



# INTERNATIONAL COMMISSION OF JURISTS

*Parliamentary and Presidential Elections in Malawi*

*Report of the Team of Observers of the  
International Commission of Jurists  
April - May, 1994*

*Geneva, November 1994*

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FINAL REPORT OF THE ICJ MISSION TO MALAWI-PARLIAMENTARY  
AND PRESIDENTIAL ELECTIONS (APRIL - MAY, 1994)

(1) INTRODUCTION

The International Commission of Jurists, on behalf of the European Economic Community, commissioned a team of African experts to monitor the parliamentary and presidential elections in Malawi that took place on 17th May 1994. This mission was a follow up on an earlier mission of the ICJ that monitored the referendum conducted in June 1993 regarding the issue of whether or not Malawi would adopt a multiparty form of government.

When the people of Malawi opted for a multiparty form of government and multiparty elections were scheduled for May 1994, the ICJ sent two missions to monitor and observe the ensuing voter registration exercise.

During the earlier missions, ICJ observers, most of whom are part of the present, made their contribution in covering the referendum in 1993 and the registration of voters early this year and submitted to ICJ, Geneva, detailed reports on the two events in the democratisation process in Malawi. They performed their functions as members of the Joint International Observer Group which operated under the auspices of the United Nations Electoral Assistance Secretariat:

No effort has been made to reproduce the findings of those reports here.

(2) COMPOSITION OF THE OBSERVER GROUP:

The team of observers consisted of the following:

1. Judge Matar Diop of Dakar, Senegal.
2. Nutifafa Kuenyehia, legal practitioner, Accra, Ghana and President of the Ghana Bar Association.
3. Kathurima M'inoti, Advocate of the High Court of Kenya and Vice-Chairman, International Commission of Jurists (Kenya Section)
4. Githu Muigai, Advocate of the High Court of Kenya and Chairman, International Commission of Jurists (Kenya Section).
5. Christopher Mulei, Executive Director, International Commission of Jurists, (Kenya Section).
6. Livingstone Sewanyana, Executive Director, Foundation for Human Rights Initiative, Kampala, Uganda

7. Bacre Waly Ndiaye, Barrister, Member of the Council of Senegalese Bar Association.
8. Raymond Sock, Director, African Centre for Democracy and Human Rights Studies, Banjul, the Gambia.
9. Prisca Nyambe, Legal practitioner, Lusaka, Zambia.

(3) THE TERMS OF REFERENCE

The general terms of reference of the observer group were:-

To monitor the impartiality of the electoral authorities; the complete freedom of association, movement, assembly and expression of support of the alternative groups; verification that the voters polls are properly drawn up, that qualified voters are not denied identification and registration cards or the right to vote; to report to the electoral authorities on complaints, irregularities and interference reported or observed, if necessary requesting the electoral authorities to take action to resolve or rectify all activities related to the organization of the poll, and to prepare periodic reports on the fairness and freedom of the different stages of the electoral process.

The specific terms of the observer mission were:-

1. To evaluate the criteria for the appointment of electoral authorities at regional and provincial level, as well as the fairness of controversial actions or significant decisions at the national or provincial levels.
2. To establish regional contacts with social organisations at national and regional levels and carry out a programme of visits to districts and villages throughout the country.
3. To observe all important rallies and other relevant campaign activities.
4. To verify the observance by all sides of the stipulations of the electoral law and any codes of conduct that might have been agreed by the contenders or established by the electoral authorities.
5. To visit registration centres periodically and evaluate complaints received or irregularities observed.
6. To receive complaints and requests presented by the relevant social organisations, analyze their relevance, supply complementary information and transmit them to the electoral authorities and/or appropriate authorities.
7. To submit a final joint written report to the Secretary General of the International Commission of Jurists by 15th June 1994.

(4) THE ELECTORAL ADMINISTRATIVE FRAMEWORK

THE ELECTORAL COMMISSION

The Electoral Commission was established on the 15th of December 1993 under the Parliamentary and Presidential Elections Act 1993. Under the act the commission was to be appointed by the President on the advice of the National Consultative Council (a statutory transitional body consisting of seven of the eight registered political parties which acted as a quasi-parliament and monitored political/in the interim period prior to the holding of the /events general elections). What actually happened was that each of the political parties then formed, proposed a candidate for appointment to the Electoral Commission. The persons proposed by political parties were not necessarily members of those parties. Ultimately its membership was constituted as follows:

1. A.S.E. Msosa (Mrs) (Chairperson) - High Court judge, nominated by the National Consultative Council.
2. C.S. Chilingulo - Lawyer, nominated by AFORD.
3. J.M.E. Chipeta - Agriculturalist, nominated by MNDP.
4. C.S. Joyah - Surveyor, nominated by MDP
5. Prof. C.F. Kamlongera - Economist, nominated by MCP
6. R.J. Mhone - Lawyer, nominated by UDF.
7. M.D. Mwambetania - Economist, nominated by UFMD
8. I.W. Menyere - Teacher, nominated by MDU

The Commission was charged with the task of exercising general direction and supervision over the conduct of the Parliamentary and Presidential elections.

The Clerk to Parliament and all the officers subordinate to him are by law designated as election officers attached to the Commission. The Commission is further entitled to request any other public officer to be attached to the commission. In pursuance of the latter, all District Commissioners and Assistant District Commissioners have been designated as returning officers and deputy returning officers, respectively.

The specific mandate of the Commission that it is by law required to discharge covers the following:-

1. Determining the number of constituencies for purposes of the Parliamentary and Presidential Elections Act 1993.
2. Organizing and directing the registration of voters.
3. Devising and establishing voters registers and ballot papers
4. Printing, distributing and taking charge of ballot papers.
5. Approving and procuring ballot papers.

