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Maybe free but not fair: Electoral administration in Malawi 1994-2004

Lise Rakner
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1. Introduction

Ensuring that elected political leaders ‘play by the rules’ and act in accordance with their mandate without violating citizens’ rights, is a key challenge for new democracies in sub-Saharan Africa. But while legislative multiparty elections have been held in the great majority of sub-Saharan Africa’s countries since the early 1990s, executive dominance is still common and the institutions that are supposed to hold governments accountable are often weak. Elections provide a ‘test’ of the strength and legitimacy of the institutions in place to check against executive dominance. But in many African states where democratic transitions took place in the early 1990s, incumbents have found ways to win electoral mandates without opening for extensive political liberties and participation. Weakly institutionalized electoral processes – where forms of democratic rule are maintained through the conduct of regular elections but where the outcome often is influenced in favour of the incumbent in advance of the formal campaign – remains a main feature of the democratisation process on the continent.

The way elections are administered, is the key to the outcome and legitimacy of the elections, and thereby democratic consolidation. It is increasingly argued that the quality of electoral administration has a direct impact on the way elections are perceived and how the outcome is regarded.¹ The recent emphasis on electoral administration should be seen in the view of the fact that in many instances the quality of the electoral process has declined from the first to the second (and third) elections in many sub-Saharan countries. The paradox of stagnant or declining quality of electoral administration presents a core challenge for democratic institutionalization on the African continent.

Seeking to explain the lack of improvement of electoral administration, this paper analyses the role of electoral management bodies. We argue that the administration of the electoral process is a key factor for understanding the still limited institutionalization of democracy in sub-Saharan Africa. Political actors, civil society, local and international monitors and donors have often failed to acknowledge that electoral processes begin long before elections actually take place. The capacity of the administrative unit mandated to administer elections and this unit’s autonomy from the political forces is central to the electoral outcome and how the electoral process is perceived among voters, parties, candidates and civil society (Elklit 1999, Mozaffar 2002).

Emphasising the case of Malawi, the paper demonstrates that along central dimensions of the electoral process, electoral administration in Malawi has not improved since the founding elections in 1994. Malawi adopted a multiparty constitution in 1994. The 1994 elections brought the United Democratic Front (UDF) and President Bakili Muluzi to government, after three decades of one party rule by the Malawi Congress Party (MCP). The expectation was that the first election under multi-party rule would be surrounded by controversies while later elections would be less controversial as the voters, candidates, and administrators gained experience with multi-party contests. Unfortunately, neither the 1999 elections, nor the May 20th 2004 Presidential and Parliamentary elections indicate that a learning process has taken place. As a result, the legitimacy of the electoral process is questioned by all major stakeholders.

Seeking to explain why electoral administration has not improved, the paper turns to analyse the role of electoral management bodies, in the case of Malawi the Malawi Electoral Commission (MEC). We evaluate the institutional capabilities of the MEC by assessing the electoral commission’s mandate, autonomy and capacity to administer free and fair elections. We find that the commissions’ limited control over its budget, its inability to enforce the electoral regulations and the appointment structures, greatly hamper the commission’s ability to carry out its functions. But, the electoral commission’s ability to secure free and fair elections also depends on how the

¹ See: Burnell P. 2002, Elklit and Reynolds, 2002, Lopez-Pintor R, 2000 and 2005, Rakner and Svåsand, 2005, Mozaffar, 2002.

institution is perceived by other central actors in the electoral process such as the political parties, media and civil society. We therefore proceed to analyse the electoral commission's relational resources i.e. how the MEC draws support from other institutions and agents in the political system. Based on interviews with political stakeholders and survey data, we find that the commission has limited legitimacy among the political stakeholders and civil society as an independent organisation. The limited trust affects its ability to perform its functions. Assessing the relations between the MEC and the international donors in electoral administration in Malawi, we argue that the active role of the international actors has reduced national ownership of the electoral process.

The administration of the electoral process

The legitimacy of the electoral process hinges on the electorates' and candidates' perception that the process has been conducted in a way that does not in advance ensure a certain outcome (Przeworski, 1991: 40-41). To ensure legitimacy, the electoral process should therefore be regulated by constitutional rules and special legislation as well as by cultural norms developed to govern the behaviour of the actors. The definition of who qualifies as a voter must not be biased against special groups in the population. Moreover, the electoral process should be organized in such a way that the voters have a real choice between alternatives. For candidates and political parties, the quality of the electoral process entails some additional aspects. As the election itself is the end point of a long process, the rules and regulations governing the organization of political parties, the nomination of candidates, the rules for conducting the election campaign, all impact on how level the playing field is for the contestants. The conduct of the electoral campaigns should also be neutral to the extent that voters are supplied with information that enables them to make a choice between alternatives. Access to mass media is a critical point. Finally, incumbent parties everywhere have certain benefits over the opposition, but the critical point is to what extent the incumbent party uses its position to tilt the playing field to its advantage, but to be sure, also opposition parties must play by the rules.

When a system fails in significant ways to comply with expectations of a 'free and fair' electoral process, the legitimacy of the exercise is called into question. Fig. 1 and Fig. 2 identify two central qualities that the electoral process must comply with in order to qualify as a free and fair election. Fig. 1 defines the electorate and the exercise of the right to vote, while fig. 2 is about contestants, parties and candidates, and the electoral campaign.

Figure 1: Defining the electorate

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|--|
| <ul style="list-style-type: none"> a) all adults are qualified voters b) each voter has only one vote c) each voter has an equal opportunity to participate in the elections d) when casting their votes the electorate should be free to choose among the alternatives (parties, candidates) without fear for picking a particular choice, or without being compensated for choosing a particular alternative e) each vote is counted only once and for the alternative chosen by the voter f) only ballots cast by the voters are included in counting |
|--|

Figure 2: Securing a level playing field

- | |
|---|
| <ul style="list-style-type: none"> a) the criteria for registering parties and nominating candidates should be politically neutral b) each contestant (party or candidate) should have an equal opportunity to present to the voters their arguments, both arguing for their own case as well as to formulate a critique against the incumbent government c) none of the contestants should have access to resources that are supposed to be neutral between the contestants |
|---|

No electoral process is able to comply fully with these criteria, but this ideal standard provides a measure of comparing electoral processes in different countries or across time, as in our case.

