



MALAWI ELECTORAL COMMISSION

For Immediate Release

RESPONSE BY THE MALAWI ELECTORAL COMMISSION TO ISSUES RAISED AND DEMANDS MADE BY POLITICAL PARTIES IN A STATEMENT RELEASED THROUGH A PRESS CONFERENCE ON 16TH OCTOBER 2024.

Background

The Malawi Electoral Commission (the “Commission”) wishes to address the issues raised jointly by the Alliance for Democracy (AFORD), Democratic Progressive Party (DPP), and the UTM Party (UTM) (the “Political Parties”) during a press conference held on 16th October 2024 in Lilongwe. During the press conference, the political parties read out a statement which raised several issues and made certain demands to be addressed and satisfied by the Commission or by the people or officers mentioned in the statement.

On 17 October 2024, the Commission considered the issues raised and resolved to address them as follows—

Smartmatic International Holding B.V.

It has been alleged in the statement that Smartmatic International Holding B.V. (Smartmatic), the company contracted by the Commission to supply Election Management Devices (EMDs), and the Election Management System Software is a company of questionable integrity and has been involved in electoral malpractices in Venezuela, the Philippines, Kenya, and other countries that were not mentioned.

The Commission is always committed to the principles of due process, transparency, and accountability, including in its procurement processes. Therefore, as requested the Commission wishes to assure the political parties, the contracting of Smartmatic was in accordance with the law that regulate procurement in Malawi and that all the necessary due

diligence was conducted by the Commission to ensure that Smartmatic has the professed capabilities to deliver the EMDs and the EMS Software.

Briefly, the process which resulted in the identification and subsequent contracting of Smartmatic was as follows—

Adoption of new technology and procurement process

As part of the process, the Commission went on a learning visit to the Independent Electoral Commission of South Africa (IEC) in March 2022. Based on the lessons from the learning visit the Commission resolved to migrate to the new technology. By its resolution dated 4 August 2023, the Commission approved the commencement of the procurement process to identify and contract a supplier for both hardware and software for election management.

The Commission sought and was duly granted a *No Objection* by the Public Procurement and Disposal of Assets Authority (PPDA) on 21 August 2023 to use a two staged restricted tendering method of procurement.

Research was conducted to find prospective suppliers for the equipment and the software. The research to identify the potential suppliers was based on the following attributes—

- (i) Whether company is a manufacturer and developer of both the device and the software.
- (ii) The company's experience with any Election Management Body.
- (iii) Where the company has supplied before and when the supply was done
- (iv) Type of the gadgets they supply or manufacture and sample of their gadgets.
- (v) Quantities and scale of operation.
- (vi) Manufacturer support during field operation and support services
- (vii) Manufacturer training for user's staff

The findings of the research were that most of the companies indicated to be providers of the solutions, while some clearly indicated that they are manufacturers. Some companies indicated that they are software developers and would partner with a gadget manufacturer to offer complete solutions. Few indicated that they are both manufacturers and software providers.

Further, most of the companies indicated that they are biometric solution providers for services such as identity registration and mainly working with Election Management Bodies (EMBs) to provide voter identification solutions in elections. Some indicated being both a

biometric solution provider and having worked EMBs in voter registration, results transmission among many other electoral processes.

Based on analysis, the Commission's Internal Procurement and Disposal Committee (IPDC) resolved to request technical offers from the following suppliers:

- (i) *Aratek Biometric International from Taiwan*: This company is both a manufacturer of the gadget and the developer of the software running on the gadget. This company is both a biometric solution provider as well as tailored solution for governments and educational institutions, among others. The company has the capacity to develop tailor-made software for the gadgets it manufactures.
- (ii) *Miru Systems from South Korea*: This company is both a manufacturer of the gadget and the developer of the software running on the gadget. The company is solution provider for electoral processes including voter identification, electronic voting systems and votes counting systems. The company has supported the EMBs in Iraq, Russia, Democratic Republic of Congo, South Korea, among others. The company provided support to over 75,000 polling stations in DRC during operations and also provided manufacturer training to the EMB's staff.
- (iii) *Smartmatic International from the Netherlands*: This company is both a manufacturer of the gadget and the developer of the software running on the gadget. The company is both a biometric solution provider but has also specifically been involved with several EMBs within the region and beyond including Kenya, Zambia, Uganda, Venezuela, Philippines Belgium, the U.S., the U.K., Bulgaria, Norway, Albania, Estonia, Brazil, and Australia. The company has worked on voter registration, voter identification and authentication, processing of deceased voters and results transmission. The company has demonstrable capacity for manufacturer training of EMB staff as well as provision of technical support during the electoral activity on massive scale. The company was able to supply and provide technical field support to over 45,000 devices.