6. Establishing and operating polling stations.
7. Taking measures to ensure that the parliamentary and presidential elections are conducted in a free and fair manner.
8. Establishing security conditions necessary for the conduct of elections in accordance with the electoral law.
9. Promoting through the media and other appropriate and effective means the civic education of the citizens concerning the elections.
10. Ensuring compliance with the law and adopting measures necessary to guarantee that the elections are free and fair.

The law provides that in the discharge of its statutory functions the Commission must act independently of any person or organisation or any public officer, body of government, political party, or any candidate whatsoever. The Commission is nonetheless under an obligation to report to the President in terms of its overall mandate.

In the conduct of the election the Commission has shown great independence and fairness. In cases where the Commission has been ineffectual this has been largely due to the limitations inherent in its mandate and the scarcity of resources human and material at its disposal.

#### (5) REVIEW OF CONSTITUENCIES

In January 1994 the Electoral Commission toured the whole country and considered the number of constituencies then existing and the boundaries thereof. As a result of the survey conducted by the commission it recommended that the number of constituencies in the country be increased from the then 141 to 177. This was duly approved by Parliament on 11th February 1994. Except for a few concerns raised by the MCP and the UDF about boundary disputes in Nkhata-Bay and Zomba districts, there appears to have been no major problems arising from this exercise and most parties considered the exercise fair.

Some critics however felt that the constituencies were based on census data, which data was based on residence as opposed to place of work, which is a better guide to where voting is likely to occur.

#### (6) VOTER REGISTRATION

The registration of voters commenced on 21st February 1994 and was to end on 12th March, a date which was extended to 26th March 1994 due to the low turnout. A total of 3,775,256 persons registered as voters. This figure was roughly equivalent to the real registration figure for last years' Referendum and represented some 80% of the projected voter population.

The population of Malawi is estimated as at 10 million.

A number of problems arose during the voter registration exercise. These were:

Low voter registration turn out. This was attributed to a number of factors.

- (a) Initially there were a number of administrative problems that attended the registration process such as the lack of transfer certificates and lack of plastic envelopes at a number of centres.
- (b) Whereas many of the people involved in the registration process were teachers and had already some experience with the referendum, it was still clear that there had been no proper training. In fact no manual or handbook had been prepared to guide the registration officers.
- (c) There was a slow start in the civic education programme. It was felt that had the voter education programme taken off earlier the number of persons registering as voters would have been significantly more.
- (d) There were allegations of intimidation, harassment and bribery of potential voters by traditional leaders (Chiefs and Headmen) acting at the behest of the MCP.

In a number of cases the chiefs were used as "monitors" by MCP. Government Ministers and Members of Parliament allegedly misused their offices. It was claimed that a number of them manipulated the civil servants and civil service apparatus in their endeavour to foment intimidation and harassment.

- (e) Where voters had already registered, there were reported cases of voter certificates being confiscated by traditional leaders. In some other cases it was reported that some registered voters had been forced to sell their voter certificates.
- (f) There were reports of the use of "Nyau dancers" to intimidate potential voters. These dancers are part of the rich cultural life of the people of Cenral Region of Malawi and are present in a number of festivities. In almost all instances they are armed with spears and machetes. In view of the fact that they wear masks, and generally look fearsome, they have potential for instilling fear if used for nefarious purposes like attacks and threats.

The reports received by observers pointed an accusing finger at MCP.

- (g) There was the very controversial order of the Inspector General of Police prohibiting the registration of Police Officers as voters. Although this order was declared illegal by the Electoral Commission, the damage had already been done and there was very little evidence thereafter that the members of the Police Force were registering despite special arrangements by the Electoral Commission for them to register after the official close of the registration exercise.

Coupled with the problem of the Police Force was the problem of the armed forces. The Ministry of Defence initially took the view that the registration of soldiers was inconsistent with their terms of service. Although this issue was finally resolved between the Electoral Commission and the Ministry of Defence, again it was too late and thereafter there was little evidence that there was any significant registration thereafter.

- (h) There were reports that a number of persons refused to register until the government provided them with famine relief maize as had allegedly been promised.

It is fair however to point out that on the whole the Electoral Commission dealt with all reported cases of malpractices firmly and decisively, where practicable. For example, the Commission dismissed election officials in Thyolo, Blantyre and Lilongwe who were implicated in registration malpractices. The Commission also issued strong public statements warning perpetrators of violence and intimidation and intervened on the issue of the use of traditional rulers for partisan political activities and the registration of members of the armed forces. By election day three chiefs had been charged in various courts with election related offences.

The Commission nevertheless felt frustrated in that as the elections neared, most of those people who had been reported as having violated the electoral law had not been prosecuted. The Commission had engaged the services of private lawyers to follow up cases of electoral malpractices but only a few of the culprits were actually prosecuted. Thus the electoral body watched helplessly waiting for police response even with regard to those cases which it deemed straightforward.

(7) THE PARTY NOMINATION PROCESS

The Electoral Commission had set the 25th of March as the day on which the candidates nominated by the political parties would present their nominations to the returning officers. Whereas the Commission communicated to the National Consultative Council and all the parties two months prior to the said date, and even had the date published in the official gazette, it wasn't possible to have all nominations on time. The NCC requested the Commission to delay the printing of the nomination papers as certain amendments to the election law were pending.