Steps in the electoral cycle

The role of the electoral management bodies that are put in place to oversee the elections is central to the administration of the electoral process. The capacity of the administrative unit mandated to administer elections and this unit's autonomy from the political forces is a key factor explaining the electoral outcome and how the electoral process is perceived among voters, parties, candidates and civil society (Elklit and Reynolds, 2000). Underscoring the time dimension of an electoral process, it is increasingly argued that the electoral cycle begins immediately after the polling in the previous election.² *Broadly speaking*, the electoral cycle includes a number of steps that must be completed as fairly as possible, in order for an electoral process to be considered free and fair.³

Elections and in sub-Saharan Africa

Between 1989 and 2000 sub-Saharan Africa witnessed 65 presidential elections involving more than one candidate. Over the same period, legislative elections involving at least two parties were held in at least 42 countries. Only Congo, Eritrea, Somalia, Swaziland, and Uganda refrained from multiparty elections (van de Walle, 2003: 299). In the new millennium, many of sub-Saharan Africa's new democracies have conducted their third and fourth multi party elections. But, regardless of the observed 'democratic maturity' in the form of consecutive multiparty elections, the quality of the electoral process has not improved everywhere. Bratton and Posner (1999) noted a distinct decline in quality from the first to the second elections conducted in a number of Africa's new democracies. Comparisons of electoral administration in Zambia 1991, 1996 and 2001 have shown that continued uncertainty of the rules and regulations guiding elections and electoral administration has maintained the same party in power through three consecutive elections, despite an alarming economic record (Rakner and Svåsand 2005). With some exceptions⁴, despite regular competitive elections, most African regimes fail to meet more substantive tests of democracy – the possibility of government turnover through free and fair elections. And while elections have become a 'must' for gaining international recognition and economic assistance for impoverished African nations, these political openings have so far stopped short of actual democratisation. This observation has led scholars like Carothers to conclude that most of Africa's new democracies have not yet consolidated as democracies, but have entered a 'grey zone' in which the line between the state and the ruling party is blurred (2002). Such regimes are 'stuck in transition'; a form of democratic rule is maintained through the conduct of regular elections without blatant electoral fraud, yet they feature electoral processes influenced long in advance of the formal campaign. The administration of elections in Malawi 1994, 1999 and 2004 illustrates the general picture presented above. Along key dimensions of the electoral cycle, the quality of the electoral process has declined since the first multiparty elections in 1994.

² This argument has been advanced by Elklit (1999), and has since become a standard that most election monitoring institutions adhere to.

³ Elklit (1999: 40) lists 12 steps: 1. Establishment of the legal framework for the electoral process, 2. Establishment of adequate organizational management structures, 3. Demarcations of constituencies and polling districts, 4. Voter education and voter information, 5. Voter registration, 6. Nomination and registration of political parties and candidates, 7. Regulation of electoral campaign, 8. Polling, 9. Counting and tabulating the vote, 10. Resolving electoral disputes and complaints, 11. Election result implementation, 12. Post-election handling of election material.

⁴ The electoral process in Ghana since 1996 in Mali and Lesotho in 2002 and Kenya 2002 largely met the contestants and the domestic and international observers' expectations of a democratic process.

2. Electoral administration in Malawi 1994-2004

The third wave of democracy manifested itself in Malawian politics in March 1992 when the Catholic bishops issued an Episcopal letter criticising the authoritarian politics of President Banda and the MCP. The formal protest initiated a popular movement for democratic reform that, coupled with pressure from the international community, led to the referendum on multiparty democracy in June 1993 where two-thirds of the votes cast favoured a return to a multiparty system of government. After the referendum, the democratisation process gathered momentum. The first competitive elections for president and parliament were held May 17, 1994. The 1994 parliamentary and presidential elections brought a new government to power, the UDF and its presidential candidate Bakili Muluzi, a businessman and former politician under Dr. Banda. Since then, two parliamentary elections, two presidential elections, one local government election, and numerous by-elections have been held under a legal and constitutional framework that guarantees freedom of choice and participation in multiparty elections.

The Malawi Electoral Commission

The Constitution of Malawi (1994) establishes the Malawi Electoral Commission (MEC) as the main administrative unit in charge of the electoral process. The Electoral Commission Act (ECA, 1998) states the appointment procedures of the commission and provides that the chair of the MEC shall be a judge nominated by the judicial service commission and further that there shall be no less than six other commissioners. According to section 4 of the ECA, the President appoints the chair and other commissioners in consultation with leaders of the political parties represented in the National Assembly. Terms and conditions are to be determined by the Public Appointment Committee of Parliament, which also can recommend the removal of commissioners to the President on grounds of incompetence or incapacity in the performance of their duties. The tenure of the commissioners is four years and may be renewed for a further term. The current MEC was appointed in 2002 and its term ends in 2006. The chair, Justice Kalaile, was replaced by the first chair of MEC (1994-1997), Justice Anastasia Msosa in October 2004. In addition to the Chair, there are currently eight commissioners. MEC has eight committees, each headed by a Commissioner, with membership from within the MEC. The committees' concerns are: Legal affairs, finance and administration, civic and voter education, campaign monitoring, research, training, logistics and operations, and media and public relations. The MEC is serviced by a secretariat and the commission holds the following departments: Personnel and administration, electoral services, media and public relations, civic education, finance and procurement, information technology. The MEC has three regional offices, in the north, south and central region serving five districts in the North, nine in the Central region and thirteen in the South. The regional offices do not have a permanent structure; at the time of elections the MEC appoints a Returning Officer for each district.

Section 6 of the ECA states that the MEC is an independent body, which shall perform its functions and exercise its powers independently of direct interference of any public official. 'For the purposes of accountability', according to ECA, the MEC shall report directly to the President on the overall fulfilment of its power and functions. Funding is provided through the Ministry of Finance. ECA section 15 (3) states that the MEC shall control its own funds. The Parliamentary and Presidential Elections Act (PPEA) (1993) mandates MEC to manage the electoral process fairly, equitably and in a transparent and accountable matter. The Electoral Commissions Act (1998) tasks the commission with:

- The determining of constituency boundaries
- The registration of voters
- The registration of candidates
- The regulation of electoral campaign

- The handling of the voting process on Election Day
- The tabulating and announcing of the results
- Handling of election complaints

Below, we show that along these dimensions of the electoral process, the quality of electoral administration in Malawi has declined from the first election in 1994 to the second in 1999 and the most recent May 2004 elections.

