation of voter registration certificates by opposing political parties were reported. An attempt to check this was by passing an amendment to the Parliamentary and Presidential Elections Act (Amendment Act No.10 of 1998). The Act now stipulates that any person found guilty of the confiscating the certificates shall be liable to a fine of K50, 000 and to imprisonment for seven years (section 24(5)). Generally there have also been problems in the registration process such as lack of any written or official form of identification of voters. This is particularly the case with voters in rural areas. The Parliamentary and Presidential Elections Act allows for verbal or visual identification by a chief, headman or any one from the village. However, due to the lack of adequate communication, the message does not filter down to the people clearly. This problem was felt more in 1994 than in 1999. Registration by underage people is also a

problem, as is registration by non-citizens, especially in districts that border neighbouring countries.

During both 1994 and 1999 elections, the registration period had to be extended. The Parliamentary and Presidential Elections Act stipulates that the registration period should not be less than 30 days and should expire not less than 21 days before the polling day. This period was reduced to 14 days by the Amendment Act No.16 of 1994 providing scope for further extension. In 1994, the registration period was extended to five weeks and in 1999, it was extended to six weeks. This extension caused difficulties in the exercise of other electoral activities.

In the 1999 elections, the lack of adequate registration materials was compounded by other administrative and logistical problems. These adversely affected the registration and thereby, the voting process, leaving out at least 100, 000 potential voters that remain unregistered. Despite suspicions, there appears to be no clear evidence to suggest that the freedom of the people to participate in the electoral process was, or has been, deliberately curtailed or challenged.

The performance of the Electoral Commission also came under further scrutiny.

From time to time, the Commission has faced accusations of incompetence and bias levelled by political parties and civil society. Even the High Court had occasion, in the run-up to the 1999 elections, to comment adversely on the performance of the Commission in the following terms:

Part V of the Parliamentary and Presidential Elections Act deals with the right to campaign by political parties. Section 56 (1) of the Act guarantees all political parties the right to campaign in an election and sections 56 to 66 deals exhaustively with the rules and regulations guiding the exercise of political rights by parties. Parties have the right to campaign as well as the right to have the substance of their campaign propaganda reported on radio news broadcasts of the Malawi Broadcasting Corporation. The High Court has restated the requirement for fair coverage of political opponents by the Malawi Broadcasting Corporation in the case of *Kafumba v The Electoral Commission*. Political parties also have the right to monitor the registration of voters, the polling and the counting of votes in every registration/polling centre.

Political parties have exercised these rights in the last two general elections. Both elections have witnessed rigorous campaign

activities by the three major parties the MCP, UDF and AFORD. Political parties draw their support mainly from rallies and campaign meetings. Campaign activities generally carry a colourful festive atmosphere, however, campaigns have not been free from violence and intimidation. Rallies of parties that are not predominant within a specific region tend to be disrupted by the supporters of the dominant party in that region. Though there were incidents of campaign violence, there were also measures taken to combat them through civil society institutions and the Electoral Commission, and there were no gross violations of code of conduct or any major cause for concern that could undermine the level of the rights enjoyed by parties to political campaign.

### **Election Results**

The supporters of the opposition MCP-AFORD Alliance expressed their dissatisfaction over the results by staging a peaceful march in the streets of the City of Blantyre. It was also mentioned earlier in this report that in the northern region, violence erupted as a sign of rejection of the poll results. Homes and mosques were set ablaze and properties vandalised. These incidents caused several deaths and rendered many people homeless. Furthermore, also as stated

earlier, the results were contested (in the event, unsuccessfully) by the Alliance in the High Court.