The last-minute availability of nomination papers caused some hardship to some candidates and their parties. For example, the presidential candidates got only 48 hours to present their nomination papers which needed 10 signatures from each district! Consequently, and much to its credit, the Commission was forced to accept nominations after the appointed day.

(8) CIVIC EDUCATION

The Electoral Commission commenced its civic education programme on 13 January 1994. The main effort was concentrated on the Malawi Broadcasting Corporation which dedicated 19 hours of air time. Channel Africa in South Africa also broadcast civic education material sent in by the Electoral Commission. These programmes were in English and Chichewa, one of the major local languages in Malawi.

It is estimated that 70% of the adult population in the country own radios. However, it was a shortcoming that the broadcasts were not in the other languages spoken in Malawi such as Yao in the South and Tumbuka in the North.

The Electoral Commission also conducted civic education programmes in Zomba (Southern Region), Salima (Central Region) and Mzuzu (Northern Region).

Much later in April trainers from the United Nations Electoral Assistance Secretariat and from the Public Affairs Committee General Elections Monitoring (PACGEM) joined the civic education effort with the publication of posters and the holding of training sessions nationwide.

On the eve of the elections the Electoral Commission held one day mock voting demonstrations which were capped by popular song, folklore and poetry.

There were however, a number of problems associated with the Commissions' civic education project and the overall civic education programme. These were as outlined hereinbelow:

- (a) The entire project failed to take off early enough. With the election in May, the four months were too short in which to do effective job in a country where illiteracy levels are high. But even then the project was slow to start and it was not until March that effective work began.
- (b) The Commission did not adopt an integrated programme of civic education, preferring to commence with voter registration first. As a result it was felt that the impetus had been lost.
- (c) The distribution of civic education materials such as posters and handbills was delayed for some time thereby slowing down the effort.
- (d) The training totally failed to take off in a number of places whereas in places where it took place the same was hurriedly done without regard to the novelty of the procedures for those involved.
- (e) The Commission failed to integrate the efforts of the United Nations Electoral Assistance Secretariat and the other non-governmental organisations into its civic education programme in time. When for example the religious organisations were brought in at the last minute to support the call for registration of voters, the number of persons registering increased dramatically.

Not only was the training of the electorate inadequate but the training of the trainers and of the election officials was not as comprehensive as would have been preferred.

It was felt that most donors eager to support institutional capacity building concentrated on funding the National Consultative Council (NCC) and the Electoral Commission (EC). The funding available to non-governmental organisations for civic education was very little and came too late.

The role of the print media in promoting civic education left a lot to be desired. True the various newspapers (or more correctly broadsheets in respect of most of them) carried civic education materials from the Electoral Commission. However, the papers were by and large preoccupied with carrying opinion pieces aimed at character assassination with little concern for solid news items and professionalism. Little attempt, if any, was made on enlightening the readers of the pressing issues of the day and the aspects and challenges of the democratisation process.

(9) THE POLITICAL PARTIES

There are eight registered political parties in Malawi which participated in the elections. These are:

1. AFORD.....Alliance for Democracy.
2. CSR.....Congress for the Second Republic of Malawi.
3. MCP.....Malawi Congress Party
4. MDP.....Malawi Democratic Party
5. MDU.....Malawi Democratic Union.
6. MNDP.....Malawi National Democratic Party.
7. UDF.....United Democratic Front
8. UFMD.....United Front for Multiparty Democracy.

From the start the election fight was a straight one between the MCP, the UDF and the AFORD.

In March the UDF entered into a coalition agreement with a number of smaller parties, namely, the Congress for the Second Republic (CSR), the United Front for Multiparty Democracy (UFMD) and the Malawi Democratic Union (MDU). Under this agreement the parties would support only one presidential candidate and would try to support the same candidates for the Parliamentary elections.

(10) PRESIDENTIAL ELECTIONS CANDIDATES

The following candidates were nominated by their respective parties to contest the post of State President.

1. Dr. Kamuzu Banda .... (MCP) - Medical Doctor, officially 88 years old (believed to be in his 90's). First President of the Republic of Malawi.

2. Mr. Bakili Muluzi ..... (UDF) - Businessman, 51 years old. Former Secretary General of MCP and Minister in Malawi Government.
3. Mr. Chakufwa Chihana....(AFORD) - Trade unionist. 55 years old. Founder leader of AFORD.
4. Mr. Kamlepo Kalua...(MDP) - Former broadcaster with Radio Channel Africa, 36 years old. Founding member of MDP.
5. Mr. Timothy Mangwazu....(MNDP) - Former Diplomat, 61 years old.

A week before the election Mr. Mangwazu announced that he was stepping down in favour of Mr. Muluzi. Mr. Mangwazu's withdrawal came too late to have his name and symbol removed from the ballot box on the polling day. Accordingly, effectively there were only four presidential candidates.

The fight for the presidency was however a straight fight between Dr. Kamuzu Banda of MCP, Mr. Bakili Muluzi of UDF, and Mr. Chakufwa Chihana of AFORD.

(11) PARLIAMENTARY ELECTIONS CANDIDATES

There are 177 constituencies in Malawi. Below is an analysis of the manner in which the parties fielded candidates for the parliamentary seats.

1. MCP.....	177
2. UDF.....	177
3. AFORD.....	162
4. UFMD.....	35
5. MDP.....	30
6. MNDP.....	11
7. CSR.....	6
8. MDU.....	2

(12) THE CAMPAIGN

Members of the ICJ Mission observed the election campaign by all the contesting parties in the three regions of Malawi.

