



## **The EU publishes the final report of the EU Election Observation Mission (EOM) for the 21 May 2019 Tripartite elections in Malawi.**

*The EU was invited by the Government of Malawi and the Malawi Electoral Commission to observe the Tripartite Elections in 2019. This was the fourth time the EU has deployed an EOM for elections in Malawi, following missions in 2004, 2009 and 2014. In addition, Election Follow-up Missions were deployed in 2013 and in 2017. A total of 83 observers from 28 EU Member States (and Norway) were deployed across the country from 4 April until 16 June 2019 to observe the electoral process until its termination. The 2019 EU EOM was led by Miroslav Poche MEP, from the Czech Republic. Now that all legal proceedings on the contested elections of May 2019 are concluded, the EU EOM final report is published to present the Mission's overall findings and conclusions on the election process and to help improve future elections.*

EU Election Observation Missions (EOMs) are a complex undertaking - working on the ground during periods which are tense and sometimes polarizing for the countries concerned. Sometimes they generate controversy, especially on social media, and it is important to recall what they do and what they don't do.

EOMs are a tool to support democratic elections in partner countries. They provide a comprehensive, independent and impartial assessment of an electoral process. EOMs seek to make a positive contribution without either interfering in the conduct of an election or validating its result.

EOMs do not determine whether an election has been "free and fair". EOMs look at whether fundamental freedoms are respected, they look at issues of fairness linked to the political campaign but they never define an election using the terms "free and fair" which are rarely heard today from professional election observers.

EOMs are only deployed to countries where an invitation to observe has been received from the Government or the electoral authorities, where there is a broad national support to the EU observation and where the EU believes that its presence could bring added value.

EU observation focuses on the long-term and is comprehensive. Wherever an EOM is deployed, it is part of the EOM objectives to look into what the country has achieved in terms of electoral reforms, in particular in light of previous EOM recommendations. EOMs assess the election not as a one-day event but a process encompassing various aspects: for example, the political context, the legal framework or the election administration, as well as the election day itself, but also the results and the post-election environment.

The Preliminary Statement issued by EOMs 48 hours after the close of polling does not represent the final assessment by the mission. It is only the first post-election assessment by the EOM. The preliminary nature of this statement means that the EOM continues its observation of post-election

developments, including counting, the tabulation of votes, the announcement of the preliminary results, the resolution of any complaints or appeals, the publication of the results, and the wider post-election environment, and issues its overall assessment only later, in its final report.

Every EOM final report builds upon the conclusions made in the Preliminary Statement but it sometimes happens that the overall assessment of the mission differs from the preliminary assessment. For example, a generally 'positive' preliminary statement can become a 'negative' final report because of post-election problems with results or violence. It is the final report – and not the Preliminary Statement - which details the EOM's overall findings and conclusions on the election process.

The final report presents another key feature - and something which is most important when looking forward - and that is the detailed recommendations to improve the framework of future elections.

These recommendations play a key role in the period between two elections in the sense that, if correctly implemented, they could help to improve future electoral processes and to conduct them in line with international and regional standards, and best practices for democratic elections. The recommendations are also used to identify possible areas for EU financial or technical support.

## **Questions and answers on the EU EOM Final report to the 2019 Tripartite Elections in Malawi**

### **Why was the EU EOM final report made public so late?**

The timing for the release of an EU EOM report is a challenging moment. On one hand, the publication should not give the impression that it is interfering in a process, for example when an appeal process is still on-going. On the other hand, there is a need to ensure transparency on the EU findings on the electoral process. In the case of Malawi, to achieve those objectives, decision was made to publish the EU EOM final report after the resolution by the Supreme Court of the appeal to the Constitutional Court ruling but before the new presidential election so that the report could be used to better prepare for their organisation.

### **The EU EOM final report reads *“many international standards were met but some standards, notably relating to some campaign practices and accounting for the results, were not met.”* Are they not Western or European standards not applicable to the Malawi or African context?**

They are not. The EU EOM assessment is strictly based on international and regional commitments, which Malawi has freely entered into. This includes, for example, the International Covenant on Civil and Political Rights but also the African Charter on Human and Peoples’ Rights or also the African Charter on Democracy, Elections and Governance.

### **What is the overall conclusion of the EU EOM? Were the 2019 tripartite elections free and fair? Could the EU EOM certify the results and testify who is the winner of the presidential election?**

While often used in everyday language, the terms “free and fair” do not correctly reflect the comprehensiveness of the assessment made by EU observers. EU EOMs provide a much more nuanced assessment of the electoral process and of the overall observance of human rights and fundamental freedoms such as the right to stand, to vote, the freedoms of expression, assembly and association, etc. Actually, the terminology “free and fair” is rarely heard today from professional election observers. Also, EU EOMs do not certify results nor confirm in any way who is or who are the winner(s) of an election. This is the sovereign responsibility of the national authorities concerned.