The 1999 election results were challenged in the courts of law by the presidential candidates of the opposition parties. The respondents contested the general elections which were held in this country on 15 June 1999, as presidential candidates. Following the results of the elections, they commenced an action in the High Court claiming essentially, that the elections were not conducted in a free and fair manner. The action was brought by a petition which alleged, among other things, that voters in several constituencies were denied the right to register and the right to vote, that the appointment of a Justice of Appeal to head the Electoral Commission was unconstitutional, that some ballot papers were printed locally without the knowledge of the political contestants, that the numbers of voters announced from each constituency were not consistent with the numbers of persons who were able to register in that constituency and that the Electoral Commission unlawfully declared winner of the presidential contest, a person who received the majority of the votes cast instead of the majority of the electorate.

The case went on for one year, and finally ended in

May 2000 in favour of the incumbent presidential candidate. Allegations pertaining to electoral flaws could not be proved due to inadequate evidence. As to the issues of 'majority,' the court ruled that "a majority" is of those who will have actually voted, and that a candidate attains a majority if he receives more votes than any other candidate.

Throughout all this, the government continued to function normally and Parliament also met, albeit after an initial boycott by some Members of Parliament of the Alliance. The efforts of the church bodies and people's spirit of tolerance and accommodation soon contained the situation. Peace was restored and life returned to normal.

### **LOCAL GOVERNMENT ELECTIONS IN MALAWI**

The first term of the democratically elected government under a multi-Party system in Malawi (May 1994 – June 1999) ended on a note of despair, with constitutional commitments unfulfilled and thereby creating a vacuum to be filled in - the commitment of holding local government elections and thereby paving way for democratic decentralisation. In the first term of the new regime, local government elections and democratic decentralisation

in Malawi were areas of focus and priority for many donor institutions and local NGOs. This was not really the case with the party in power as well as the opposition parties. They did not express genuine concern but only extended lip service. Many reasons can be identified for this lack of interest and enthusiasm of political parties in local elections, out of which the most basic and obvious one is a fear towards decentralisation, which involves power sharing. This fear was coupled with other logistical, administrative and financial hiccups. However, a major step towards decentralisation was taken towards the end of the first term and that was the enactment of the Local Government Act 1998. The Act set the groundwork for the decentralisation programme, which would give people at the grassroots the power to determine their own development programmes and agendas. During its second term, the government treated local government elections with some urgency and priority. The high expectation and anxiety over the local elections that had been building over the last six years declined drastically by the time the elections drew closer. Preparations were extremely inadequate in terms of voter awareness programmes, civic education pertaining to local government, party

campaigns and logistical management. Above all, it was the lack of political will and a display of voter apathy from the people which was responsible for a very low turnout and thereby a cause for great concern.

### **Pre Electoral Issues**

#### ***Local Government by Appointment or Elections?***

Just a month before the scheduled local government elections, the government introduced an amendment to the Local Government Act, which gave powers to the President to appoint Local Assembly Mayors, Chairs and their Deputies. This measure, in reality, would superimpose Central Government's power over political and administrative matters of Local Government. The bill was tabled in an earlier sitting of Parliament but was very ably stalled by the MCP opposition. The NGOs and the opposition parties strongly condemned the bill. A press statement was issued by 23 NGOs protesting against the bill. The donors, the opposition and the civil society attacked the proposed bill as a calculated move to dilute the Act by giving unnecessary political powers to the central government. The question was posed by George Finlayson, the British High Commissioner: Can democracy be achieved by the Head of State appointing the Chairmen and Vice

Chairmen of Local Assemblies?<sup>3</sup>

Owing to these pressures and the need to regain public confidence, the bill was promptly withdrawn.