The determining of constituency boundaries

According to the Malawi Constitution (Section 76), the Malawi Electoral Commission is responsible for determining constituency boundaries impartially. From a perspective of fair elections, the aim is to ensure that each constituency contains approximately equal numbers of voters eligible to register. According to the law, the only exceptions to this general rule should be considerations of population density, ease of communication, geographical features and existing administrative areas. Review of existing boundaries should take place at intervals of no more than five years. The recommendations of the Malawi Electoral Commission are then reported to the Parliament, which can adopt the recommendations from the Commission. Parliament itself cannot change constituency boundaries or the number of constituencies

Constituency boundaries have been altered a number of times since independence and twice since the establishment of multiparty democracy in 1993 (Table 1). But informal institutional processes linked to traditional leaders' authority, MP's authority, and regional concerns, coupled with financial constraints, have limited the ability of the Malawi Electoral Commission to carry out a demarcation process within the standards laid out in the constitution. The 1993 demarcation process did not fulfill the principle of equal numbers of voters in each constituency. Avoiding constituency borders crossing regional or district boundaries, constituency size ranged from the smallest (Nkata Bay East) of 3,307 registered voters to the largest (Machinga North) having 59,494 registered voters. Thus, the votes of the Nkata East Bay had 17 times more value than the votes of the people of Machinga North in the National Assembly. The 1998 demarcation exercise prior to the 1999 elections did not adequately address the discrepancies in constituency size. Before the 2004 elections, no demarcation exercise took place in spite of the legal obligation to do so, and the discrepancies in constituency size continued to effect the administration of the 2004 general elections.

Table 1: Demarcation of constituencies

Year	1964	1973	1983	1987	1992	1993	1998
No of constituencies	53	63	101	112	141	177	193

The registration of voters

All political systems distinguish between qualified and registered voters. However, the discrepancy tends to be larger in new democracies in the developing world such as Malawi, since they do not have permanent voter registers but perform voter registration during designated time periods. To be eligible to vote in Malawian elections one must be a resident citizen or have been permanently residing in Malawi for seven years. In addition, a potential voter must have reached a specified age requirement. Before the 1999 elections, the age requirement for registration as a voter was reduced from 21 to 18 years. Because Malawi does not have a comprehensive system for recording births, in practice there have been problems in implementing the age restriction for both registration and voting. As a result, according to local and international election monitor reports, people under the age of 18 have registered, and voted, in the presidential, parliamentary, and local elections.

Similarly, since Malawi lacks a national death registry, the voters' roll before each election has been inflated.

The registration system records the basic information on the voter, such as name, surname, age, sex, village, and Traditional Authority area (TA). As very few Malawians have formal identifications, the village headman or some other person of standing within the community confirmed the identities. Before the 1999 elections, the registration system was upgraded as an electronic registration form was employed and photos were taken and attached to the registration card. Despite the upgrade, a large number of voters were reported to have been excluded from the voter's roll due to lack of registration materials. As many as 168, 000 voters in the opposition's strongholds in the northern and central regions were reported to have been excluded from the voters' rolls (Patel 2000: 34). The 1999 registration exercise was therefore not able to secure equal participation of all eligible voters. The extension of voter registration led to postponement of elections in 1999, through convening an extraordinary sitting of the parliament.

Underscoring the lack of improvement of electoral administration, the 2004 registration process displayed as many challenges in terms of securing equal participation as the previous elections. At the end of the registration exercise, the MEC stated that 6.7 million people had registered to vote in the 2004 elections. This represented an increase of app. 2.7 million voters from the figure of 5.1 million voters registered before the 1999 elections. As the figure also was much higher than estimates from the Malawi National Statistics Office, the MEC 'cleaned' the voters' roll, resulting in a reduction of voters to 5.7 million. In the week leading up to the polling day, a number of political parties and NGOs petitioned the High Court arguing that the Electoral Commission had failed to conduct an efficient registration of voters and had not allowed sufficient time to inspect the voters' roll. As in 1999, the poor registration process resulted in a delay of the election-day, this time from May 18 to May 20. Due to the inadequacies of the registration, three reference documents were used to identify eligible voters during the 2004 voting process; the computerised voters' roll, the manual voters' roll of 1999, and the national registration cards. This caused delays and possible disenfranchisement of the voters.

Popular participation in electoral processes is often used as an indicator of the quality of the electoral process. As table 2 indicates, a number of challenges remain for the Malawi electoral process to fulfil its stated objective of guaranteeing all eligible voters equal participation. Both the 1999 and 2004 presidential and parliamentary elections were declared not fair by local and international election monitors, in part due to the inadequate registration procedures. In both the 1999 and 2004 elections voter registration was extended which led to postponement of elections; in 1999 by convening an extraordinary sitting of the parliament and in 2004 the elections were postponed by a few days. These extensions helped marginally to enhance voter registration. Table 2 suggests an increase in the number of polling centres, which may have reduced the administrative burden of voting for Malawian voters. However, as indicated by both the total number of valid votes and the percentage of voters among the registered voters, the voting population in Malawi decreased from the 1999 to the 2004 elections. The fact that the problems encountered in the 2004 registration exercise were identical to those experienced in 1999 suggests not only poor planning on the part of the MEC, but also an inability to learn from past mistakes and rectify them (Dulani 2004, p 9).

Table 2 Voter registration in parliamentary and presidential elections 1994-2004

Year	Registered voters	Total vote	Vote/Reg %	Total valid votes	Polling centres
1994	3,775,256	3,004,835	80,54	2,934,285	Na
1999	5,071,822	4,755,422	93,76	4,663,751	3698
2004	5,752,028	3,413,565	59,35	3,323,801	4500

Source: Malawi Government Gazettes

Regulation of the electoral campaign

As indicated in Figure 2 above, the regulation of the electoral campaign should guarantee the freedom of all candidates and parties to communicate with the voters. First, state controlled media, radio, TV, and newspapers should present the political alternatives neutrally. Second, all contesting parties should be granted equal opportunity to present their views publicly at rallies and public demonstrations. Finally, access to public resources for campaigning and running for office should be equally available or not available at all. But, the elections conducted in Malawi since 1994 have suggested that the MEC and a number of other relevant institutions have faced challenges in terms of facilitating a fair electoral process and securing a level playing field.

