



“A ride on a bumpy road”

CHRR ASSESSMENT OF GOVERNMENT PERFORMANCE IN 2016: A GOVERNANCE AND HUMAN RIGHTS PERSPECTIVE

About CHRR

Centre for Human Rights and Rehabilitation (CHRR) is a Human Rights and Governance organization in Malawi. CHRR’s vision is of a Malawi with a vibrant culture which embraces the values of democracy, human rights and rule of law. Since its inception in 1995, CHRR has championed its work at national level, SADC level through the SADC Human Rights Defenders Network at which it sits in the board, continental level through the African Commission on Human and Peoples’ Rights using its observer status, and at UN level through different UN mechanisms such as the International Covenant on Civil and Political Rights (ICCPR). Founded in February 1995 as a non-profit making organization, CHRR got registered under the Trustees Incorporation Act of 1962.

Introduction

It remains an enduring fact that the year 2016 will go down with its well-documented hope and despair for Malawian citizens on the governance and human rights fronts. It’s worth re-affirming the point that Malawi is legally guided by a progressive and democratic Constitution, the supreme law of the land. Remarkably, Section 12 of the Constitution of Malawi obliges government to remain accountable to its citizens and conduct itself in a transparent manner consistent with an open and democratic society. Chapter IV of the Constitution, also known as the Bill of Rights, remains the country’s watershed in recognizing the political, civil, economic, social and cultural rights inherent in every person. Malawi’s commitment to furtherance of human rights enjoyment is evident in the country’s ratifications of key international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), UN Convention on the Rights of the Child (CRC), Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), to name but a few.

The country has gone further to domesticate these instruments by enacting a number of laws such as the Marriage, Divorce and Family Relations Act, Trafficking in Persons Act, Prevention of Domestic Violence Act, Child Care, Justice and Protection Act, the Gender Equality Act, among others. It is in light of the foregoing that CHRR, in line with the

organisation's mandate, assesses the government on how it has fared in 2016 on human rights and governance aspects.

I. Access to Information Bill enactment---a huge milestone

The year 2016 couldn't end on a higher note with the enactment of the long-awaited Access to Information (ATI) Bill. CHRR's special mention goes to well-meaning parliamentarians for rising to the occasion to record a giant stride in the democratization of the country. CHRR also commends the civil society, media and development partners for their consistent advocacy support towards the passing of the Bill. That's remarkable.

In hindsight, however, the 12-year-old battle ahead of ATI enactment was needless, if not sheer waste of time. Section 37 of the Constitution of Malawi provides for the right of access to information (ATI) and the least government could have done was to play cock-eyed tricks on the enactment of the law. No law is perfect, and the just passed ATI Bill is no exception. However, its passing—after a 12-year battle—should be looked at as a watershed in replacing a culture of secrecy and suspicion with a culture of transparency and accountability in the operations of government affairs. As a nation, we simply cannot afford to look back.

CHRR, thus, calls upon the President to equally do the needful by assenting the Bill into law without hesitation. CHRR expects the President to look at the bigger democratic picture and make good on his campaign promise on the right of access to information enshrined in Section 37 of the Constitution of Malawi.

II Threats against Human Rights Defenders, Journalists and Members of Opposition parties---a drawback on democracy

It is worth applauding the efforts by the Malawi government in guaranteeing freedom of expression in the country. Generally, the year 2016 started with citizens enjoying their civil and political rights, evidenced by peaceful protests as well as media freedom. However, the year 2016 also got blighted by disturbing trends that threatened to wipe away the gains registered and replace them with the reign of threats and terror orchestrated by the ruling Democratic Progressive Party (DPP) against government critics or those with dissenting views.

Earlier in the year, the civil space got narrow when members of Malawi Congress Party (MCP) got arrested for an allegedly seditious WhatsApp chat. The fact that there seems to be no progress on the case only buttresses CHRR fears that government was just out to silence critical voice in the country. Quite undemocratic!

On 17th October 2016, for instance, a Human Rights Activist Mr. Billy Mayaya and two others were arrested for demonstrating against persisting electricity black outs. The country has also witnessed threats being issued to Kamlepo Kalua, a Member of Parliament from the Opposition Peoples Party for the simple reason that he voiced out his concerns and pointed out some irregularities on different issues bordering on corruption and good governance.

Further to this, as reported by the Daily Times Newspaper of Tuesday, 30th August, 2016, the state house has been targeting its critics and embarked on a campaign to silence all Malawians it views critical to its administration. Through different social media and online forums such as malawivoice.com, Malawi independentblog.com, blantyrepost.com among others, the officials at State house have been fabricating stories about different Malawians ranging from economists, opposition politicians, human rights defenders to journalists, among others. The troubling developments came barely three weeks after the DPP Regional Governor for the South asked the State President at a rally to authorize the youth wing of the party known as the cadets to silence the critics.