#### ***Legality of the Electoral Commission***

The independence and impartiality of the Commission, a contentious issue during the 1999 General Elections, had still not been resolved. Therefore, the image of the Commission as having lost its credibility and public confidence since the 1999 general elections had not undergone any reversal. The opposition parties questioned the legality of the composition of the Electoral Commission on the grounds that the representation of political parties in the Commission was unequal, with the ruling UDF having four members, the opposition MCP with two and the AFORD with only one member. The Commission suspended Mr. Garnet Kamwambe, AFORD nominee in the Electoral Commission during the 1999 general elections process. The Party had been, by then, repeatedly voicing the demand for the reinstatement of the suspended Commissioner, who was dismissed by the Public Appointments Committee. The Party sought a replacement for that position in order to retain its

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<sup>3</sup> Independent candidates: 371.

representation in the Commission. But, until the time of holding of local elections, the issue was not resolved in spite of the party's Publicity Secretary strongly stating that 'that the issue needs to be redressed before we proceed with any elections. However, no such changes occurred and the unequal representation in the Commission continued.

The Commission also did not heed the request of the opposition to replace the returning officer of the Ntcheu district who was proved incompetent for the job in the general elections.

#### ***Logistical/Administrative Inadequacies***

The polls had to be postponed in nine wards in the northern region, because some candidates had died in some wards, whilst there were anomalies involving ballot papers in other wards. In some wards, voting could not take place because the names of the candidate and the party symbols were confused on the ballot papers. The ballot papers had not arrived in the country with barely ten days to go and the input of data of voter's rolls in computers was not yet finalised.

#### ***Political Parties' Preparedness***

Political parties, especially the main opposition party, the MCP, were so absorbed in their own leadership tussles and squabbles that

they did not campaign effectively. AFORD was also focusing on its strategy and structure in order to survive as a third alternative.

The opposition's weak position gave considerable leverage to the UDF, not so much because of its discipline or structure, but because it was the only Party which could field candidates in most wards. In 112 out of 860 wards, the UDF won unopposed. AFORD also secured 3 wards unopposed. The electoral process further fuelled the controversy over the Party leadership in the MCP, who had had nullified conventions by court rulings, and two factions sending out conflicting messages, i.e. on Party monitors. AFORD was focusing mainly on its representation in the EC and did very little campaigning in the field.

All the parties appeared to be caught up in leadership tussles and internal conflicts and only managed to portray themselves as being undemocratic and unscrupulous. None of the parties could claim to have leaders who were democratically elected through legitimate party conventions. According to their respective Constitutions, it was mandatory for party executive posts to have been contested every five years in an election to be held at their respective conventions. This constitutional necessity was

disregarded and blithely brushed aside.

#### ***Inadequate Voter Education***

Civic and voter education was disappointingly sparse. These programmes for the elections started late due to delayed funding and other organisational difficulties. The efforts of the NGOs and the political parties in voter/civic education for the local elections were greatly hampered by the uncertainties clouding a number of issues as mentioned above. However, some NGOs and church institutions, such as the Blantyre Synod, expressed confidence that the Synod had put across the necessary information to the voters to enable them to vote wisely.<sup>4</sup>

The *Tilitonse* (story workshop) on radio quite effectively covered the process of registration and elections. However, what was generally lacking in these activities was the emphasis on the concept of decentralisation and the role of local bodies in the democratisation process.

Inadequate campaigning by the parties, especially the opposition, left people unaware for whom they should vote. The case of voters in prisons was a particular case in point as the law prohibits campaign activities in prisons. The opposition parties and the NGOs demanded

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<sup>4</sup> 193 seats are being contested by 1267 candidates.

postponement of the local government owing to an overall unpreparedness and lack of general enthusiasm and will.

The morale of all stakeholders- political parties, media, NGOs, donors and the people at large was at a low ebb.

**Table 8: Turnout at the Local Polls**

Registered voters by region	Votes cast	Null & Void votes	Valid Votes
682294 North	152924	3224	149700
1865857 Centre	245173	11302	233871
1667783 South	201997	9710	192287
4215934 National	600094	24236	575858

**Table 9: Local Government Elections Results**

No of Wards by region	AFORD	MCP	NIP	UDF	Independent
166 North	114	05	0	31	06
343 Centre	06	71	0	257	05
351 South	0	07	1	324	16
860 National	120	83	1	612	27

Source: *Local Government Elections, Election Commission Report, 2000.*

**Proposed Amendments to the Parliamentary & Presidential Elections Act (PPEA) in 2003 on Local Government Elections**

The institution of local government is weaker and more fragile than the national democratic institutions. In the entire first

term of the new political dispensation, no local government elections were held. However, in the second term of the new government, the donor pressure to hold these elections was high and finally they were held. The inadequacies and problems faced during these elections have already been discussed. One acceptable remedy that emanated from this was to hold the three elections simultaneously.