In terms of access to media, the Parliamentary and Presidential Elections Act (PPEA section 63) states that every political party is entitled to have the substance of its campaign reported on the Malawi Broadcasting Corporation (MBC) and any newspaper in circulation in Malawi (63). Furthermore, the Act commits MBC to neutrality in the reports of news. The act also empowers the Electoral Commission to play a role in ensuring that the MBC ensures a fair base for political competition. The Constitution specifies an official election campaign period, starting eight weeks prior to Election Day itself.

Maybe not surprisingly, considering that these were transitional elections from a one-party system, in the 1994 election campaign, the MCP dominated the radio. The MBC carried mainly reports of Banda's tours around the country. The opposition, on the other hand, dominated foreign broadcasting. As a result, political parties, civil society, local, and international election monitors concluded that media coverage was fairly balanced in the 1994 elections. In the 1999 election campaign, both local and international election observers reported that the playing field was not balanced. It was found that the MBC did not provide fair coverage of all the parties contesting the elections as the incumbent party, the UDF, dominated. In order to ensure a better balanced media coverage of the 2004 general elections, a number of steps were taken in collaboration between political parties, the Electoral Commission, civil society, and the donor community. Most importantly, a media monitoring unit was established within the Electoral Commission. Nevertheless, the 2004 elections' campaign was reported to be biased in favour of the incumbent party, the UDF. In a period of 15 weeks prior to the polling date, the MBC gave 92.9% of positive election news in the main news bulletins to the governing UDF / Aford⁵ / NCD⁶ Alliance leaving 7.1% to be shared between all opposition parties and candidates (Neale 2004: 185). On the other hand, some private radio stations provided voters with more balanced information and the two major daily newspapers, The Nation and The Daily Times were more critical of the government. However, what counts in Malawi is the radio. The newspapers have a small circulation of 10,000 and 16,000 respectively and is available mainly in the cities of Lilongwe and Blantyre, while 85% of the people live in the rural areas where access to radio is the only mass media available⁷. Comparisons of media coverage indicate that the Electoral Commission has not been able to secure the various contesting parties and candidates a level playing field in the electoral process. The unclear responsibilities between the Malawi Communications Regulatory Authority (MACRA), the MEC and the MBC in terms of enforcing the electoral guidelines suggest that the rules and regulations guiding the electoral process in Malawi are ambiguous.

The use of state resources in electoral campaigns also indicates a bias toward the incumbent candidate and party. In Malawi, political parties that gain a minimum of 10 per cent of the seats in the parliamentary elections are entitled to state funding. But as these funds do not cover the costs of maintaining a party organisation or finance electoral campaigns, all parties rely on sponsors. Inadequately defined boundaries between the state and the party suggests that the incumbent party's political campaign is regarded as 'national affairs' and therefore, supported by the government.

⁵ Alliance for Democracy

⁶ New Congress for Democracy

⁷ See also EU observer mission report, Annex 8 for data on media coverage.

Electoral reports of the 1999 presidential and parliamentary elections found that the UDF and the State President used state resources, including government vehicles, to conduct its campaign. The 2004 election campaign witnessed newspaper reports and televised events showing the incumbent party's (UDF) presidential candidate handing out money at public rallies. Vehicles from government parastatals were also used for campaign purposes. The Malawi Electoral Commission did not act on the openly displayed use of state funds for political campaigns. The failure of the MEC to level the playing field in terms of access to media and campaign resources meant that the 1999 and 2004 elections were clearly skewed in favour of the incumbent party. Despite rules and procedures regulating media access, these rules were not adhered to.

Voting in Malawian elections

The main focus of any electoral process is of course that of voting itself. For the elections to carry any weight it is essential that voting proceeds in an unbiased manner and that the process is transparent and open to scrutiny by national and international observers. Having cast their votes, voters must be confident that each vote is counted, counted only once, that votes are counted for the alternatives they were intended and that no votes except those dropped in the ballot boxes are included in the tally. As discussed above, the 1994, 1999 and 2004 parliamentary and presidential elections in Malawi have all displayed administrative shortcomings. In terms of voter turnout, the 2004 general elections showed a decline from the 1994 and 1999 elections. Of the 5.7 million registered voters, only 59% voted, compared to 80% in 1999 and 93% in 1994. App. 3 per cent of the votes cast were declared null and void, representing a slight increase from 2 per cent in 1999. Arguably, the decline in voter participation reflects an increasing public disenchantment with political processes in Malawi.⁸

However, in general both local and international monitoring reports have observed that the actual voting process have been carried out in a transparent manner in all elections since 1994. An indication of this is that problems with the voting procedures were not reported as frequently as problems with registration in the 1999 general elections. Commenting on the actual polling in its report on the 2004 elections, the Commonwealth Secretariat's Monitoring team noted that: "It was the people involved in this election rather than the policies and plans of the Electoral Commission that made it work".⁹

The tabulating and announcing of the results

The tabulation and announcement of results have witnessed shortcomings in the 1994, 1999, and 2004 presidential and parliamentary elections. Election observers of the 1999 elections noted that the transmission of results to Returning Officers was undermined by delays and errors of documentation. Possibly due to the increased number of contesting parties and candidates, local and international observers found the tallying of the 2004 parliamentary and presidential to be marked by irregularities to an even greater extent than the 1999 elections. The processing and declaration of results in the 2004 elections highlighted a number of flaws that impacted on the credibility of the results. In the days after the polling closed May 18, 2004, the Electoral Commission failed to display all results for verification by stakeholders before announcement, which led to announcing and gazetting of different sets of election results. Mirroring shortfalls experienced in the 1999 elections, the processing and declaration of results by the Malawi Electoral Commission was delayed. The delays raised suspicion of manipulation by key stakeholders. When the MEC finally placed the results of the 2004 elections in the Government Gazette on July 16, they were different to the results announced on May 23. It was not until August 4, almost three months after the presidential and parliamentary elections, that the results were published in the Daily Times, thus

⁸ See Afrobarometer figures as well as Dulani, 2004, p. 13.

⁹ Commonwealth Secretariat Final report, June 2004.

becoming available to the general public. The reasons for the delays and the denial of observers to access the IT centre where the tallying was carried out for several days after May 23 were never made clear. This lack of transparency fuelled suspicion, and suggested that in terms of both tallying and announcing the election results, little institutional learning had taken place between 1999 and 2004.

The tables below display the election results in presidential and parliamentary elections in Malawi 1994-2004.