Request for Technical Offers was sent to the three bidders- Aratek Ltd of Taiwan, Miru Systems of Korea, and Smartmatic of Netherlands on 5 August 2023. The Commission received technical offers from three companies on 15 August 2023. An analysis of the offers was done on 27 and 28 August 2023 by EMD Project Team to Develop a Bid Document.

By letter dated 25 September 2023, the Public Procurement and Disposal of Assets Authority granted the Commission approval to use a Two Stage Restricted Tendering and also authorised the Commission to invite bids from the above companies as the first stage of the procurement process.

The bid document was issued to the three bidders on 9 October 2023 and the three (3) identified and shortlisted international suppliers were instructed to submit their bid offers by 9 November 2023. All the identified suppliers acknowledged receipt of the bid document and were kept in constant engagements for clarifications. By November 2023 at 14:00 hours, which was the set closing time, only one bidder, Smartmatic of Netherlands had placed their bid in the tender box. Aratek International and Miru Systems did not. Aratek submitted a formal withdraw through email on 7 November 2023. The reason provided was that “the requirements and specifications in the bid document regarding the device memory and internal storage were not aligned with [their] business strategy.”

Having remained with one bidder, the Commission sought further guidance from Public Procurement and Disposal of Assets Authority through a letter dated 13 November 2023, on whether or not proceeding with one bidder is within the law and regulations that govern two-staged restricted tender method. PPDA’s guidance was that it is within the procurement law to proceed with one bidder.

Evaluation of the lone bid took place from 24th and 25th November 2023 and Smartmatic was confirmed as meeting the requirements.

On 20th December 2023, the Bidder (Smartmatic) conducted the demonstration and simulation of Election process (Registration to Results Management) to the IPDC, MEC Commissioners, and political parties’ representatives through Centre for Multiparty Democracy (CMD).

Due diligence

The Commission conducted due diligence on Smartmatic, which included a visit to the company’s assembly plant and offices in Taipei, Taiwan, from January 28 to February 2, 2024. This process involved a systematic approach to collecting and evaluating evidence to assess the supplier’s credibility and suitability.

The Commission also visited Zambia and Kenya, being countries where Smartmatic has been involved in supply of election technology. The CMD leadership was part of the learning visit to Zambia. Based on the information that the Commission has regarding Smartmatic, the Commission was convinced of its suitability and credibility.

The Commission is aware that Smartmatic has faced various allegations of election interference in countries such as Venezuela, the Philippines, and Kenya. However, after a thorough examination, these claims have been found to lack merit, with no substantiated evidence to support them. As such, these allegations do not diminish the company’s credibility or the vital role it has been assigned by the Commission in supporting the electoral

process. Stakeholders are encouraged to make their own independent inquiry and verify this assertion.

Finally, the Commission submitted to PPDA a request for *No Objection* to award contract to Smartmatic on 6 February 2024 and a *No Objection* was granted on 23 February 2024. The Anti-corruption Bureau (ACB) issued a clearance to proceed with the tender award on 29 February 2024. The Government Contracting Unit (GCU) vetted and approved the contract on 7 March 2024.

It is the Commission's hope that the above explanation will be considered in good faith and that in the spirit of transparency and accountability, stakeholders will duly acknowledge this effort and consider this matter resolved.

Rationale for acquiring new Software

As indicated above, the Commission resolved to adopt modern election management technology. Stakeholders will also recall that the Commission discontinued the use of BVR Kits, which had become outdated. The software for the BVR Kits was developed with technical support from UNDP under the Electoral Support Project. However, the lead technical expert responsible for its development and maintenance left UNDP Malawi when the software became a key issue in the electoral court dispute of 2019-2020.

Additionally, the software was not Android-based, making it incompatible with the devices the Commission was considering for procurement. For these reasons, the software was no longer a viable option and compatible option, prompting the Commission to upgrade both the hardware and the accompanying software.