In the last sitting of Parliament for 2003, the MEC presented a list of ten proposed amendments to the PPEA. One of these was the suggestion to hold the local government elections along with the parliamentary and presidential elections. In fact, talks of combining the three elections and holding a tripartite election have been going on for a long time. However, it was not legalised by making necessary amendments to the Constitution until the end of 2003. There are many sound arguments put forward to hold the three elections at the same time, such as the need to avoid voter apathy for local elections. The last local elections had only 14% turnout, and furthermore, it would also be cost effective. Though there was no opposition to these arguments and all political parties and NGOs had even began voter education for a tripartite election, what went wrong was for the MEC to lump together a number of

issues - some of them controversial in nature. Had the local government issue been considered on its own, it would very likely have gone through. The question here is, when the MEC started talking of tripartite elections years ago why did it wait until the end of 2003 to legalise them? Why did the NGOs, especially those working on decentralisation with the support of donor institutions, not raise the matter with the MEC earlier?

**THE PRESIDENTIAL OPEN TERM BILL**

The second term of the UDF government began with signals of regression in some of the democratic institutions that had been gaining root in the last few years. Out of these, the threat to the supremacy of the Constitution has already been discussed in the earlier section. The most serious challenge was the introduction of the open term bill for the President. The Constitution of Malawi clearly stipulates in section 83 (3) that the President and the vice-President shall serve a maximum of two consecutive terms. 1999 to 2004 is the second term for President Muluzi. Some of his close Cabinet colleagues and party supporters started propagating the bid for another term for Muluzi at rallies. One may wonder at the fact that hardly after two years of swearing in a new government, could political

rallies be held This is a unique feature of Malawi politics, i.e. all time is rallying time, especially for the ruling party. President Muluzi kept silent on the issue but his pronounced silence was an indication that he was not against the bid lodged for him by his cronies. There were closed door discussions on whether a national referendum would be required or a Constitutional amendment requiring a two-thirds majority. Finally the bill to amend the Constitution was moved before the National Assembly on the 4 July 2002 by AFORD Member of Parliament, Khwauli Msiska.

The voting was done through a roll call where 125 members voted for the amendment, 59 objected and 3 abstained. President Muluzi accepted the results and called on all political players to bury all the differences caused between the proponents and opponents of the bill. There were clear indications of monetary inducements causing shifting of political allegiances leading to factions within parties. On the side of the civil society, the NGOs and the religious organisations placed the issue on a war footing and the public outrage against this move spread like wild fire. The failure of the government and the ruling party to read and understand the country's mood on this issue is something that

surprises people looking at the issue from outside.

The defeat however, did not put the matter to rest but the possibility that the bill could come back in another form, haunted the nation for the ensuing months. True to these fears, the bill reappeared in January 2003 when Parliament was called for an extraordinary sitting without any agenda being given for a two day sitting. This time, the bill was introduced by the Attorney General cum Minister for Justice Henry Phoya, and it was called the "Third Term" bill instead of "Open Term" bill. Tensions were high and the public condemnation of the repeated attempt to extend the term of office of the President was loud and clear and various players from civil society and political parties resumed a staunch resistance against the bill. It appears that the ruling party was more responsive to public outrage this time, and the bill was never tabled, but discreetly withdrawn and sent to a Parliamentary Committee – ostensibly for scrutiny before tabling. The Bill did not re-emerge and is still gathering dust on a parliamentary shelf, where it may again rear it's ugly head at some time in the future.

