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**African Union Election Observation Mission to the 2019 Tripartite Elections in the
Republic of Malawi**

PRELIMINARY STATEMENT

I. INTRODUCTION

At the invitation of the Government of the Republic of Malawi and the Malawi Electoral Commission (MEC), the Chairperson of the African Union Commission (AUC), H.E. Moussa Faki Mahamat, deployed an African Union Election Observation Mission (AUEOM) to the Tripartite Elections held on 21 May in Malawi.

The Mission is headed by H.E. John Dramani Mahama, former President of the Republic of Ghana. The Mission is comprised of 7 Long-Term Observers (LTOs) and 22 Short-Term Observers (STOs). The observers were drawn from the Pan-African Parliament (PAP), Ambassadors to the African Union, Election Management Bodies (EMBs), Civil Society Organisations (CSOs) and experts from 20 African countries.¹

The Mission is supported by a technical team drawn from the AUC, PAP and the Electoral Institute for Sustainable Democracy in Africa (EISA).

The AUEOM has a mandate to observe the 21 May Tripartite Elections in conformity with the relevant provisions of the 2007 African Charter on Democracy, Elections and Governance (ACDEG), the 2002 Declaration on the Principles Governing Democratic Elections in Africa, the 2002 African Union Guidelines for Election Observation and Monitoring Missions, the 1981 African Charter on Human and People's Rights (ACHPR) and 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; as well as other relevant regional and international benchmarks for election observation and the legal framework for the conduct of elections in Malawi. The observations of the AUEOM are based on the principles and standards for the conduct of democratic elections as enshrined in the aforementioned AU instruments.

¹ Botswana, Cameroon, Central African Republic, Ethiopia, Ghana, Kenya, Lesotho, Mozambique, Nigeria, Sahrawi Republic, Seychelles, Sierra Leone, South Africa, Sudan, Swaziland, Tanzania, The Gambia, Uganda, Zambia and Zimbabwe.

This is a preliminary statement that reflects the AUEOM's assessment of the 2019 Tripartite Elections up to the close of polling on 21 May 2019. A final report of the AUEOM's overall assessment of the entire process will be released within a reasonable time.

In line with its mandate stipulated in the aforementioned instruments, the objective of the AUEOM is to make an independent, objective and impartial assessment of the 2019 Tripartite Elections in Malawi.

To achieve this, the Mission undertook the following activities:

- Deployment of a team of seven (7) LTOs in Malawi from 29 April 2019 to 4 June 2019 covering all regions of Malawi. Since their arrival in the country, LTOs have consulted with MEC, relevant government departments and agencies, political parties and candidates, the media, academic institutions/think tanks, civil society organisations and the security agencies in order to make an informed assessment of the pre-election context.
- The LTOs were joined by a team of 22 STOs on 14 May 2019 to 24 May 2019. The STOs underwent an intensive 2-day orientation training during which they received briefings from a wide range of electoral stakeholders including: MEC, political parties, candidates, security agencies, media, civil society groups and election experts.
- The AUEOM Leadership Team also held high-level consultations with electoral stakeholders. It coordinated its efforts with other international election observer groups in Malawi by hosting a pre-election coordination meeting of international observer missions in Blantyre on 19 May 2019 and attending the post-election coordination meeting hosted by the Commonwealth Observer Group in Blantyre on 22 May 2019.
- On 19 May 2019, STOs were deployed in 15 teams to all regions of Malawi, covering 18 districts throughout the country.
- On Election Day, AU observers visited 157 polling stations to observe all aspects of Election Day.

II. PRELIMINARY FINDINGS

a. General Political Context

The African Union recognizes that the Government of Malawi, the Parliament of Malawi and the MEC have taken cognizance of the recommendations of the African Union Election Report to the 2014 Tripartite Elections, taking the necessary measures to implement these recommendations with a view to enhance the credibility and transparency of elections in Malawi thereby guaranteeing the legitimacy of their outcomes.

The AU notes specifically the efforts by the Government of Malawi to ensure timely and adequate disbursement of election budgets; the efforts of the MEC to prepare and audit the voters roll in good time for the 2019 election; and the promulgation of the Political Parties Act of 2018 by the Parliament of Malawi.

The pre-election context was largely peaceful and open to competition by all political parties with isolated and minor incidents of violence reported to AU observers prior to Election Day.

The AUEOM commends the Malawi Electoral Commission for the professional and ethical manner in which it managed the electoral process including the confidence bestowed on it by all key political stakeholders.

The AUEOM commends the political parties and candidates as well as their supporters for their peaceful conduct in the pre-election period and encourages all stakeholders to continue in the same manner after the elections.

b. Legal Framework

The legal framework of Malawi is governed by the Constitution of Malawi (as amended), relevant Acts of Parliament and Electoral Regulations issued by the MEC.