Table 3: Malawi Parliamentary Election Results, 1994.

Party	Votes scored	Seats
AFORD	563 417	36
MCP	996 047	56
UDF	1 375 878	85
Others	21 811	0
Total	2 963 612	177

Source: *The Malawi Government Gazette 1994* (Vol. XXXI, No. 40)

Table 4: Malawi Presidential Election results, 1994.

Candidate	Votes scored
B. Muluzi (UDF)	1 404 754
Dr. K. Banda (MCP)	996 353
C. Chihana (AFORD)	562 862
K. Kalua (MDP)	15 624
Total	2 978 885

Source: *The Malawi Government Gazette 1994* (Vol. XXXI, No. 40)

Table 5: Malawi Parliamentary Election Results, 1999.

Party	Votes scored	Seats
AFORD	474 215	29
MCP	1 518 548	66
UDF	2 124 999	93
Indep.	319 936	4
Others	54 459	0
Total	4 492 157	192

Source: *The Malawi Electoral Commission, 1999*

Table 6: Malawi Presidential Election results, 1999.

Candidate	Votes scored
B. Muluzi (UDF)	2 442 685
G. Chakuamba (MCP)	2 106 790
K. Kalua (MDP)	67 856
D. K. Nkhumbwe	24 347
B. wa Mutharika	22 073
Total	4 663 751

Source: *The Malawi Electoral Commission, 1999*

Table 7: Malawi Parliamentary Election Results, 2004.

Party	Votes scored	Seats
AFORD	114 017	6
MCP	785 671	57
UDF	801 200	49
Indep.	766 137	40
RP	231 002	15
NDA	256 713	9
PPM	98 548	6
Mgode	53 127	3
Petra	21 153	1
CONU	7 410	1
Others	26 609	0
Total	3 161 587	187

Source: *The Malawi Government Gazette 2004* (Vol. XLI, No. 34)

Table 8: Malawi Presidential Election results, 2004.

Candidate	Votes scored
B. wa Mutharika (UDF)	1 195 586
J. Tembo (MCP)	937 965
G. Chakuamba (MCP)	836 118
B. Mpinganjira (NDA)	286 320
J. C. Malewezi (Indep.)	67 812
Total	3 323 801

Source: *The Malawi Government Gazette 2004* (Vol. XLI, No. 34)

Underscoring the significance of transparent and fair electoral administration, the electoral results indicate the competitiveness of parliamentary and presidential elections in Malawi. Whereas only three parties gained seats in the parliament in 1994 and 1999, the number rose to nine following the 2004 elections. The competitive nature of presidential elections in Malawi is reflected by the narrow margins of victory among presidential candidates. This trend is also marked in parliamentary elections, indicated by the significant turn over of candidates. For example, 51 out of 95 incumbent MPs lost their seats in the 2004 parliamentary elections to newcomers and independent candidates.

The handling of election complaints

The Malawi courts have played a significant role in terms of solving disputes arising during the electoral process between contesting parties. Compared to the 1994 electoral process, the 1999 election results were to a greater extent disputed, and the judiciary became involved in a number of cases. In 1994 a few court interventions took place that involved the legal framework. In 1999, the courts intervened to a greater extent at the campaign stage. The 2004 elections indicated an increased level of conflict as the courts became centrally involved in the electoral process from cases involving electoral rules, the voter registration process, the candidate selection, the election campaign, the polling process, the counting of the ballots, and the integrity of the results (Gloppen and Kanyongolo, 2004) The impact of the courts in terms of safeguarding free and fair elections was particularly witnessed in securing the contesting parties and candidates' access to public rallies and demonstrations. Nevertheless, the number of election petitions brought to the courts after the 2004 elections indicate that the electoral process continues to be marked by irregularities that affect the legitimacy of the election results.

The fact that electoral contests are referred to the courts may reflect a lack of trust in the political institutions charged with the administration of the electoral process. Whereas observers described the 1994 electoral exercise as 'free and fair', the 1999 general elections were characterised as 'substantially free and fair' by international observers. The 2004 general elections were judged to be 'free but not fair' due to inadequacies of administering the electoral process. Civil society organisations as well as local and international election monitors have, in particular, emphasised the need to restructure the Malawi Electoral Commission in order to improve the administration of the electoral process and, thereby, ensure the legitimacy of the election results.

3. Explaining the decline in the quality of elections

The analysis above has indicated that along central dimensions of electoral administration, the quality of the electoral process in Malawi declined in the period from 1994 to 2004. This finding is shared by the MEC:

"It is true, we do not have the capacity to conduct free and fair elections, we did indeed have better elections in 1994 than in 2004, we are not moving in the right direction. This is due to capacity and planning. The election date is set in the constitution, we have a good five years to plan, but nevertheless elections are characterised by chaos".¹⁰

A number of factors may explain why the 1994 elections were better organised than the 1999 and 2004 elections. First of all, the 1994 elections were about change, and it was not clear who the 'new masters' would be. Against this background, relatively balanced media coverage was secured.¹¹

¹⁰ Statement by Willie Kalyonga, Deputy Chief Election Officer, Lilongwe, July 1, 2004.

¹¹ Interview Eunice Chipangula, Malawi Broadcasting (MBC), Blantyre, July 14, 2004.

Second, the economic situation in Malawi, and herein the quality of public services, has deteriorated since 1994.¹² The limited number of parties, candidates and NGOs also reduced the level of complexity in the 1994 election exercise.

Nevertheless, the assessment of the electoral process in Malawi across three general elections has confirmed the findings from a number of studies of African electoral processes that have found the quality of election management either to have stagnated or declined, across the second and third multiparty elections. The qualitative data from Malawi's elections 1994-2004 have further indicated a lack of institutional learning along key aspects of the electoral process, from voter registration, via campaigning to tallying and handling of complaints. While increased complexity and financial constraints may in part explain the administrative challenges of managing elections in Malawi, it cannot explain the absence of institutional learning and qualitative improvements after having conducted three presidential and parliamentary elections, one local government election (2000) and numerous by-elections. Partly, the poor quality of electoral administration relates to the Government of Malawi's lack of will to allow the MEC autonomy and resources to carry out its mandate as an independent organisation. Second, and related, the MEC's limited legitimacy vis-à-vis civil society, the political parties and the international donor community greatly affects its ability to enforce its electoral mandate.