The matter was put to rest only after President Muluzi nominated his successor to lead the party after months of anxiety and speculation.

### **Implications of the Third Term Bid**

Attempts to amend the Constitution to pave way for a third term put the supremacy of the Constitution at stake. Besides the Constitutional aspect, the issue had serious bearing on other aspects of society: it challenged the right to assembly and freedom of expression; it had an implication on the church state relations; serious implications on political parties, as well as major economic implications.

- Threat to basic rights: a group called the Forum for the Defence of the Constitution (FDC) emerged, comprising some church leaders, political activists including dissenting members of the ruling party, and some human rights NGOs. The group organised demonstrations against the third term which were disrupted by police intervention using teargas and shooting. The FDC sought a court injunction stopping the police from disrupting the protest march.
- The President issued a decree banning all demonstrations for or against the third term issue. He instructed the army and the police to deal with anyone involved in organising or participating in any demonstration relating to

the amendment of section 83(3) of the Constitution. The Police used this to ban all demonstrations against a third term, but were not so stringent on demonstration in favour of the extension of tenure. The matter was challenged in court. It was ruled that the ban was unconstitutional.

- The role of religion in the politics of Malawi is well known. The church commands great respect from the grassroots. The strong stand of the church on the issue heightened tension between the government and the church. The President and his chosen colleagues reminded the church of its role of imparting spiritual guidance and not politicking. Senior members of the clergy were rudely rebuffed when they sought to plead with the President to reverse the attempts for a third term bid.
- All of the three parties in Parliament split over the third term issue. The ruling UDF lost a number of MPs and senior party members who opposed the bill. The MCP, which had been in turmoil for some time over the leadership of the party, had one faction in the House favouring the motion for third term led by one of its leaders, and the other

against led by another. The President of AFORD declared his open and unconditional support to the UDF bid for the third term, with a handful of MPs. The bill was in fact moved by an AFORD member of the Assembly. A good number of MPs and senior party members left the party and formed their faction or joined other parties.

- The third term issue drained much of the nations' scarce resources, energy, and time of the Parliament when other vital issues of national development could have been attended to. The constant fascination of all stakeholders in this tussle, which some have termed a "life and death struggle for the future of our fledgling democracy" excluded all else. Whilst no exact study has yet been carried out on the cost implications of this fracas, there is no doubt that it has set back development programmes for many years. No least, by virtue of the fact that the donor community suspended virtually all aid to Malawi at that time, and did not resume it for 18 months thereafter.

### **POLITICAL PARTIES**

It is very easy to register as a political party in Malawi. However, what the parties

find extremely difficult is to come out of the personality cult syndrome and develop an identity on issues, vision and ideology. The performance of political parties has generally been poor, not due to the lack of freedom, but due to a range of other factors, both institutional and substantive. Parties have not yet evolved effective mechanisms for identifying and recruiting members. A study conducted in 1998 on political parties in Malawi, revealed that the estimation of party membership or supporters was imprecise and subjective. This was due, in large part, to the absence of precise identification and recording mechanisms of party members and supporters (Kadzamira, Mawaya, Patel: 1998). The former practice of the MCP in issuing party membership cards used as a coercive tool of the state during the era of one-party dictatorship, left behind a deep negative connotation. The present political parties promptly discontinued the party card system, but did not substitute it with another mechanism and therefore there is no reliable way of establishing their membership. Parties often judge by turnout at public rallies as a method of ascertaining their support base.

What restricts the competitiveness of parties is their limited perception of their long-term vision and

programmes. Even the major parties have problems in clearly formulating and articulating their ideologies and distinguishing themselves from each other. However they do have international affiliations, which can be used as an indication of some ideological distinctions. The UDF is a member of the Liberal International; AFORD has some association with the Socialist International, while the MCP historically had relationships with members of the Conservative government. The parties, however, do not make much of these international affiliations in public and do not use them to underscore any ideological distinctions between themselves. These deficiencies limit the capacity of the parties to compete and offer the electorate a genuine choice between different policies. The "first past the post" electoral system limits the chances for smaller parties to be represented in Parliament.