During the recent rally at Masintha Ground in Lilongwe, DPP acting general secretary Francis Mphepo threw caution to the wind by asking the newspapers "to go to hell". The statement, coming from a powerful political figure like him, is a serious set-back to media freedom in the country.

As if that was not unfortunate enough, recently, the Malawi Communications Regulatory Authority (MACRA) fined Zodiak Broadcasting Station (ZBS), a private radio station, for granting what it deemed unbalanced media coverage. This is coming against a background that ZBS granted a lot of space to Kamlepo Kalua, an opposition legislator who spoke against the maladministration. This is not the first time that MACRA has attempted to stifle media freedom in Malawi more especially targeting the private media houses. This is despite the fact that state broadcaster, Malawi Broadcasting Cooperation (MBC) favours the government in its propaganda programs targeting opposition and critics, and goes undisciplined by MACRA. These double standards are a regrettable professional scandal, to say the least.

CHRR, therefore, asks the Malawi Government to stop using state resources to abuse and silence its critics including the media. Government ought to take progressive steps in guaranteeing media freedom by among others, signing the Table Mountain Declaration. Furthermore, government ought to adopt a law protecting human rights defenders in conformity with the UN Declaration on Human Rights Defenders 1998 and the Commission's Resolutions on Human

Rights Defenders including ACHPR/Resolution 69 (XXXV) 04, ACHPR/Resolution 119 (XXXXII) 07, and ACHPR/Res.196 (L) 11;

III Rising insecurity---cause for sleepless nights

The year 2016 saw national security nose-dive once more, forcing citizens and property owners spend sleepless nights. Cases of armed robbery remained unabated. Prominent citizens such as the Vice President Hon. Saulos Chilima, Leader of Opposition Hon. Lazarus Chakwera and Minister of Lands, Housing and Urban Development Hon. Atupele Muluzi had the wrath of insecurity in the country. Parliamentarian Jessie Kabwira had her vehicle torched by the yet-to-be known criminals. The common citizens, especially market vendors, also had a year to forget due to fires that razed down most of the major markets in the country. This is not to talk of killings and abductions of people with albinisms, worsened by increasing cases of mob justice. Perhaps, the height of insecurity in the year 2016 was the gruesome murder of a female Police Officer, Rhoda Ngoma, who was heading the Chipoka Criminal Investigating Department (CID).

CHRR believes insecurity can best be resolved by giving the Malawi Police Service more capacity, especially resources. Furthermore, government ought to conduct a thorough screening exercise during the police recruitment to avoid a possibility of entrusting people with questionable criminal records with the task of enforcing law in the country. Most importantly, there is need for a robust and meaningful investment in police- public relationship if the country is to tame insecurity.

III Sentencing of cop over 20/7/11 killing---hope for justice

There was a ray of hope when, finally, the court handed down a 12-year-jail term to a police officer involved in the 20th July, 2011 killings. The move has given hope for justice over extra-judicial killings by those in authorities. The sentencing of the police officer, however, happened against a silhouette of another unfinished business on the Robert Chasowa, Issa Njaunju murder cases, 19 citizens who were killed in cold-blood during the 20 July protests. There simply has been so much flip-flopping on the cases that one would safely accuse government of bloody complicity. A senior official at the Malawi Anti-Corruption Bureau (ACB) Issa Njaunju was brutally murdered by unknown people. Up to now, there has been nothing tangible in as far as investigations of the perpetrators of the crime are concerned. The international community has offered to assist the Malawi government through the Malawi Police Services with the investigations. What has been very surprising and of course disheartening is that the government has not yet opened up on how and indeed whether it is willing to work with the international experts in criminal investigation to find the Njaunju killers. This has brought about a lot of speculations and of course fears among different experts in

law enforcement agencies like the ACB and the Financial Intelligence Unit among others in the fight against corruption.

Further to this, there is unresolved murder case involving Robert Chasowa, a 25 year old Engineering student at the Polytechnic, a constituent college of the University of Malawi. For umpteenth time, the government has pledged to make sure that justice sees the light of the day in the Chasowa murder case. However, on the ground, there has been very little, if any, steps taken to make sure that the case comes to its logical conclusion. By playing hide and seek on the cases, government is setting a dangerous precedence.