With a number of the repressive laws curtailing the freedoms of expression, association and assembly having been repealed, the various political parties were able to hold and address campaign rallies without let or hindrance which characterised the Referendum. Many of the rallies drew large crowds and the atmosphere was electrifying and a carnival affair. However, there were advertised public meetings where the chief speakers did not turn up at all or which did not take place at all.

The campaigns did not, by and large, address substantive issues on policy programmes and good governance but were rather more tilted to the personalisation of issues which was characterised by vilification of political opponents. Accordingly, such political rallies did not play a significant role, as they ought to have, in enhancing the level of civic education.

This situation was clearly inimical to the spirit and letter of the Code of Conduct issued under the Parliamentary and Presidential Elections Act by the Electoral Commission. The Code prohibits, amongst other things, the "use of language which is inflammatory, defamatory or insulting or which constitutes incitement to public disorder, insurrection, hate, violence or war when campaigning" or the disruption or frustration of campaign efforts of other political parties.

The Code exhorts the political parties to, *inter alia*, "organise and conduct their campaigns in a manner and spirit that will promote a congenial and peaceful atmosphere throughout the election process;" and to comply with the electoral laws and regulations currently in force.

From all accounts, departure from the stipulated Code rather than its adherence, was more often than not the norm.

#### REPORTED IRREGULARITIES

The political campaigns by the various parties brought out a number of problems which were also evident during the Referendum and the registration exercise.

Various irregularities were reported but not all of them could stand serious scrutiny. Those discussed below are the ones which could reasonably be followed up.

##### (1) Campaign Violence

The incidents of campaign violence were both comparatively few and less severe. Those reported were almost exclusively between MCP and UDF supporters. Not unexpectedly each party blamed the other for the violence. The minor parties appear not to have been involved at all neither was AFORD, although there were some reports - quite few in number of the latter party's share in campaign violence.

The violence took the form of stone throwing. People, vehicles and shops were affected. Most of the violence occurred just prior to or soon after a campaign meeting.

There are numerous reports of opposition campaign meetings, particularly those of the UDF, being disrupted by MCP supporters and sympathizers. There were also complaints from MCP about what was described as "bad and provocative language" used by UDF campaigners.

Opposition parties complained that the MCP was unfairly depicting a post-election Malawi in which if did not win the election, there would be the spectre of violence and civil war.

(2) Purchase of Voter Certificates

There were several allegations that voter certificates were being purchased by agents of the political parties in areas where they had weak support for the purpose of destroying them. The UDF claimed that this was being done by the MCP while the latter responded that those buying votes were UDF agents dressed as MCP supporters.

It was very difficult to verify these allegations. Where the headquarters of the parties were very convinced that this was going on, investigations by the observers in the districts and villages yielded no hard evidence.

(3) Impounding of Voter Certificates

In a number of districts reports were made that voter certificates had been impounded by chiefs on the instructions of the MCP. In some of the complaints it was alleged that the chiefs told the people that the certificates were needed for safe keeping. In some cases it was alleged that school headmasters (who were Electoral Commission Officers) demanded voter certificates allegedly to send them to the district commissioners for verification.

It was not possible to get to the bottom of these allegations as all those district commissioners and chiefs interviewed denied any knowledge of such activities.

The Electoral Commission did however broadcast appeals to all those who had their certificates taken from them under whatever circumstances to obtain new ones before polling day.

(4) Intimidation of Voters by "Nyau Dancers"

We received numerous complaints from across the country that the "Nyau" dancers were being used to intimidate voters and disrupt campaign meetings. Most of the complaints suggested that the major culprit in this regard was the MCP. Our investigations showed that even opposition parties used "Nyau dancers" in their campaign meetings, but the use of them to intimidate and disrupt meetings was on the whole the preserve of the MCP.

In a number of isolated cases a number of "Nyau dancers" were arrested by the Police and were prosecuted in the traditional courts and fined.

(5) Manipulation and Intimidation of Traditional Leaders and Civil Servants

We received numerous complaints that the traditional leaders in many districts were very hostile to the opposition. Some of the District Commissioners we interviewed conceded this point but attributed it to the fact that the chiefs and the MCP have had a 30-year very close working relationship.

MCP officials admitted this situation as well but attributed it to the fact that the chiefs did not like the "bad language" and the violence that attended opposition meetings.

In one case that was very thoroughly investigated, a woman chief was severely threatened and intimidated by MCP functionaries because her son was running for election on an AFORD ticket. We formed the impression that a number of other chiefs we spoke to felt they owed their jobs to the MCP and felt obliged to support it and its candidates.

We found little evidence that the district commissioners and their assistants were in the same situation as the chiefs. In most cases they came across as fairly neutral, independent and professional.

The Police were a source of numerous complaints. Perhaps no other single institution was singled out for criticism as was the Police Force. Most critics felt that the Police Force was lethargic and ineffectual. Its response to complaints left much to be desired and left the impression that either the Police didn't care or they condoned the breaches of law brought to their attention.

(6) The Preferential Distribution of Famine Relief Food

In a number of districts we received complaints that famine relief food was being used by the MCP, which posed as the source of the food, to intimidate villagers perceived to be sympathetic to the opposition. In some places it was alleged that villagers waiting in queues for relief food were forcefully removed on the basis that they were opposition sympathizers. However in other places where we raised this issue we were informed that the problem did not exist.

These allegations were most difficult to verify. When we spoke to the District Commissioners they denied that the distribution of relief food was undertaken by any political parties or any politicians. The District Commissioners insisted that the distribution of relief food was exclusively from their offices.