### **Party Funding**

The Constitution requires the state to fund any party, which secures more than one tenth of the national vote to ensure that it is able to continue to represent its constituency (section 40(2)). Thus in principle, the three parties represented in Parliament receive funding from Parliament. However, in practice the funds have

often been suspended in regard to the opposition parties for reasons such as the boycott of the Assembly or the non-submission of audited reports. This is despite the fact the Constitution does not stipulate any such requirement for securing the funds. Funding from the state caters only partly to the requirements of the parties. They need to supplement this from other sources.

Political parties in Malawi, including the ones in Parliament have not put up sound income generation mechanisms such as setting up party companies, or making investments. Parties in Malawi tend to largely rely on personal funding and on certain individuals as main fundraisers, this diminishes the collective participation, ownership and accountability of the party and, in addition, only serves to reinforce and perpetuate neo-patrimonial patronage systems. Some parties have links with the business sector, however; business enterprises do not openly support parties for fear of reprisals and this limits the interaction between them.

### **Leadership Crisis and Disintegration of Parties**

Regular communication and dialogue within parties on issues cutting across all levels from grassroots to the national level is almost nonexistent.

Communications are more in the form of issuing instructions or direction from the top. Leaders, who have not guided and encouraged aspiring leaders within their parties, are creating serious dissent resulting in factions. The avoidance of holding conventions for almost ten years has caused mistrust, suspicion, hatred and intolerance within the ruling party. This was further exacerbated by the third term bid of the incumbent Presidential candidate. The formation of the National Democratic Alliance as a pressure group by one of the most senior leaders of the UDF and the subsequent resignation and dismissal of a number of senior party officials has brought the UDF to the verge of disintegration. In the case of the MCP, personality clashes and personal differences between two of its leaders divided the party into two factions, which almost paralysed the opposition in Parliament. Support for the third term bid by one of the factions of MCP and the subsequent reversal of its stand and reconciliation with the other faction has distorted the image of the party considerably. AFORD has been beset by major internal squabbles for some time, and the President's support for the third term bid with some of his party followers has brought the party to the brink of a break up and the formation of a new party called MCODE

(Movement for Genuine Democracy). Both hate speech and the perpetration of violence have become rampant, thereby leaving less scope for accommodation and reconciliation. Internal matters of the party that have long been unresolved are aired in rallies and public gatherings in offensive language, thereby causing tension. There is a disturbing practice of using the youth to disrupt the rallies held by the opposition to perpetrate violence.

**Table 10: Parties in the 2004 Elections race**

PARTY	ASSEMBLY SEATS CONTESTED
AFORD	40
CONU	01
MAFUNDE	22
MCP	174
MDP	10
MGODE	22
NCD	26
NDA	187
NSM	01
NUP	09
PFP	03
PTP	15
PPM	110
RP	112
UDF	164

**Key To Abbreviations**

AFORD	Alliance for Democracy
CONU	Congress for National Unity
MAFUNDE	Malawi Forum for Unity and Development
MCP	Malawi Congress Party
MDP	Malawi Democratic Party
MGODE	Movement for Genuine Democracy
NCD	New Congress for Democracy
NDA	National Democratic Alliance
NSM	National Solidarity Movement
NUP	National Unity Party
PFP	Pamodzi Freedom Party
PTM	People's Transformation Party
PPM	Peoples Progressive Movement
RP	Republican Party
UDF	United Democratic Front

**Table 11: The Presidential race**

Bingu Wa Mutharika	UDF, AFORD
Gwanda Chakwamba	GWIRIZANO Coalition
Brown Mpingangira	NDA
John Tembo	MCP
Justin Malewezi	Independnet

**AFORD:** Began as a pressure group during the transition period and registered as a political party. It was the only party in the northern region in the 1994 elections, sweeping all 33 seats. AFORD entered into an alliance with **MCP** during the 1999 elections, continuing with a firm grip in the north and slowly making inroads into other regions. However, the new coalition with the **UDF** and the split in the party on the third term bid has shaken the monopoly of the party in the north and generally reduced its credibility. However, looking at the positive side, it has now fielded 40 candidates, which is more than what it did during the past two elections.

