

MALAWI AT 50: STOCKTAKING MALAWI'S PROGRESS IN PROMOTION AND PROTECTION OF HUMAN RIGHTS FOR ALL AND GOOD GOVERNANCE



Presented at a press briefing organized by Centre for Human Rights and Rehabilitation and Centre for Development of People in partnership with human rights defenders to track progress made by the country over the years in the realm of human rights, good governance and rule of law as part of the country's 50th anniversary celebration

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REFLECTING THE PAST, PRESENT AND FUTURE IN LIGHT OF VIENNA CONSENSUS AND OTHER DOMESTIC AND INTERNATIONAL HUMAN RIGHTS INSTRUMENTS: A GOLDEN OPPORTUNITY TO BEND THE HAND OF CLOCK TOWARDS A TRUE DEMOCRATIC STATE BUILT ON RESPECT FOR ALL HUMAN RIGHTS, RULE OF LAW AND CONSTITUTIONALISM

1.0. INTRODUCTION

There is no gainsaying that, as a country, Malawi has earned itself continental adoration for reaching a golden mark---more so when the feat is attained with peace and unity still prevailing in the country. Attaining independence from the British colonial masters in that defining year, 1964, was not easy, and neither was the post-colonial path to development. Graduating from a one party state into multiparty democracy in 1993 was remarkable. All these strides recorded are no mean achievements. We therefore join the rest of the county in celebrating this golden jubilee. We also call on government, CSOs, and all Malawian citizens to make the post-Jubilee years even better.

2.0. THE VIENNA CONSENSUS AND ITS RELEVANCE IN STOCKTAKING MALAWI'S PROGRESS IN HUMAN RIGHTS AND GOOD GOVERNANCE OVER THE YEARS

Malawi's 50th anniversary of independence provides the rare opportunity for all Malawians to take stock of the progress the country has registered over the years on fronts ranging from social-economic to political development. However, one of the vital areas which must be given careful consideration when stocktaking Malawi's progress over 50 years of independence is human rights and, of course, good governance. Protection and promotion of human rights for all and good *governance* are the bedrock of development all levels. Most importantly, the universal human rights principle of "indivisibility, universality and interrelatedness of all human rights" is vital. This principle insists that human rights be universally applied to all, and that there is nothing like "selective" human rights restricted to only one geographical area but not applying to other areas. Human rights are universal and, hence, for all irrespective of cultural

background, race, sexual orientation, religious belief, nationality and other aspects of life. This means that any assessment of a country's track record on human rights should be measured against the existing universal or international human rights instruments, and, of course, the domestic legal instruments which foster the protection and promotion of human rights for all as enshrined in the Universal Declaration on Human Rights and other international human rights instruments.

To what extent has Malawi--over the years--conformed to the various international human rights instruments it has ratified? Is Malawi progressing or retrogressing in as far as promotion and protection of human rights for all is concerned? These are some of the questions which we at thought we should seriously reflect on as a country as we commemorate this year's 50 years of independence. We will use the *Vienna Declaration and Programme of Action of 1993* and other existing domestic and international human rights instruments to guide this reflection. The fact that this year's independence celebration follows the international human rights day celebration [10 December 2013] of the 20th anniversary of the Vienna Declaration and Programme of Action offers the country an opportunity to reflect on its human rights progress over the years in light of the Vienna consensus. According to Ms. Navi Pillay, the United Nations High Commissioner for Human Rights, the consensus to the Vienna Declaration and Programme of action emerged due to the delegate's appreciation of the notion of universality, indivisibility and interrelatedness of all human rights. In Pillay's words, the Vienna Declaration and Programme of action "reaffirmed the dignity and rights of all, and showed us how to achieve them. It crystallized the concept of universality and impartiality with regard to justice. It showed us the way forward, and to some extent we have followed that path". Special focus will dwell on the progress registered since 1993, the dawn of democratization in Malawi.

3.0. CONTEXTUALIZING GLOBAL HUMAN RIGHTS ACHIEVEMENTS OVER THE YEARS: TO WHAT EXTENT DO THEY APPEAL TO MALAWI'S SITUATION?

One great global achievement that stands out since the inception of the Vienna Declaration and Programme of Action is the creation of the position of High Commissioner for Human Rights in 1993 which has enabled an "independent, authoritative voice to speak out for human rights worldwide". Since its inception, the office of the High Commissioner has been responding to crises, supporting human rights defenders, and bringing human rights closer to people.

Despite the various challenges so far registered and anticipated in the quest for protection and promotion of human rights and fundamental freedoms at the global stage, the office of the United Nations High Commission cites the following as some of the achievements accomplished since 1993:

1. Economic, social, cultural, civil and political rights and the right to development are recognized as universal, indivisible and mutually reinforcing rights of all human beings, without distinction.
2. Human rights have become central to the global conversation regarding peace, security and development.
3. New human rights standards have built on the 1948 Universal Declaration of Human Rights and the implementation of international human rights treaties is significantly improved.

4. Women's rights are now acknowledged as fundamental human rights. Discrimination and acts of violence against women are at the forefront of the human rights discourse.
5. There is a global consensus that serious violations of human rights must not go unpunished. Victims have the right to claim justice, including within the processes to restore the rule of law following conflicts.
6. The rights of lesbians, gays, bisexuals and transgender individuals have been placed on the international agenda.
7. States and the United Nations recognize the pivotal role of civil society in the advancement of human rights. Civil Society has been at the forefront of human rights promotion and protection, pinpointing problems and proposing innovative solutions, pushing for new standards, contributing to public policies, giving voice to the powerless, building worldwide awareness about rights and freedoms and helping to build sustainable change on the ground
8. There is a heightened awareness and growing demand by people worldwide for greater transparency and accountability from government and for the right to participate fully in public life.
9. National human rights institutions have become more independent and authoritative and have a powerful influence on governance. Over a third of all countries have established one or more such institutions.