The AUEOM notes that in line with the principles enshrined in the 2002 Declaration on the Principles Governing Democratic Elections in Africa, the legal framework for the conduct of elections in Malawi guarantees the fundamental rights and freedoms of its citizens and recognizes the principle of separation of powers. It provides for the regular conduct of elections by universal adult suffrage with the date of elections fixed by the Constitution; the establishment of an independent election management body; the adjudication of electoral disputes; and procedures for constitutional amendment.

The AUEOM notes with satisfaction the electoral reforms undertaken ahead of the 2019 elections, including:

- The Communications Act (2016) which mandates the MEC to establish ahead of each election an “Election Broadcasting, Monitoring and Complaints Committee (EBMCC) in collaboration with Malawi Communication Regulatory Authority (MACRA), and chaired by the MEC;
- The Political Parties Act (2018) which regulates the registration, financing and functioning of political parties, including the prohibition of ‘hand-outs’ or vote buying; and
- The Electoral Code of Conduct for Political Parties (2019) which provides a guide on how electoral stakeholders should conduct themselves, including expected behaviours as well as behaviours that should be avoided in order to promote democratic, credible and peaceful elections.

c. Voter Registration

The MEC conducted voter registration in 8 phases from 26 June to 9 November 2018. The registration system incorporated new processes such as the presentation of National ID cards during registration and biometric voter registration. The Mission received reports that citizens were not fully aware that National ID cards would be used during voter registration. This may have prevented some potential voters from registering for the 2019 Tripartite Elections.

The AUEOM received reports from stakeholders that the biometric voter registration kits improved the speed of capturing registrations.

The Mission recognizes the efforts the MEC has made to respond to the AUEOM recommendation that the voter’s roll should be compiled in a timeous fashion to allow for a proper and comprehensive audit of the roll. The legal framework of Malawi includes requirements for a public inspection of the voter’s roll, which was made available in 4 phases between 10 December 2018 and 9 January 2019.

The AUEOM notes that after the inspection and audit process, the MEC announced a voter’s roll of 6,859,570 persons (80% of eligible voting population); 3,818,578 female (56%) and 3,045,992 male (44%) voters. The number of registered voters for the 2014 polls was 7.5 million. The 2019 register shows a major decline from the 2019 figure. A total of 3,729,588 (54.37%) registrants are youth (aged between 18 and 35 years).

d. Women’s Participation

Although Malawi passed the Gender Equality Act (2013), women continue to be significantly underrepresented at all levels of elected government as well as in

nominations by parties at the Presidential, Parliamentary and Local government levels. Only 22% of the nominees for parliamentary seats and 23% of the local government candidates are women. This is in a context where there are 3,813,578 women and 3,045,992 men registered to vote in the 2019 elections.

e. Parties and Candidates

The 2019 nomination of candidates for Presidential, Member of Parliament and Local government positions opened on 3 January 2019, with submission of nomination forms taking place between 4 and 8 February 2019. 13 Presidential candidates submitted the necessary forms for their nomination, with 10 candidates passing the preliminary screening. A further 3 candidates were removed from the final ballot due to withdrawal or disqualification.

The 7 confirmed Presidential nominees were:

- Lazarus Chakwera, Malawi Congress Party (MCP);
- Saulos Chilima, United Transformation Movement (UTM);
- John Chisi, Umodzi Party (UP);
- Reverend Kaliya (Independent).
- Peter Kuwani, Mbakuwaku Movement for Development (MMD); and
- Atupele Muluzi, United Democratic Front (UDF);
- Peter Mutharika, Democratic Progressive Party (DPP);

For the legislative elections, 1,329 candidates (295 women and 1034 men) had their nominations confirmed. For the Local Government elections, 2709 nominees were confirmed (645 women and 2,064 men).

f. Campaigns

In line with section 57 of the Parliamentary and Presidential Elections Act, campaigns started on 19 March 2019, two months before the Tripartite Elections and closed 48 hours before the opening of the poll.

The campaigns proceeded in a largely peaceful atmosphere, with parties able to campaign freely in all regions without any restrictions. However, there were reports of isolated incidents of violence and of defacing of campaign materials.

g. The Media

The Mission notes that since the 2014 Tripartite Elections, Malawi has adopted several pieces of new or amended legislation to regulate the conduct of the media in the 2019 electoral cycle. These include:

- Malawi Electoral Laws (2015);
- Communications Act Malawi (2016); and
- Electronic Transactions and Cyber Security Act (2016);

The Parliamentary and Presidential Elections Act Section 63(2) stipulates that the MEC may on arrangement with Malawian Broadcasting Corporation (MBC) allocate time on the television and radio during which political parties may be allowed to speak in campaigning for an election and the Commission shall allocate equal time to every political party.