**UDF:** The party started losing members to other existing parties and senior members formed their own new parties especially during the second term of the government, and more particularly in the wake of the third term debate. The imposition of the candidature of Dr. Bingu Mutharika as the next party President by Bakili Muluzi has left the party exposed and bereft of public respect and sympathy. Whether the money and muscle power of the party will

take it through this election remains to be seen. It is interesting to note that President Muluzi has taken up the new position of "Party Chairman" which was specially created for him in the wake of the failure of the third term bid. This theoretically places him above the State President, should the Presidential candidate secure victory at the polls. There will certainly be grounds for constitutional challenges through the courts if the UDF candidate does win in 2004. This will be on the premise that the State President is elected by national mandate, which supersedes and the party mandate is granted by a Convention to the Party Chairman. Thus the Chairman cannot control or dominate the State President. **MCP:** The prolonged leadership clash between the leaders of the two factions led by John Tembo and Gwanda Chakwamba finally concluded with the split of the Party into MCP under Tembo's leadership and the emergence of a new party called the Republican Party led by Gwanda Chakwamba. **NDA:** The Party is led by one of the former senior members of UDF who held several Cabinet positions and was one of the key movers of the Party. Lack of opportunity to nurture his ambition within the Party drove him to form his party with a good number of former UDF members. This

party poses competition to the UDF in the southern region which has been its stronghold in 1994 and 1999.

**PPM:** This Party consists of many prominent disgruntled members of the former ruling party. The party also has some prominent urban, educated elite amongst its membership.

**MAFUNDE, PETRA, MGOODE:** Small urban based parties which could secure a few seats in the Assembly. Of the three, MGOODE is the latest formed. MAFUNDE and PETRA were established at almost the same time in early 2003.

**Republican Party (RP)** The Party is probably the most recently formed in the wake of 2004 elections. Led By Gwanda Chakwamba, the party plays a critical role in the Mgwirizano Coalition and will be challenged in the manner in which it faces the forthcoming elections.

#### **The Ruling Parties' Coalition: The UDF and AFORD**

**AFORD** was in an electoral alliance with the MCP during the 1999 elections; it severed links with MCP and supported the UDF on the third term bid by Mr. Chakufwa Chihana standing solidly behind Muluzi. As stated earlier, the first attempt to amend the Constitution in order to extend the presidential term of office was tabled by an AFORD Member of Parliament. To cement this

renewal of alliance the two parties, UDF and AFORD signed a Memorandum of Understanding (MOU) early in 2004. The MOU gave the position of second Vice President to Chakufwa Chihana, President of AFORD. The two parties also agreed to jointly contest all the 193 constituencies. Upon electoral victory, the presidential appointments to Cabinet, foreign missions and all other similar positions will be done equitably through consultations with the AFORD President.

As a Party this is a come down for **AFORD** as it fielded a presidential candidate in 1994 and all the 33 constituencies in the north. Again in 1999 it fielded a candidate as the presidential running mate. This time it has been relegated to the position of a second Vice President.