The institutional capabilities of the Malawi Electoral Commission

The MEC's autonomy

The MEC is formally an independent body.¹³ However, in terms of appointments and budget, the institution can at best be characterised as semi-autonomous. The composition of the Commission and the representation of parties present in Parliament should facilitate for greater autonomy from the executive office. But, in reality, the party associations have rendered the MEC very partisan. In 1999, the operations of the MEC were crippled by partisan voting and dissent. In the period after the 1999 elections, the coalition between the UDF and the Aford have given the incumbent a majority position in MEC and our preliminary findings suggest that MEC's autonomy from the executive has declined in the last election period. According to some commissioners, the process of nominating commissioners from the political parties and then later on have them appointed by the head of state poses as a threat to the autonomy of the commission. Commissioners interviewed also acknowledged the temptation of advancing the interest of their political masters at the expense of the national interests.¹⁴

The 'party model' of the Electoral Commission is often considered the 'best practise' in terms of securing independence for election management bodies (Lopez-Pintor 2000). In the case of Malawi, this has not functioned in the intended manner. Clearly, when new parties emerge, this model will lose its legitimacy in Malawi¹⁵. This is also an issue of rules versus conduct – but it may

¹²As an illustration, one informant argued that the economic system and environment at that time was more conducive to the MEC because a government cheque could still transact even if the government had no money in its bank accounts. The introduction of a cash budget system after 1994 has meant the MEC must wait until it gets funds from the government and delays in funding affects the commission negatively. Personal interview, W. Kalonga, Deputy Election Officer, MEC, Blantyre July 13, 2004.

¹³ Malawi Constitution Ch. VII, para. 75 (4).

¹⁴ The clearest example of the partisan divisions within MEC over electoral results in the 2004 elections was provided by one of the main opposition parties' commission members. When told by the party president that they ought to resign from the commission to protest the allegedly fraudulent result the, commissioner replied: 'We said that if we were not here, you would not have been number two, you were number four according to their figures'. Personal interview, MEC commissioner July 14, 2004.

¹⁵ This issue is well illustrated by the conflict between President Mutharika and the party that nominated him (UDF). The president has launched his own party, DPP. However, DPP is not represented in the commission, which he has now taken the initiative to 'correct'. (The Nation, December 12, 2005).

also be argued that it is naïve to argue that the party model is a best practise in a political system characterised by patron-client networks.

The electoral commission's lack of *budgetary autonomy* also affects its independence. The MEC's budget is not guaranteed by regular transfers but decided by the Ministry of Finance. Due to Malawi's precarious economic situation and dependence on donor finance for close to 50 per cent of its national budget, funding for special institutions of restraint like the electoral commission, human rights commission, and the bureau of anti corruption is regularly reduced. As Malawi's public institutions is compelled to run on a 'cash budget system' as part of its debt service agreements with the international financial institutions, funding for government institutions is often erratic and unpredictable. The MEC does not have an independent budget and is therefore, forced to plead to the Ministry of Finance for funds, which further reduces its autonomy.¹⁶

According to MEC senior administrative staff and commissioners, a key problem is that funding from government arrives too late and there is very little or no funding of the commissions' activities during non-election years apart from meeting employee salaries. However, even in election periods, funding appears erratic. The poorly administered registration exercise was by the MEC Secretariat largely attributed to the fact that funding arrived too late to conduct the process in August-November as the MEC originally had planned. The funding from government only arrived in November, and as a result, the registration exercise was pushed to January 2004.¹⁷ As argued by a senior officer in the MEC:

We are supposed to be financially independent and our budget should go straight to our account 60 days prior to the elections. But we have to go to the Treasury and beg for funds. Then you ask: How independent is the electoral commission if it cannot even afford to conduct by-elections!¹⁸

Illustrating the tendency of the government in Malawi to regard elections as short-term activities taking place every fifth year, the MEC's financial problems have continued also after the 2004 elections. On May 5, 2005, the *Daily Times* announced that the Ministry of Finance had cut the funding for the MEC from K 3 million to K 600,000. It was also reported that government had not released the arrears from the 2004 budget. Since the MEC owed Malawi Telecommunications K 1 million in telephone bills, all their phone lines were disconnected as of May 1, 2005.

The capacity of the commission in terms of its continuity and change

The composition of the commission does not take into account either regional or religious factors. The only criterion used is that of nominating members from the parties that are represented in parliament and this is proportionally done depending on number of seat obtained by each party in parliament.¹⁹ Below are listed the members of the MEC 1993-2006.

¹⁶ As argued by one of the MEC Commissioners: "It is true that we report to the President. But face it, we had no vehicles to conduct the elections and government refused to disburse of vehicles. It was only when the Chair of MEC contacted the President that this issue was sorted out and vehicles from the police and army were secured" (Personal interview, MEC Commissioner, Blantyre, July 13, 2004).

¹⁷ According to Senior Election Officer, MEC as an institution is not supported at all and this affects its ability to deliver. When they solicit the Ministry of Finance for funding, they got the following reply from the deputy Minister of Finance (August 2003): "we have better and more urgent matters to attend to, the MEC is not a priority to us". Source; chief election officer W. Kalonga, July 1, 2004.

¹⁸ Personal interview, Deputy Chief Elections Officer, Willie Kalonga, the MEC, Blantyre July 13, 2004.

¹⁹ Personal interview Commissioner Chinkwita Phiri, Blantyre July 14, 2004.

Table 9: Malawi Electoral Commission: Commissioners 1993-1998

Justice Anastanzia Msosa – Chairperson	
Mr. Joya	MDP
Mr. Chipeta	MDP
Mrs. Chikoko	MCP
Mrs. Kambalometore	
Mr. Manyere	MDU
Mr. Kamlongera	MCP
Mr. Chilingulo	Aford
Mr. Mwambetania	Aford
Mr. Mhone	UDF

Table 10: Malawi Electoral Commission: Commissioners August 1998-July 2002

Justice Hanjahanja-Chairperson (replaced in 1999 by Justice James Kalaile)	
Mr. Mbekeyani	MCP
Mrs. Mgwembe	MCP
Mr. Kamwambe	Aford (dismissed 2000)
Prof. Tembo	Aford
Mr. Mtendere	UDF
Mrs. Chirwa	UDF
Mr. Nanthuro	UDF
Mr. Kanjo	UDF