### **What are the main findings and conclusions of the EU EOM?**

The EU EOM concluded that, overall, many international standards were met but some standards, notably relating to some campaign practices and accounting for the results, were not met.

This was the fourth time the EU has deployed an EOM for elections in Malawi and many of the shortcomings noted repeat those identified previously, highlighting the need for Malawi to address key recommendations offered by the mission. For example, regulations on party and campaign financing were amended but still do not ensure transparency and accountability. Further, while a prohibition on certain types of handouts in the campaign was introduced, it is quite a narrow prohibition and lacks a clear regulatory framework for enforcement, enabling widespread abuse of handouts and state resources during the campaign.

It is also important to stress that legislative provisions relating to the management of election-related disputes do not provide enough certainty or coherence with regard to how disputes should be handled and related timelines, adversely affecting the right to an effective legal remedy.

### **What is the EU EOM final assessment of the overall performance of MEC?**

During the pre-election preparation phase, MEC's management of the process was inclusive and transparent and the institution enjoyed a high level of confidence among the public and political contestants alike. Many aspects of the electoral preparations were well managed, including a much-improved voter registration, electoral logistics and a number of positive operational reforms, including the creation of constituency tally centres. Election Day was also well managed.

However, all these positive aspects contrast sharply with MEC's poor management of the vote count and tallying processes in many areas, and its management of complaints. The administration of results and the handling of complaints were poorly managed and marked by errors and poor practices, which affected stakeholder confidence.

### **What about the role of election officials at the polling stations level and the constituency level?**

EU observers reported that the vote count was transparent but officials at polling stations were inconsistent in how they managed the count, there was a lack of adherence to procedures and numerous problems were encountered in completing results sheets, leading to alterations and corrections being administered, which impacted on perceptions of the integrity of the process. At the constituency level, the process was transparent, but numerous errors in results sheets meant further changes were made so that results could be transmitted.

### **What is the EU EOM assessment of the role of the main political parties in these elections? How did the EOM perceive their behaviour during the campaign period?**

The campaign was competitive and campaign freedoms were largely respected. On the other hand, the campaign was marked by some tensions, misuse of state resources and handouts and bias in state media. Such practices are consistent with past elections and were raised in previous EU EOM recommendations, though not addressed.

### **What do you think about the use of Tippex?**

The use of Tippex was not formally provided for and was thus irregular. This usage undermined confidence in the results sheets. MEC's management of the results tabulation was poor, which contrasts to its good management of the electoral preparations.

### **Do the EU EOM believe that there was fraud during the counting and tabulation of results?**

This is not the mandate nor the responsibility of the EU EOM to determine whether fraud, which could lead to criminal prosecution, was committed. However, the EU EOM has considered that the major shortcomings which affected the tabulation process were a direct consequence of fatigue, poor working conditions, a lack of capacity, poor judgement, inadequate training and pressure of time.

### **What do you think about MEC's management of the complaints process?**

MEC's management of the post-election complaints contrasts with its inclusive and transparent management of the pre-election period. It is clear that the management of complaints was not handled well, with a lack of clarity as to when or how individual complaints were adjudicated upon. There needs to be increased coherence in the procedures for complaints so that all outstanding issues are dealt with prior to the announcement of results.

### **Did the EOM take into account the legality or constitutionality of measures put in place by MEC to manage the elections?**

EU EOMs measure the degree to which elections were organised in compliance with international, regional and national commitments for democratic elections taken by the host country. EOMs assessments are norm-based but, in line with the principle of non-interference in the election process, do not in any way substitute for the judiciary, which is solely responsible for administering justice.

**Why did EOM allow and vet constitutional tally centres if they are indeed anti-constitutional?**

This not part of the EU EOM mandate to interfere in the conduct of the electoral process. In line with the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers commemorated in 2005 at the United Nations, EU observers do not to obstruct any element of the election process, including pre-election processes, voting, counting and tabulation of results and processes transpiring after election day.

**What are the EU EOM recommendations meant for?**

EU EOM recommendations are an important feature of the final report. Recommendations are aimed to improve future electoral processes and to conduct them in line with international and regional standards, and best practices for democratic elections. The 2019 EU EOM final report in Malawi includes several recommendations aimed at improving critical phases of the electoral process such the political campaign, the counting, tabulation and transmission of results, and the handling of electoral disputes, which we believe important for the upcoming new presidential election. The recommendations are also used to identify possible areas for EU financial or technical support.

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