In pursuance of this provision, the MEC requested from political parties and candidates 3-minute radio and a 3-minute television messages for onward transmission to the MBC for broadcasting. In addition, the political parties and candidates were asked to record a 30-minute programme focusing on their manifestoes and submit to the MBC for broadcasting.

The Mission notes reports by the National Institute for Civic Education (NICE) and the Malawi Electoral Support Network (MESN), Public Accounts Committee (PAC) and opposition parties and candidates which showed that MBC covered mostly the activities of the ruling DPP and its candidates, particularly during news bulletins. The MEC upon receiving complaints cautioned the state broadcaster during the campaign period against biased reporting.

The Mission notes that compared to 2014, when MACRA published regular media monitoring updates ahead of the elections, similar reports on the 2019 elections are not apparent. These reports provide a useful basis for assessing the fairness of media coverage in an election. Whilst some interlocutors mentioned the bias of privately-owned media, the absence of the media monitoring reports limited the AUEOM's ability to assess the role of both public and private media in this regard.

h. Civic and Voter Education

The MEC is mandated to undertake Civic and Voter Education (CVE) in every election in the country. Specifically, MEC is required by the legislation to promote public awareness of electoral matters through the media and other appropriate channels.

The MEC accredited more than 40 organizations to support the work of civic and voter education ahead of the 2019 polls in all 28 districts throughout Malawi. CVE activities included:

- Theatre performances and road shows;
- radio and TV programming;
- Faith based and school outreach initiatives;
- Traditional authority meetings;

- Distribution of materials; and
- Use of loudhailers.

The Mission received reports that civic and voter education activities were not as comprehensive as was the case in previous elections. Some accredited civil society organisations were unable to carry out CVE activities due to funding challenges.

i. Preparedness of the Malawi Election Commission

Section 75 of the Constitution of Malawi establishes the MEC as a body to administer all elections in Malawi. The Commission must have a minimum of 6 Commissioners and a Chairperson. Commissioners serve on MEC for a term of four (4) years, and the present Commission has 9 Commissioners.

Training of electoral staff took place between April and May 2019. The MEC trained 170 Master Trainers who in turn trained presiding officers and their assistants at constituency levels. The trainings began on 25 April 2019 and ended on the 7 May 2019. The presiding officers and their assistants then trained polling clerks in their respective polling stations on 16 May 2019. The trainings of Constituency Store Assistants were held across the country from 8 to 9 May 2019 focusing on the handling of polling materials, both sensitive and non-sensitive.

For the 2019 elections, the MEC established 193 Constituencies, 462 wards and 197 Constituency Tallying Centres. 5,002 voting centres with streams limited to a maximum of 800 voters were established throughout the country.

The Mission observed the distribution of materials to the District Offices prior to the election, with the AU observer teams confirming the arrival and delivery of election materials to the voting centres ahead of the Election Day under security protection.

III. THE AUEOM FINDINGS ON ELECTION DAY

AU observers visited 157 polling stations on Election Day to observe the opening, voting, closing and counting procedures in their areas of deployment. The AUEOM commends the eagerness with which Malawians turned out to exercise their franchise very early in the day. Below are their findings in this regard:

a. Opening of the polls

AU observers were present at the opening in 15 polling stations across 13 districts. 44% of the stations opened later than the 6:00 am as stipulated in the law. Observer teams returned to stations which opened late in the evening and confirmed that in stations where voting opened late, the MEC had allowed additional time for voters to join the queues.

The Mission notes that in general, the MEC staff appeared familiar with opening procedures, and that the opening was carried out according to the MEC guidelines.

The Mission notes that security personnel were inside the voting centres during the opening procedures in some stations, and in some cases, AU observers reported that security personnel were actively involved in the opening processes.

b. Election material

During the opening, the Mission note that late delivery of election material delayed the opening in 3 polling stations by 30-45 minutes. The Mission further notes that materials were subsequently delivered and voting proceeded thereafter.

The AUEOM reported that in 4% of polling stations, voting was suspended at some point during the day due to shortages of material. In these cases, additional material was delivered to the stations from the District Offices.

The Mission reported that material meant for Machete Prison, Lilongwe were incorrectly delivered to the polling centre at the local education authority, which necessitated a relocation of these materials to the correct location. A similar situation was observed where materials meant for Mangochi Town Hall was incorrectly delivered to Mangochi Prison.

c. Polling stations

The Mission notes that most polling stations were set up in outdoor public areas, and that the layout of the centre divided voters into their streams in a manner that protected the secrecy of the ballot. However, in some of the stations visited, the layout of polling stations, especially the placement of the booths, did not fully guarantee the secrecy of the ballot. The layout of the polling stations also promoted the transparency and openness of the voting process. In stations with multiple streams, queue control was a major challenge, and the MEC should consider providing additional partitioning to assist queuing between different streams.

d. Election personnel

The MEC staff appeared generally competent in carrying out their responsibilities, although the AUEOM notes the most common challenges experienced by the MEC staff occurred during the closing and counting procedures. The Mission recommends that additional attention should be paid to this element of training in future elections.

e. Independent observers and party/candidate representatives

The AUEOM notes the presence of other international observer groups in 43% of stations visited.