CHRR hopes 2017 will see justice prevail over all the extra-judicial killing cases, once and for all. CHRR urges government to expedite the investigations and bring to book the murderers of the late Issa Njaunju, one of the directors at Malawi ACB and ensure the protection of the workers at the ACB. The Robert Chasowa case also needs to be acted on with speed. It is CHRR's expectation that the Government of Malawi will ensure the prosecution of all alleged perpetrators of extrajudicial killings and expeditiously complete all the processes that have been already initiated, punish those who are convicted and compensate the victims.

IV Hunger Crisis---- good response undermined by exorbitant grain price and corruption reports

It's a well-known fact that 2016 proved yet again disastrous on the enjoyment of the right to food by citizens in the country as stipulated by Section 30 (2) of the Constitution of Malawi. This was largely due to dry spells and floods that hit most parts of the country. It is, however, worth commending government for taking swift actions by among others, prioritizing the crisis in the 2016/ 2017 national budget. Government's subsequent stocking of the country's various Admarc depots with maize bespeaks its commitment to fulfil the right to food. CHRR also appreciates development partners' response to the crisis through, amongst others, distributing food items to the most affected citizens.

However, media reports of fraudulent activities involving the purchase of maize from Zambia are disconcerting. CHRR gathers that Malawi government obtained a loan of K26 billion from the Eastern and Southern African Development Bank (PTA Bank) to purchase 100, 000 metric tonnes of maize from government of Zambia through Zambia Cooperative Federation (ZCF). Consequently, the maize price was hiked from around K5000 to K12 500 per 50 kg bag to enable Admarc repay the loan.

Disturbing reports have, however, emerged suggesting that government bought the maize from a private company at an exorbitant price. CHRR feels the move by

government is a huge betrayal to the citizens, especially considering that the price of K12 500 for 50 kg bag of maize is way too high for the ordinary Malawians. It was sheer insensitive on the part of government.

Affordability is one of the critical areas in realizing the right to food and government has done a huge disservice to Malawians on pricing.

CHRR, therefore, calls upon government to consider adjusting downwards the maize price to meet the affordability for most Malawians. CHRR also calls upon the ACB to, as a matter of urgency, institute investigations into reports of corruption in the purchase of maize from Zambia. ACB should be seen to be proactive in fighting corruption rather than waiting for a complaint, as we have recently been made to believe. CHRR further urges government to act with speed on the Right to Food Bill which, if enacted, can go a long way in enhancing the country's legal framework on the response to food shortage in the country.

V. Public Sector Reforms on track---but more support required

There is no denying the fact that the Public Sector Reforms being championed by government are taking shape. For instance, the year 2016 also saw government finally rolling the national identification program in the country. This is commendable. Of late, Malawi has been home to a number of illegal immigrants, exacerbated by the country's porous borders and laxity on the part of Immigration staff working along the borders. We, at CHRR, thus, hope the national identification program is a step in the right direction in reducing the high risks of statelessness in the country. If successfully conducted, the exercise will help government come up with relevant policies and resources towards critical sectors such as health and education.

CHRR, however, calls upon government to properly and publicly share the gains realized by the Reforms so far to offer citizens the opportunity to appreciate the progress made and, where necessary, offer constructive inputs on the Reforms. CHRR feels sharing the successes on a political platform should be discouraged if the Reforms are to enjoy support from all Malawians across political divide. Moreover, CHRR urges government to provide more resources towards the program to ensure that it's a success.

VI War against corruption-----a long way to go

Cognizant of the devastating impact cash-gate has had on service delivery in the country, it was only prudent for government to expedite prosecution of all cash-gate

cases in the country. That's what everyone expected, after all. This is why CHRR appreciates government efforts-- within the limited resources—to prosecute cash-gate cases, with others already convicted. It is also worth applauding government through Accountant General Office for regularly demanding reconciliation reports of previous funding from Ministries and Department Agencies (MDAs) before approval of subsequent funding. This can go a long way in inculcating fiscal discipline in government. CHRR, however, feels the fight against corruption has, over the years, been highly politicized. Actually, there has never been a year when the ACB was more politicized than 2016. This is retrogressive. More importantly, the year 2016 witnessed wide-spread reports of corruption happening in district councils in the country. Development packages such as Masaf stands out to be the most abused, with unscrupulous councils officials conniving with chiefs and Area Development and Village Development committees to create ghost workers for self-aggrandizement. This shameless and malignant level of corruption has literally defeated the real intentions of the program and condemned the deserving vulnerable groups to untold poverty. For years, there has been a cry for decentralization as one way of empowering the local citizens. However, with these disturbing corruption reports, are we, as a country, not decentralizing cash-gate?