(7) The problem of the Malawi Young Pioneers (MYP) and alleged Discovery of Caches of Arms

Since the disbanding of the Malawi Young Pioneers (MYP) and their forceful removal from their previous quarters by the Malawi Army, Malawi has lived under the shadow of rumours relating to the MYP. In some places we received reports by villagers that they thought that the MYP were hiding somewhere waiting to disrupt the peace. Most seemed to believe that they were in Mozambique waiting to return by force if they did not approve the results of the elections.

There were a number of well publicized incidents in which hidden caches of arms were recovered by the Malawi Army. This went to creating an air of uncertainty before and during the elections.

(13) THE ACCESS OF THE PARTIES TO THE MASS MEDIA

It is estimated that 60% of Malawians are illiterate and that 75% of the people live in the rural areas. The primary tool of communications is the radio (Malawi has no television although cable television is available to a small affluent urban community). The only radio station is the government-owned Malawi Broadcasting Corporation (MBC). The major news gathering instrument in the country is the government-owned Malawi News Agency (MANA). Initially the MBC made no attempt to give fair and balanced coverage to the contending parties.

During the Referendum last year, the MBC did not maintain independence and impartiality in reporting the news of the campaign period. Progress was however made over time and by the time the general elections were conducted all the political parties were accorded equal air time mainly due to the unbending insistence by the Electoral Commission that this should be done.

During the campaign period ARTICLE 19 (The International Centre Against Censorship) conducted a very close monitoring of the operations of both MANA and MBC. Its conclusions were as follows:-

1. MANA's reporting lacked uniformity, independence and depth.
2. Many of the hourly newscasts on MBC continued to present a mixture of foreign political news and "soft" local news.
3. While MBC offered a wide variety of civic education programmes, only infrequently did it cover domestic political and campaign events as news.

We were also able to establish through our own research that after the campaign period was over the MBC permitted Dr. Banda to make a 45 minute campaign speech. To the Electoral Commission's credit, an offer was made to other parties to avail themselves of the same time. UDF did whilst AFORD declined.

ARTICLE 19 findings indicate that on the whole there remained in both MANA and MBC a very clear bias in favour of the MCP. It is not possible however to establish how much this affected the campaign of the other political parties. It is probably true to say that whereas the coverage was less than fair the opposition nonetheless got a real opportunity albeit unequal to air their views.

The "independent media" could not be said to have been independent in any way as it was very partisan in favour of the political parties financing them or which they sympathized with. Parties without newspaper backing complained that they were seriously disadvantaged and complained that this was as serious discrimination as by the official media.

(14) THE CONDUCT OF THE ELECTION ON POLLING DAY

The ICJ observers were deployed throughout the three regions of Malawi and were part of the Joint International Observer Group which operated under the auspices of the United Nations Electoral Assistance Secretariat. This involved the participation of over 300 observers from 40 countries to observe Malawi's Parliamentary and Presidential elections on 17th May, 1994. The coverage was 50 per cent of the total number of 2,451 polling centres.

Six members of the ICJ Mission were Senior District Observers. These/Messrs Bacre Waly Ndiaye (Chitipa District, Northern Region); /we Nutifafa Kuenyehia (Mchinji District, Central Region); Kathurima M'Inoti (Chiradzulu District, Southern Region); Christopher Mulei (Mzimba District, Northern Region) Raymond Sock (Kasungu District, Central Region); and Matar Diop (Machinga District, Southern Region)

Ms Prisca Nyambe and Mr. Githu Muigai were deployed in Lilongwe District (Central Region) and Mr. Livingstone Sewanyana in Mzimba District (Northern Region).

(15) THE POLL

The polling on 17th May, 1994 was peaceful and incident-free throughout the country. At virtually all the polling stations, people had gathered in rediness to cast their votes some hours before the official time. This no doubt indicated the great interest by the Malawi people in the electoral process and the democratisation process this engendered, a fact which is borne out by the high turnout of registered voters.

Although campaigning had officially ended 48 hours before the poll, the polling day was far from being sombre - it was full of excitement and anticipation. At the same time the day was marked by disciplined behaviour orderlines and patience.

The following is an itemisation of important aspects of the poll:

(1) Opening time

Polling centres opened right on time, that is 6.00 a.m., and virtually in all of them the polling staff spent the night there. There were a few centres which opened between a quarter to half an hour late but this was mainly due to lateness of some party representatives or monitors, or due to darkness in buildings whose location was such as not to let in the dawn light.

(2) Administrative Efficiency

Overall the performance of the polling staff was admirably exemplary. The election officials performed their duties with a high degree of assiduity and commitment and were endowed with intuitive adeptness to improvise where there were administrative bottlenecks of one type or another.

The innovative way in which most presiding officers planned the lay-out of their polling stations merits singling out.

Each polling station (polling centres with more than one thousand registered voters had more than one polling station or "stream") was allocated 12 polling clerks with a presiding officer assisted by a Supervisor.

The clerical staff, under the able stewardship of the senior polling staff, seemed conversant with their duties and responsibilities and discharged these to the best of their ability. The onerous task of explaining to the largely illiterate voters about voting procedures was carried out with unflagging zeal and determination throughout the day.

(3) Adherence to the Electoral Law and Procedures

Conscientious determination to adhere to the electoral law and procedures was evident at the centres visited. The presiding officers had the training manual at hand and they would refer to this in case of doubt, and would also seek guidance from observers and domestic monitors. (Strictly speaking, international observation does not include interference in or assistance to the electoral process).

There was no intention on the part of the election officials to flaw the electoral process and mistakes which might have been made were not actuated by bad faith.

(4) Role of Party Representatives and other Domestic Monitors

There were party representatives at all the polling stations visited and it is safe to assume that this was the case in the centres not covered by international observers.