Table 11: Malawi Electoral Commission: Commissioners October 2002- 2006

Chairperson Justice James Kalaile, replaced in August 2004 by Justice Anastanzia Msosa	
Mr. Nsanje	MCP
Mrs. Mgwembe	MCP
Mr. Lusekelo	Aford
Prof. Tembo	Aford
Mr. Mtendere	UDF (dismissed October-03, replaced Rev. Chinkwita Phiri)
Mrs. Chirwa	UDF (dismissed October-03, replaced Mrs. Kapanda Phiri)
Mr. Nanthuro	UDF
Mr. Kanjo	UDF

Institutional learning depends of course on several factors. Both continuity among commissioners and continuity in the secretariat are important. As for the former, whatever experience commissioners may have accumulated in the first five year period was lost in August 1998 when there was a complete change of members. The fact that the new commission was appointed shortly before the 1999 elections, affected the quality of the elections.²⁰ The commission appointed in 1998 was to a large extent also responsible for the 2004 elections as most commissioners were retained.²¹

²⁰ Patel, 2000.

²¹ Except Mr. Nsanje who replaced Mr. Mbekeyani (MCP) and Mr. Mwalughali (Aford) who filled the position after G. Kamwambe. In October 2003, the UDF commissioners Mr. Mtendere and Mrs. Chirwa were replaced by Rev. Chinkwita Phiri and Lillian Kapanda Phiri.

Continuity between the second and third commission was marginally better, but only two of the commissioners served for the full next term, while two were replaced nine months before the elections in 2004 and one already in 2000. But even more serious in 2004 was the abrupt change of the head of the secretariat. The wife of the head of the secretariat ran as a candidate for parliament but had been given her husband's official MEC vehicle to campaign in. He was therefore forced to resign shortly before the election and was replaced by the clerk of parliament.

The MEC's relational capabilities

In a report on the preparations for the 1999 elections, Butler and Baxter noted that: "The team's discussions with political party leader's evidence that there may be lack of confidence in the independence and impartiality of the Commission".²² This feeling is echoed in public opinion. Surveys suggest that confidence in the MEC has never been particularly strong and that it has declined (Table 12). In 1999 about half of the respondents expressed the opinion the MEC could 'mostly or always' be trusted, about the same proportion as expressing confidence in the courts. In 2003 however, only slightly more than a third had 'a lot' or 'a very great deal' of trust in MEC, about the same as expressing trusts in traders in local markets. Of all institutions in which people expressed 'a very great deal' of trust, MEC ranked 13 of 18. In contrast, the courts had been able to retain its trust level from 1999.

Table 12: Trust in Malawi Electoral Commission, 1999 and 2003²³

1999: How much can you trust MEC to do what is right?					
Never	Sometimes	Mostly	Always		
27	18	19	30		
2003: How much do you trust MEC (listed among other institutions), or haven't you heard enough about them to say?					
Not at all	A little bit	A lot	A very great deal	Don't know	
22	32	21	17	9	

The MEC's relationship to the political parties

In an attempt to increase the relevance and legitimacy of the MEC, in 2002 the international donor community, headed by the German development agency (GTZ), agreed to fund the establishment of a National Elections Consultative Forum (NECOF). This forum met for the first time in August 2003 and provided political parties and NGO's representatives with an arena to discuss the organisation of the elections with the MEC. A similar structure was established at the district level, Multiparty Liaison Committees. NECOF was characterised as a conflict management mechanism. By bringing together the stakeholders and discuss election related issues, it was hoped that a better atmosphere could develop between the contestants and the MEC. NECOF was supposed to meet once every month but in reality NECOF only met on four occasions because of lack of commitment on the part of members. At the first NECOF meeting all parties had representatives. However,

²² Vic Butler and Joe Baxter: Report on issues in preparation for the 1999 General Elections in Malawi

²³ Maxton Grant Tsoka (2002): Public opinion and the consolidation of democracy in Malawi, Afrobarometer Paper No. 16 and Stanley Khaila and Catherine Chibwana (2005): Ten years of democracy in Malawi: Are Malawians getting what they voted for, Afrobarometer, Working Paper No. 46.

interviews with party- and civil society representatives suggest that in the period leading up to the 2004 elections, the inter-party consultations were discontinued. According to informants representing civil society, the UDF and the opposition parties in the NECOF-forum, NECOF failed due to the lack of commitment of the political parties. Political parties were represented by individuals who were not seniors in terms of the party hierarchy. The end result was that when these delegates reported back to their seniors, the recommendations were not taken seriously. A good example was when the UDF, AFORD and MCP members of parliament voted against proposals to the amendment of the electoral law and yet their members were party to the NECOF. Instead of focusing on useful debates relating to electoral management, the NECOF was more or less acting as a forum for discussing inter-party conflicts thereby distorting the whole purpose of the NECOF.²⁴ Contrary to the poor functioning of the NECOF, most respondents applauded the Multi Party Liaison Committees (MPLC) at the district level for being influential in resolving political conflict at the district level (Patel 2004: 229).

The MEC and civil society

Most MEC commissioners' interviewed saw the contribution by civil society in the area of civic education, and mobilisation for registration and actual voting as very positive. The commissioners also regarded the establishment of the Malawi Election Support Network (MESN) before the 2004 elections as a sign of commitment to cooperation on the part of the civil society. However, the commissioners interviewed after the 2004 elections criticised the MESN for its inability to fulfill its mandate to work as a support network in collaboration with the MEC. MEC commissioners argued that MESN operated more or less like a political opponent and cited some cases in which the MESN criticized the electoral process in publish press releases on issues which were not even brought before the commission prior to going in public. Representatives of civil society shared this view and argued that the two parties looked at each other as if they were political opponents and not collaborators. Civil society representatives, however, blamed the electoral commission for concealing electoral information and for working too closely with the incumbent (UDF). Civil society representatives linked the MEC's bias to its inability to sanction MBC for unbalanced media coverage, while at the same time the MEC issued threats to withdraw accreditation to some organizations that were regarded to collaborate with the opposition parties.²⁵

The MEC and the donor community

Electoral reports of the 1999 presidential and parliamentary relations have noted that the relationship between the electoral commission and the international donor community was conflictual. In the 2004 election exercise the main issue of discontent raised by the MEC commissioners related to the donor community's interference in the MEC's budgetary preparations. While the MEC's limited financial autonomy in part, is related to its lack of secured funding, senior administrative staff and commissioners, however, tended to see donors as a greater threat to their autonomy. Interviews with commissioners and administrative staff of the MEC indicate that donor involvement was considered a chief impediment to a properly designed civic education project and the registration process. Complaints about lack of budgetary transparency from the donor community were raised in interviews with all commissioners and many argued that matters concerning funding of the commission should be left in the hands of the Malawi government. The process surrounding the budget for the 2004 election illustrates the relationship between the MEC and the international donor community. The MEC presented a budget of U\$21 million for the 2004

²⁴Personal interview, Paul Maulidi, deputy secretary general of UDF, UDF representative in NECOF. Maulidi has served as a minister of justice and also as a member of parliament in Muluzi's administration.