CHRR feels the fight against corruption starts with making ACB independent by making the Parliamentary Public Appointments Committees (PAC) the appointing authority of the ACB Director, unlike in the current case where the ACB boss is behaving like a ruling party official. This is a greatest set-back the fight against corruption has been facing in the country. Most importantly, it has to be made clear that corruption or indeed cash-gate cannot be won through prosecution alone. There is need to invest in a robust civic education by government and other stakeholders on the evils of corruption. CHRR also calls upon government to regularly conduct audits in the district councils as one way of exposing corrupt practices in the councils.

VII Persistent Water Shortages and Electricity Blackouts--- a huge blow for social and economic rights

There is no gainsaying that government fared woefully in water and energy sectors in the country. The country consistently witnessed intermittent power and water supply, leading to preventable deaths in the public hospitals. The development virtually threatened the right to life, enshrined under section 16 of the Constitution of Malawi and other international instruments the country is party to.

Secondly, it must be emphasized that persistent water and electricity shortages caused huge havoc in the enjoyment of social and economic rights. The manufacturing sector

that contributes a greater percentage to the GDP of our ailing economy made a lot of losses in the year due to blackouts. Malawians operating small scale businesses that depend on water and electricity availability like barbershops, video show rooms and salons cried foul. Citizens found it hard to enjoy their right to economic activity, as stipulated in section 29 of the Constitution of Malawi. This is happening despite the fact that the water and electricity tariffs are way too high for most ordinary Malawians.

CHRRs call upon government to rise up to these challenges once and for all by, among others, expediting the projects government is already exploring. The Mulanje-Blantyre and Salima-Lilongwe water projects are welcome and their completion can go a mile in resolving the crisis at hand. Similarly, energy projects such as the Kamkwamba electricity project ought to be acted upon with speed.

VIII Unwarranted closure of public universities--- a violation of right to education

The year 2016 also saw frequent and unwarranted closure of public universities, leading to pro-longed academic calendar. It appears government has fashioned a culture of shutting down public universities at every emergence of the issue that can best be handled by decisive leadership and honest dialogue. That's deplorable. It needs no reminding that the move rolls back enjoyment of the right to education for the students and as well as exerts an extra economic burden on the parents and guardians who provide financial support to the students.

CHRR calls upon government to immediately re-open the closed universities while pursuing open and genuine dialogue to the misunderstandings.

IX Violence against people with albinisms and sexual minorities...laudable response by government

CHRR would like to commend government for taking bold steps in curbing violence against sexual minorities and people with albinism in the country. Equally worth-applauding is the moratorium government is implementing on legal status of same-sex relationships in the country. Furthermore, CHRR noted with satisfaction government and stakeholders' efforts in dealing with abduction, killings and exhumation of remains of people with albinism in the country.

However, considering that most of the victims are from poverty-stricken families, CHRR calls upon government to consider socially and empowering people with albinism so that they become productive citizens in future. Similarly government needs to act on reports of violence against the sexual minority groups in the country as one way of protecting their various rights.

X Malawi's sticking to ICC---a commendable commitment to international justice system.

2016 will also go down as the year Malawi government stood with victims of human rights atrocities by re-affirming its support and membership for International Criminal Court (ICC) which was founded by the Rome Statute in 1998. The stand by the Malawi government ought to be deemed as a mark of democratic sanity buttressed by serious commitment to ending heinous crimes of international nature. Of late, there has been an anti—ICC narrative by critics who have been accusing the Hague-based court for unfairly targeting Africans. The narrative has, however, been proven to be fallacious as records indicate that most of the cases before the ICC were brought by Africans themselves. Secondly, ICC critics forget to realise that the Tribunal is a court of last resort. It is, thus, important to underscore the fact that Malawi government has been able to see through the hypocrisy by ICC critics.

CHRR would, therefore, like to urge Malawi government to take a step further by coming up with a law on serious crimes such as war crimes, war against humanity and crimes of aggression. Doing so would go a long way in attaining the principle of complementarity as required by international criminal justice.

Conclusion

Looking back, the year 2016 wasn't without tribulations. More depressing is the fact that most challenges in the economic and social rights were caused by natural catastrophes such as dry spells and floods. This seriously compromised government's capacity to fulfil citizens' social and economic rights. However, it must be underscored that, in Human Rights and Governance, it's not a question of whether duty bearers have adequate resources in response to every right; it's a question of whether the duty bearer can demonstrate accountability, transparency, equity and responsiveness within the limited means. As CHRR, we stand ready to support the government within our mandate to make Malawi's democracy grow and glow with a vibrant culture of human rights in 2017 and beyond.

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