Party/candidate representatives were present in 98% of polling stations visited. Citizen observers from MESN and NICE were present in most stations visited by the Mission.

f. Voting procedures

In most polling centres, voting proceeded uninterrupted and according to voting guidelines throughout the day. The AUEOM notes that the process was conducted in an open and transparent manner. Stream management and crowd control were common challenges in many polling stations during the day, however the Mission did not note any reports of serious incidents relating to queuing and crowd control.

During voting, the mission notes voters being turned away from voting in 20 polling stations. Almost all cases were due to voters presenting themselves at the incorrect polling station/stream or not presenting the correct identification.

Assistance was provided to voters with special needs, including the elderly, infirm and persons with special needs/disabilities. The Presiding Officer or a MEC official were the most common voter assistants in cases witnessed by the observer teams. 98% of stations visited by the AUEOM were accessible to persons with disabilities.

The application of the procedure for voting outside allocated polling stations was not uniform across the stations visited. In some cases, exception was made and in others such voters who did not have valid reasons were denied. The AUEOM further notes that there were gaps in information flow between the MEC national office and its district offices, as there were some the MEC decisions that were not received by officials in some of the stations visited.

g. Closing of the polls

All stations visited closed at 6:00 pm, with two stations extended for 30 minutes to make up for the late opening of those stations. There were no queues at closing time in all the stations visited.

The stipulated reconciliation procedures were not uniformly applied in all the stations visited. Three teams reported that reconciliation was not done before the counting commenced, as the officials resorted to their discretion in those stations.

The teams also note delays in the closing procedures, as staff had to relocate into closed spaces for the counting process. In some cases, the relocation delayed the vote count by over an hour.

Discrepancies were observed in the reconciliation process in two stations. The discrepancy was resolved in one situation, while the other was unresolved, but the counting proceeded all the same.

Teams notes that the use of gas lamps provided some level of lighting, though inadequate. The lamps also posed a safety hazard as there was a fire incident in one of the stations visited.

h. Security

The Mission notes the generally peaceful and orderly nature of the polls, and the presence of security officers at all polling stations. Observers reported witnessing security personnel inside the polling stations, actively facilitating voter movements or interacting with the polling staff in ways that were in some instances viewed as intrusive or intimidating.

IV. RECOMMENDATIONS

Based on its findings and observations, the Mission offers the following recommendations:

a. The Government of Malawi

- Review the budget and allocate adequate resources in support of the MEC to ensure that all aspects of the electoral process, including the disbursement of election materials and civic and voter education are sufficiently catered for.

b. The Malawi Electoral Commission

- Provide polling centres with delineation materials to separate and manage different voter streams within each polling station.
- Provide additional training to polling officials, with a special focus on queue control and the closing/counting procedures.
- Work with the relevant authorities, including the National Initiative for Civic Education and the National Registration Bureau to ensure that future National ID drives incorporate an element of electoral education which emphasizes the need to possess an ID card in order to register to vote.
- Consider ways of improving the safety and efficacy of the lighting during the counting process.

c. The Parliament of Malawi

- Review the existing legislative framework for elections in Malawi with a view to harmonizing all existing laws to streamline the administration and compliance of all stakeholders with the laws of Malawi as pertaining to elections.

d. The security agencies

- Review training of security personnel to ensure that clear roles and responsibilities are understood by security personnel when it comes to the administration and management of polling stations.

V. CONCLUSION

While the tabulation of results is still ongoing, the AUEOM hereby concludes that the 2019 Tripartite Elections have provided Malawians with the opportunity to choose their leaders at various layers of government in accordance with the legal framework for elections in Malawi, and in accordance with the principles espoused in the various instruments of the AU. The elections took place in a peaceful environment and at the time of this statement, the mission had not noted any serious concerns with the process, either witnessed or observed.

The AUEOM commends the citizens of Malawi for their conduct during Election Day and calls on all stakeholders to continue in the spirit of peaceful cooperation and respect for the rule of law that has been witnessed to this point in the electoral process.

The AU will continue to monitor developments in the post-election period and will, in due course, release a final report which will detail its comprehensive and final assessment of the 2019 Tripartite Elections in Malawi.

Done on this 23rd Day of May 2019

Blantyre, Malawi