These representatives performed their functions qua monitors efficiently and efficaciously, and as required by the electoral law, they did this "conscientiously and objectively".

The party representatives were joined by other domestic monitors (whose coverage of polling centres was however not nationwide), that is election representatives (candidates' representatives) and representatives from Public Affairs General Elections Monitoring (PACGEM) which is an umbrella body or religious organisations in Malawi dedicated to the promotion of civic education in the country.

(5) Supply of Election Materials

All the basic materials were supplied in adequate quantities and in time although there were some stations, especially in some districts in the Northern Region which were not supplied with the official Record and Summary forms. The affected centres had to make do with improvisation.

There were also centres which lacked sufficient supply of booths although improvisation lessened the magnitude of the problem.

(6) Security Detail

Security was adequate within the precincts of polling centres but there were some centres which did not have anybody from the security forces so that ushers from the clerical polling staff undertook the role of marshals in controlling the crowd.

The security supplied consisted of one person from either the Police or the armed forces and the assigned task involved escorting the election materials from the District Commissioner's office to the polling centres and back.

(7) Campaigning within the Precincts of Polling Centres

There was no reported case of campaigning within the precincts of polling centres and observers were impressed by the absence of campaign materials including T-Shirts and caps.

There were few cases where vehicles bearing the name of the ruling party, the Malawi Congress Party were detected at polling centres but the occupants were asked by the polling stations to leave immediately.

There were no reported cases of intimidation or undue influence during polling.

(8) The Role of the District Commissioners

The District Commissioners, who were the agents of the Electoral Commission, carried out this daunting task with unflinching dedication - working for long hours at a stretch to ensure that everything was in place before and during the polling.

The logistical aspects were particularly challenging especially in the large districts - supplying election materials and equipment to every polling centre even in the remote rural parts of the country. In cases where some materials had not been supplied or had got finished during the polling, these were expeditiously despatched depending on the distance covered and other logistical considerations.

SHORTCOMINGS AND ANOMALIES

The poll was beset by some shortcomings and anomalies although these were not major as to significantly affect the electoral process. These were as outlined hereunder:

(1) The Complexity of the Voting Procedure

The voting procedure was quite complex in a number of ways. First the ballot paper contained a number of stamp-look portions bearing the name of each candidate and the symbol of the political party sponsoring him or her. In the case of presidential candidates, their photographs were also printed on the ballot paper.

Although this format was quite confusing, and rather bewildering, to the voters, a situation which necessitated a lot of explaining of the procedure by the polling clerks, the procedure nevertheless helped the illiterate voters to recognize the party or candidate for whom they wished to vote. This enabled them to vote in secrecy and in dignity although for some voters especially the elderly - the presiding officer had still to assist in detaching that section of the ballot paper they wished to cast as their ballot. There is strictly no provision under the electoral law for such assistance by the presiding officer on the basis of illiteracy per.se. However, there is a provision that in the case of a voter with any physical disability that incapacitates him/her from individually casting his/her vote, a person of the voters' choice shall be allowed to assist the voter. If no such person is available, the Presiding Officer may assist the voter, in absolute secrecy.

In both cases, the presiding officer provided assistance in the casting of the vote as a matter of course. Whilst not casting aspersion on the presiding officers in compromising the right to freely cast one's vote, this possibility cannot be ruled out.

The electoral law states that a voter must place one ballot paper, for the chosen candidate, in the small envelope provided, and seal the envelope inside the booth. This involved two separate ballot papers and two separate envelopes, that is one set for the parliamentary election, and another for the presidential election.

Most of the voters, especially the rural folk, found the procedure too demanding and it was not unusual to see a voter emerging from the booth holding the ballot and the envelope separately. This is probably not surprising bearing in mind that some of the voters were not familiar with using an envelope.

The total number of null and void votes was over 2% of the votes cast.

Then there was the use of the discard box wherein voters had to insert those portions on the ballot paper relating candidates whom they did not wish to vote for. To start with, the discard box was an expensively produced plastic box which could easily be mistaken by an ordinary voter for a ballot box. To compound the confounding situation, the discard box contained two slits-which made it possible for a voter to put the ballot paper through one slit and the other discarded portions of the ballot paper through the other. Others would simply leave the discarded papers strewn on the floor of the booth. Some presiding officers used their ingenuity and sealed off one of the slits.

It is estimated by the Joint International Observer Group that a number of voters - perhaps over 1% of the electorate - wasted their vote by placing it in the discard box in error.

According to the electoral law, ballots placed into the discard box are ipso facto null and void in that the discard box is not the ballot box and that further the presiding officers are required to ensure that the contents of the discard boxes are destroyed before the counting commences. There is no stipulation that the presiding officer should scrutinise whether there are sealed ballots into the discard box with a view to preserving them for counting purposes.

However, the Electoral Commission did in the course of the polling day issue a directive that those sealed envelopes found in discard boxes were to be deemed as votes validly cast. This instruction did not reach many a centre owing to communications problems and it is doubtful whether it had in fact had a legal basis.

It is however important to note that the discard box concept is not necessarily unworkable, it can be improved upon by reverting to a cardboard box or even introducing a sack as an alternative.

## (2) Voting Under Age

In a number of stations, observers saw young persons looking very much under age, that is under the voting age of 18.

Presiding officers allowed such persons to vote as they had valid certificates of registration and that in any event the electoral law did not offer guidance in the matter.

This is an issue which goes back to registration exercise which took place between 21st February and 26th March, 1994. The first interim report on the registration process did raise this concern but what was not fully established then, and on the polling day itself, was whether there was political involvement or role in enabling under age persons to register as voters.