#### **The Opposition Coalition Mgwirizano**

The victory of the opposition coalition in Kenya gave momentum to the opposition parties in Malawi as they had already started thinking along those lines. Eight parties were initially involved in the coalition. The talks were facilitated by three clergymen. The main challenge for the coalition was to identify a presidential candidate acceptable to all parties to the coalition. The Memorandum of Understanding (MOU) set

the criteria for choosing the presidential candidate and the running mate. It stated that the leader should be one with no past criminal record, law abiding, not corrupt, and should possess a degree. The memo said further that the candidate should be a "God fearing person", not power hungry, and without outstanding court cases. NDA and MCP declined to sign the MOU as they did not find the criteria acceptable and thus pulled out of the coalition. The membership of the coalition now stands at seven with the following parties: PPM, MAFUNDE, PETRA, MGOODE, RP, NUP, MDP, and RP. The withdrawal of MCP and NDA from the coalition is certainly a setback to the coalition. However, it has some very prominent leaders with longstanding experience, and noted individuals from different walks of life who have joined one party or the other of the coalition and are set to put up a brave front.

The role played by the clergy in facilitating the coalition has come under attack by the President and the UDF Party. The President has questioned the neutrality of the church which is openly working with the opposition in coming up with a candidate to challenge the UDF.

Interestingly, a women candidate aspired to run for the presidency under the coalition umbrella. She has been a democracy activist,

women's rights crusader and is well known in Malawi, Mrs. Vera Chirwa. Unfortunately her candidacy was turned down because she did not represent any party.

### **Party Primary Elections**

These elections shared the same features as 1999 and were violent and marred by gross irregularities. The changing of party loyalties by senior members of the party just before the primaries left the grassroots party activists confused and frustrated. Although a number of senior members of the UDF, including cabinet ministers, won in the primaries, a few prominent ones also lost.

Several senior members of the MCP lost, previously having served in Parliament for two consecutive terms. A number of reported casualties and a number of arrests followed the primaries. A number of aspirants (371 out of 1267) lost in the primaries and are now contesting as independent candidates. A number of cases have been filed in courts disputing the primary elections. The Courts have thus been dragged into primary elections as well.

The conduct of parties in the primaries left a lot to be desired in respect of democratic practices and norms.

### **Media**

Section 63 of the Parliamentary and Presidential Elections Act guarantees the right of every political party to have the substance of its campaign propaganda reported both on radio news broadcasts of the state owned Malawi Broadcasting Corporation (MBC) and in any newspaper in circulation in the country. The section, in its sub clauses, enumerates the ways in which this right of the parties may be exercised through the MBC. The Act also empowers the Electoral Commission to play a role in ensuring that Malawi Broadcasting Corporation provides a fair base for political competition. During the 1999 elections, the Malawi Broadcasting Corporation did not provide fair coverage of all the parties contesting the election (Article 19, 2000). Some individuals even successfully challenged the biased and one-sided coverage by the Malawi Broadcasting Corporation in the High Court (*Kafumba v The Electoral Commission*).

The continued domination by the ruling Party over the Malawi Broadcasting Corporation (MBC) and the lack of space for the opposition parties for their voice to be heard on air continues to be a burning issue. Civil society has been resorting to every possible tactic, from pleas, demands

and threats to the MBC, but the response has been far from positive. The Electoral Commission has been bombarded with demands to play a more vibrant role in levelling the playing field by opening up airwaves fairly.

The MEC established a Media Monitoring Unit in order to ascertain the degree of news balance being achieved by the country's media. Regular weekly reports are produced by the unit.

### **NATIONAL ELECTIONS CONSULTATIVE FORUM (NECOF)**

The need to build public trust and confidence on the MEC was imperative. There was an apparent need for consultation and transparency between the Commission and the stakeholders in the management and conduct of the electoral process. NECOF was formed to cater the above needs and to ensure that 2004 elections process will be transparent. The composition of NECOF is fairly inclusive. It includes all the major stakeholders. The role of the Forum is as follows:

- To serve as a consultative body for all major programmes and new initiatives by the MEC.
- The forum is to be responsible for managing the Code of Conduct for

political parties and candidates, the Media and accredited NGOs.

- To ensure development and fair dissemination of

Democracy and Voter Education programmes.

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