²⁵ Interview with Moses Mkandawire, Director of Malawi Electoral Support Network (MESN), Blantyre, July 14, 2004.

electoral activities. When this budget was brought before the donor community, the reaction was that the figure was too high. A consultant was hired to analyse the budget and budget requirements. The conclusion of a consultant report presented to the donor community and the MEC in February 2003, was that the budget could be reduced to US\$ 14 million if all elements not strictly related to the electoral process were removed.²⁶ Moreover, the donors committed to contribute US\$5.1 million, and advised the Government of Malawi to finance the additional US\$ 9 million. It was only *after* the donor community and their consultant had reviewed the budget that the document was dealt with by the government. The figure of US 14 million was taken as a given and the budget for the 2004 elections were passed in Parliament without further comments, indicating perhaps the limited understanding by MPs of electoral matters.²⁷

In February 2004, following overspending on the voter registration exercise, the MEC again presented donors with a revised election budget totalling USE \$21 million. Seven versions of the budget were presented during negotiations that continued until April 2004, only weeks before the general elections. Eventually, a budget of US\$ 18 million was accepted as realistic, although it was never formally agreed to. None of the donors contributing to the trust fund increased their contribution to cover the gap. The stated goal of democracy assistance to the electoral process in Malawi is to strengthen the MEC's ability to manage elections, and to improve its accountability to Malawi's citizens. Ironically, perhaps, in the 2004 election exercise, long term capacity building activities were removed from the MEC elections budget as donors insisted on cutting costs. Subsequent assistance in part sought to redress the observed shortcomings on an emergency basis.

4. Concluding remarks

The paper has assessed the electoral process in Malawi across three consecutive elections and argued that the quality of the elections, in terms of voter participation (registration), a level playing field for campaigning, and certainty about the rules and regulations guiding the electoral exercise has not improved significantly. The lack of improvement of the electoral process continues to undermine the legitimacy of elections and prevent the consolidation of democracy. Malawi thereby illustrates the recent global phenomenon that Schedler (2002: 46) calls the long menu of electoral manipulation. As witnessed in transitional democracies in Latin America, Asia, Eastern Europe and Africa, regular elections are conducted; however, political actors pursue a range of strategies to secure their desired outcome.

The administrative weaknesses of the electoral processes in Malawi provide an important explanatory factor for the persistent problems identified by both local and international observers. The legitimacy of the electoral process in Malawi has been challenged throughout. In 2003, the chair of the Electoral Commission stated publicly that they did not have the funds to make the necessary preparations for the 2004 elections. The fact that MEC was unable in the 2004 election exercise to address the problem of the different sizes of constituency populations is a further indication of the limited ability of the MEC to address pertinent issues of the legitimacy of the electoral process. Moreover, the chaos surrounding registration in 1999 was repeated in 2004, suggesting that a learning process has not taken place. Furthermore, the MEC has not been able to fill a function of interaction and conflict resolution between parties. On the contrary, interviews with party officials suggest that they view MEC as part of the problem, rather than the solution to the problem.

²⁶ Horacio Boneo: "Comments on the Preparedness of the MEC and the Approach to the 2004 Elections", Lilongwe, February 2003.

²⁷ Commissioner Chinkwita Phiri observed that delays and inadequacy in funding of the commission contributed a lot to the unsatisfactory performance of the commission in the 2004 elections (Personal interview MEC commissioner, Blantyre, July 14 2004).

A report on governance in Malawi recently concluded that with an annual budget of just over 625 million dollars for a population of almost 10 million it is somewhat inevitable that all areas of governance suffer. Clearly, it is difficult to successfully manage an economy without adequate resources. Without adequate funding the institutions of government in Malawi are bound to suffer from structural weaknesses and a shortfall in capacity. We do acknowledge that even if the shortcomings of the electoral process that relate to the Malawi Electoral Commission were corrected, Malawi would still face several hurdles on its way to democratic consolidation. Other formal governmental institutions as well as informal structures would still impede the significance of the electoral process. As the state does not have sufficient funds to support political parties, they too tend to rely on the funds of private individuals. This invariably leads to such individuals personalising the parties. The dominance of the executive over the legislature and the lack of a significant local sphere of politics are some of the formal governmental institutions that also impact on the quality of the democracy. In addition, the prevailing neo-patrimonial culture and the poor performance of the economy impact negatively on the ability of the system to function according to democratic norms and ideals. Malawi's extreme dependence on the international aid transfers further limits the ability of political parties and political leaders to present alternative electoral promises to the electorate. These challenges do not disappear even if formal institutional processes are improved. Nevertheless, a further institutionalization of the democratic processes in Malawi will require reforms of electoral administration, hereunder the Malawi Electoral Commission.

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SUMMARY

Entering the third decade of multiparty democracy on the African continent, incumbents appear able to secure electoral mandates without opening for extensive political liberties. The paper argues that the administration of the electoral process is a key factor for understanding the still limited institutionalization of democracy in sub-Saharan Africa. Focussing on the case of Malawi, we show that electoral administration has not improved since the founding elections in 1994. Explaining why electoral administration has not improved, we focus on the institutional capabilities of the Malawi Electoral Commission (MEC) by assessing its capacity to administer free and fair elections. We find that the commissions' limited control over its budget, its inability to enforce the electoral regulations, and the appointment structures limits the commission's ability to carry out its functions. Second, we assess the electoral commission's relational resources in terms of its interactions with other political institutions. We find that the MEC is not perceived as an independent organisation by political stakeholders and civil society. The limited trust affects its ability to perform. Furthermore, the international donor community's active – in some instances intrusive – role in electoral administration has reduced national ownership of the electoral process.

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