## (3) Understaffing of Polling Staff

There were a number of polling centres which did not have the full complement of election officials. This meant delays in the polling exercise and the involvement of domestic monitors in polling functions which should not have been the position. Some quick thinking presiding officers employed additional staff on the spot in order to ease the exercise, a course of action which most probably exceeded their powers.

(4) Delays in Polling

There were delays at some centres in dealing with the long queues of voters. This was mainly because of the failure of some presiding officers to design the lay-out of their polling stations properly or the inability to have in place effective crowd control. The other contributing factor was the use of only one booth (instead of two, one for the parliamentary election, and the other for presidential election) because of inadequate supply of booths.

(5) Processing of Certificates of Registration and Voters' Registers

There was uncertainty at times on how to handle certificates of registration whose holders did not appear in the voters' registers. There were also cases whereby eligible voters came to a polling station to cast their votes but only to be turned away for the reason that "they had already voted".

(6) Size and Security of Ballot Boxes

The size of the ballot boxes was quite small and envelopes had to be continuously stuck in to accommodate more ballots. The boxes also lacked adequate security precautions as there was only a simple key to the box which was in possession of the presiding officer. Though the danger of tampering with the ballot box was minimised by the transparent way in which the polling and counting were carried out, the possibility - in future elections, of somebody being able to have access to the ballot box, especially in the counting hall when the polling officials are out burning the contents in the discard box cannot be ruled out.

(16) THE COUNT

The closing of the poll was done right on time, that is 6.00 p.m., and so did the start of the counting exercise. The exercise was transparent and carried out conscientiously but there were a number of flaws although this did not materially affect the outcome of the count. The net result was the long delays occasioned in the counting of the votes wherein it could take anything from three to five hours to count less than a thousand votes.

The following were the shortcomings and/or anomalies:

(1) Inherent problems in the Counting Procedure

The counting procedure - involving the burning of the contents in the discard box and the opening of the envelopes accompanied by the shouting out by the presiding officer of the /candidate named in each ballot paper - was /name of exceedingly time consuming. This was exacerbated by the use of /skeleton counting staff in some centres.<sup>a</sup>

The handling of null and void votes was not uniform, and was in any event muddled up. A vote is considered "null", amongst other things, if the ballot paper is found loose inside the ballot box whilst a vote is deemed "void" when the envelope is empty. There is all the possibility that the loose ballot and the empty/might be related at the opening of the /envelopes ballot box.

(2) Lack of adequate lighting

The single lantern and the single fluorescent torch were obviously inadequate and this clearly slowed the counting exercise.

(3) The Completion of the end of the Count Forms

The completion of end of the count forms took too long as these forms were too many. This made the counting exercise an onerous task.

(17) THE RESULT

The turnout was over 80% of registered voters. The national results released by the Electoral Commission show that in parliamentary elections, the United Democratic Front garnered 84 seats, MCP 55 seats and AFORD 36 seats. In the presidential elections Mr Bakili Muluzi of UDF won by obtaining 1,404,754 votes (that is 47.16% of the votes cast) followed by Dr Kamuzu Banda of MCP with 997,353 votes (33.45%), Mr Chakufwa Chihana of AFORD 562,862 votes (18.90%), and Mr Kamlepo Kalua of MDP with 15,624 votes (0.52%).

Parliamentary results in the North and South-West Constituencies in Nsanje District, Southern Region, were nullified by the Electoral Commission because of serious electoral malpractices. Result figures kept by the Monitors differed from those transmitted to the Electoral Commission, some ballot papers and counterfoils were missing together with the official summary of the tally results. Fresh elections are to be held in the two Constituencies.

Most of the District Commissioners throughout the country had set spacious halls where results were received from the polling centres and announced. There were usually display boards where the verified results were posted. These officials were quite cooperative, and it is, indeed, because of their assistance that observers were able to relay the results to the Joint International Observer Group "operations room" in Lilongwe, the Malawian capital.

(18) TRANSITION TO DEMOCRACY

The results of Malawi's parliamentary and presidential elections marked a further step towards genuine democracy and the death knell of a monolithic system of government which had been in existence since Malawi became a Republic on 6th July, 1964.

Of course elections do not mean the achievement of democracy; it is what the government voted into power does which ensures this is attained through good governance.

The then incumbent President Dr Kamuzu Banda, graciously conceded defeat on the national radio one day after the poll during which provisional results showed the United Democratic Front had won both the Parliamentary and Presidential elections. Dr Banda congratulated Mr Bakili Muluzi for his victory and assured him of his support and that of the Malawi Congress Party in building a new democratic Malawi.

On 16th May, 1994, the out-going MCP Parliament approved a transitional constitution which came into effect on the midnight of 17th May, that is on the eve of the parliamentary and presidential elections. It had been drafted by the National Consultative Council after two constitutional conferences and a number of meetings of this temporary quasi-parliamentary body.

The new constitution, albeit poorly drafted and unnecessarily wordy from a constitutional Lawyer's point of view, creates an interim legal and constitutional framework for pluralistic politics. It contains a Bill of Rights and puts stress on social, economic and cultural rights and provides for the abrogation of repressive laws such as the law sanctioning detention without trial. It also provides for the abolition of the death sentence.