Transmission of Electoral Results

In terms of the law, it should be recalled that the Malawi Electoral Commission Act, as amended, now allows the Commission to devise other means of management of results, including transmission of results, for the purposes of enhancing efficiency. As indicated in the MEC 2025 General Election Operational Plan that was duly launched and duly shared with stakeholders on 11 August 2023, the Commission will conduct results transmission from Constituency and District Tally Centres to National Tally Centre (electronic and physical). This will entail submission of election results from district tally centres to National Tally Centre both in hard copy and electronic form. The law is clear that this must be in consultation with political parties. Thus, the Commission reiterates its undertaking, as indicated in the Operational Plan, that it will hold specific stakeholder engagement meetings to address issues relating to transmission of results when the Results Management System is in place. In the development of the system, the Commission will be guided by the need for having a system that guarantees the credibility, probity, and inbuilt verification mechanisms at every stage of the process based on the provisions of the law.

Independent ICT Auditors

The Commission reiterates its assurance to political parties and other stakeholders that all processes within the Election Management System are fully verifiable. Upon clear and specific request for an audit being submitted, relevant aspects of the system can be made available for review to address any concerns. For present purposes, the Commission requests the Political Parties to provide clarity on this proposal to assist the Commission form a position that is neither pre-emptive nor mis-aligned with the demand.

Appointment of Chairperson and Chief Elections Officer

(i) Appointment of the Chairperson

The appointment of members of the Commission, including the Chairperson, is governed by law. Specifically, under Section 75 of the Constitution, the Chairperson is appointed by the President of the Republic of Malawi following a nomination by the Judicial Service Commission (the “JSC”). The JSC is responsible for nominating a judge for the position of Chairperson of the Malawi Electoral Commission. The JSC regulates its own nomination processes, ensuring the suitability of the nominee is assessed based on relevant facts. In this case, the JSC should be in a better position to address concerns regarding the suitability of Honourable Justice Annabel Mtalimanja as Chairperson of the Commission.

(ii) Appointment of the Chief Elections Officer

The duty to appoint the Chief Elections Officer of the Commission is exclusively or solely vested in the Commission by section 12 of the Malawi Electoral Commission Act, as amended through an “open, transparent, and competitive process. Further, the Commission has discretion to determine the terms and conditions for the appointment of the Chief Elections Officer as so provided under the Act.

The Commission conducted the entire recruitment process in strict compliance with the Electoral Commission Act and observed the statutory requirements of competitiveness and transparency using methods and processes deliberately devised for the purpose. Mr Mpesi emerged the most suitably qualified candidate of all the candidates that were shortlisted, assessed, and interviewed.

The candidates were not nominated or drawn from political parties but were identified through an advertisement which was placed in newspapers of general circulation and shared to all stakeholders through the Commission’s media and public relations platforms. All candidates went through a first-round session of interviews through which they were assessed using a set of tasks, questions and rating tools devised, formulated, and adopted by the Commission with the assistance of recruitment consultants hired by the Commission for that purpose. Throughout the process, the members of the Commission were conscious about the

requirement that the candidate to be appointed must be *apolitical* which was one of the important attributes listed in the advert. Just like the attributes of “demonstrable reasoning and analytical skills, ability to work under pressure, communication skills, time management, planning and facilitation skills” as listed in the advertisement, the Candidates were assessed and rated on practical demonstration or explanation about these attributes. Specifically, all candidates, including Mr Mpesi were assessed on how they would ensure that they discharged the roles of Chief Elections Officer in a manner that is apolitical and also how they would manage perceptions of political bias at both individual and institutional level.

The Chief Elections Officer is the Chief Executive Officer and Controlling Officer of the Commission and serves under specific directions and supervisions of the Commission and therefore, does not set the agenda of the Commission and does not make decisions on behalf of the Commission. The Chief Elections Officer implement lawful decisions of the Commission.

NRB’s Questionable Registration Process

The Commission will refrain from commenting on this matter, being a distinct entity, governed by a separate legal regime. The NRB is better positioned to address the issue.

Conclusion

In conclusion, the Malawi Electoral Commission (MEC) stands resolute in its commitment to maintaining the highest standards of integrity, transparency, and accountability throughout the electoral process. We recognize the importance of collaboration with all stakeholders, including political parties, to ensure that our electoral management systems are effective, credible, and responsive to the needs of the electorate.

We appreciate the concerns raised by the political parties and assure them that we are dedicated to addressing these issues through open dialogue and constructive engagement.

Dated this 20th day of October 2024



Justice Annabel Mtalimanja
CHAIRPERSON