The ICJ Mission to Malawi was in the country when the debate on the draft constitution was going on and some of the members were able to meet the representatives of the Law Society of Malawi and Legal Resources Centre as well as the out-going Attorney-General and Minister for Justice. It was during these discussions, as well as in others with other interested groups that the Mission was enabled to get "the feel" of the Constitution and to identify areas in which the International Commission of Jurists can render assistance in improving upon the new constitution which has an incubation period of one year. It is during this period that the supreme law will be subjected to public debate throughout the country so that it could be tailored to the wishes of the people of Malawi. This was not possible during the election period as more concentration was placed on politicking and recruitment of members into various political parties.

For democracy to take firm root in the country it will be necessary to encourage the establishment of additional civil institutions such as trade unions, peasant organisations, student organisations, women organisations, and so forth. The ICJ Mission underlined this point when it met representatives of a number of pressure groups which, in addition to the Law Society of Malawi and the Legal Resources Centre, included religious organisations, PACGEM, and the National Consultative Council.

## (19) CONCLUSIONS AND RECOMMENDATIONS

(a) CONCLUSIONS

- (1) The parliamentary and presidential elections, which were generally free and fair, reflected the will of the people of Malawi in choosing leaders of their choice. On their part, the International Observers were unanimously satisfied that the election results reflected and expressed the wishes of the Malawian electorate on the polling day.

The credit for the calm and orderly elections just concluded goes first and foremost to the Malawian people who made this possible. Additionally, their hospitality, warmth and kindness made International Observation easier and, indeed, a pleasant duty, a situation of which we are appreciative.

- (2) The Electoral Commission performed a sterling job in ensuring that the electoral process was a success. Its steadfast independence and impartiality earned it great respect and this no doubt engendered confidence by the Malawian people in the statutory body.

The Commission's tenure of office comes to an end one month after the elections but it is understood that the electoral body has asked for an extension of its operations so as to put in place electoral policy framework and guidelines for the future.

The members of the Electoral Commission have also underlined the need to establish a permanent independent electoral body to prepare future elections and to attend to such matters as continuous civic education and a comprehensive review of the electoral procedures as well as constituency boundaries.

- (3) The professional and committed way in which election officials in the field performed their duties made it possible for the Electoral Commission to realize its objectives.
- (4) The domestic monitors performed a very useful role as a watchdog of the electoral process at all the stages - the registration exercise, the poll and the count. Their presence and zest in scrutinising the elections had a significant impact in ensuring fair play.
- (5) The tempo of civic education was not as it ought to have been but there is no going over the fact that it had some impact throughout the country. In particular, the role of the Electoral Commission in effect directing the publicly-owned Malawi Broadcasting Corporation to allocate equal air time to all the political parties during the period was significantly positive.
- (6) The authentication of certificates of eligible voters remains unsatisfactory as there is no national system of identification.

The original voters' registers were rudimentary—there were no typed out copies and neither were the registers consolidated at district and national levels.

- (7) The Code of Conduct for political parties by the Electoral Commission was often breached by the main players in the political drama which characterised the electoral campaigns. Had the code been adhered to, there would not have been so much mudslinging among the political parties and there would have been more emphasis placed on substantive issues of policy and political orientation.
- (8) The election results portrayed ethnic factor in the distribution of votes cast—with UDF having as its major stronghold in the South where the Yao live, MCP in Central Region where the Chewa live, and AFORD in the Northern Region where the Tumbuka and the Tonga live.

#### RECOMMENDATIONS

- (1) That there is need to simplify the electoral procedures. This can be achieved by reviewing the electoral system but without watering down the safeguards of the secrecy of the ballot which characterise the present one.
- (2) That civic education should be a continuous exercise and an undertaking of all concerned, not just the non-governmental organizations and the Electoral Commission; the government has also its role to play. Particularly important in this regard is the drive towards the eradication of illiteracy. Civic education should also be aimed at diminishing the ethnic factor which was evident in the voting pattern.
- (3) That in order to consolidate the experience gained in conducting and supervising the elections, it is necessary to establish a permanent independent Electoral Commission.
- (4) That as earlier recommended, it is necessary to introduce the issuance of national identity cards (with photographs) for those who have attained the age of 18 years which is the voting age.
- (5) That in order to consolidate the gains of the democratic process, it will be necessary to encourage and facilitate the formation of viable civil institutions to protect and promote human rights, democracy and the Rule of Law. Such civil institution would include human rights groups, trade unions, student organisations, peasant organisations and other forms of popular organisations. In this regard, the strengthening of the Law Society of Malawi as a proponent of the maintenance of the Rule of Law in the country will be crucially important.

- (6) That the new Constitution be subjected to nationwide debate and views of the people sought. It is very important to ensure that this debate will lead to the strengthening of the Rule of Law- the independence of the Judiciary, a strong Bar dedicated to the protection and promotion of the fundamental rights and freedoms of the individual, and the establishment of a human rights-oriented law enforcement machinery.

Civic education will be an important ingredient of the public debate on the new constitution.

In view of its experience and expertise in such areas of legal and constitutional reform, it will be useful if the ICJ gives consideration to the possibility of sending a team to Malawi to assist in the exercise of evolving a broad-based legal system in country.

- (7) That an ICJ Mission visits Malawi in six months' time to review the progress of the events after the formation of the new government, which has vowed to establish democratic structures in the country, especially with regard to the legal protection of human rights and the upholding of the Rule of Law.

SIGNED by CHRISTOPHER MULEI on behalf of the members of the ICJ Mission to Malawi to observe the parliamentary and presidential elections (April-May, 1994)



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Date: 24th May, 1994 (Lilongwe, Malawi)

{ DRAFT APPROVED by the following before departure : MATAR DIOP, NUTIFABA }  
{ KUENYEHIA, KATHURIMA M'INOTI, GITHU MUIGAI, BACRE WALY NDIAYE }  
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