Our perennial failure to internalize and implement international human rights instruments

With regard to the new human rights standards built on the 1948 Universal Declaration of Human Rights, it must be clearly stated from the very outset that Malawi is party to many major human rights instruments at global, regional and sub-regional levels. They include: Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Convention Against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment, International Covenant on the Elimination of all Forms of Racial Discrimination Against Women, African Charter on Human and People's Rights and SADC Protocol on Gender and Development. It should also be mentioned that with regard to human rights, Malawi should be commended for its liberal constitution.

Despite being party to several major human rights instruments, Malawi has done very little to ensure that such international human rights standards are ably internalized and implemented. In fact, none of these instruments have been specifically domesticated in Malawi. They cannot, therefore, be invoked by citizens in the domestic courts in Malawi. However, the extent that most of them are inspired by the Universal Declaration of Human Rights whose most provisions have matured into customary international law norms, some of the provisions may be relied upon in domestic courts. In fact, according to the case of Chakufwa Tom Chihana-vs-The Republic, the Universal Declaration of Human Rights (UDHR) has a force of law in Malawi. All its provisions may actually be invoked in domestic courts in Malawi.

While acknowledging that economic, social, cultural, civil and political rights and the right to development are recognized as universal, indivisible and mutually reinforcing rights of all human beings, without distinction, some quarters have contended that socio-economic rights are not given the same level of protection as civil and political rights under the new Constitution of

Malawi adopted on 18th May 1995, which has a somewhat comprehensive Bill of Rights. In our view, the Bill of Rights substantially reflects the normative framework set by these instruments.

Mismanagement of Public funds a gross violation to the right to development and socio-economic rights

However, we remain deeply concerned over the growing public mismanagement of funds over the years with the infamous cashgate scandal standing out which has cost the nation of its hard-earned domestic and donor funds as well as development. We view the shoddy fiscal deals that have characterized our history as unfortunate and serious human rights violation, especially the the right to development as well as socio-economic rights. The continued failure of our political leaders over the years to allow the principles of accountability and transparency to guide and inform their respective government's attempts to get to the bottom of the chronic disease of looting public resources remain a serious human rights violation- that all patriotic Malawians must be concerned with.

As rightly observed by the office of the UN High Commissioner last year during the commemoration of international human rights day, there is indeed a heightened awareness and growing demand by the people across the world for greater transparency and accountability from governments, and any government that tends to conceal vital information from the public as was the case in the infamous cashgate saga has no place in a democratic and human rights dispensation. The absence of access to information legislation, the continued failure by our Presidents over the years to declare their assets as a democratic and human rights obligation all continue to impinge on the public's demand for a greater transparency and accountability as we celebrate our independence at 50. Malawians are tired of being denied of their socio-economic rights and right to development [particularly for the past 50years] due to selfishness of a few, who do not care a hoot about the plight of the common man.

The State and its relations with the Media; Political Will key for an impartial MBC

The issue of the public media as being skewed towards the government of the day since our independence has been of great concern over the years. All this has been happening despite the prevailing legal framework (section 87 [2] [a] and [d] which directly demand MBC to be free from bias in its reporting. But why has MBC been acting in this manner of "treating itself as little more than a mouthpiece of the 'ruling party' of the day"? We observe that lack of political will especially on those in the ruling towards ensuring an impartial, "open-to-all" state-media as partly behind MBC's continued "arrogance" of "treating itself as little more than a mouthpiece of the "ruling party" of the day. Of course, there have been cases where MBC has registered some improvements to the extent of covering some opposition political figures particularly during the first days of Joyce Banda ascendancy to power and recent election period. Suffice to say, such changes have tended to come into fruition at the word of the sitting President. On this, we would like to commend the former head of state Dr. Joyce Banda for opening up MBC and urge the current regime never to take MBC backwards. We strongly believe that an impartial and open to all MBC is possible considering the conducive legal environment. The key to this, however, is the demonstration of political will on the part of our leaders to allow MBC to freely function in conformity to the existing laws guiding its operations.

We observe with dismay the perennial disease that is our governments of perceiving the private media as opposition agents bent at thwarting their development agenda particularly since 1994. Journalists or media houses that have exposed and condemned the existing wrongs of such politicians have either been threatened or subjected to “unjustifiable” arrests. Raphael Tenthani and Mavuto Banda landed themselves in trouble with DPP’s government for covering a story concerning mysterious events that had characterized the Sanjika palace. They were both arrested. Zodiac Broadcasting Corporation car too got bombed by suspected DPP thugs. Within the same era, DPP administration issued a directive prohibiting all government agencies from advertising with Nation Publications Limited which was deemed as critical of Mutharika’s leadership and the pathetic passing into law of section 46 bill which empowered the minister responsible for information to ban media institutions which were deemed critical of the government.

A few weeks into office, Joyce Banda administration showed some political will towards an improved government-media by among other things making some verbal commitments towards the promotion and protection of press freedoms. On one occasion the former Malawi leader visited Nation Publications Limited where she publicly vowed never to follow the undemocratic path of her predecessor of subjecting this one of the leading print media house in Malawi to any form of ban let alone a directive prohibiting government agencies from advertising with it. Section 46, which impinged on media freedom, was repealed, and Malawi Communications and Regulatory Authority (MACRA) went on to issue both radio and television licenses to several applicants including applicants like Zodiac Broadcasting Corporation, Blantyre Newspapers Limited and CCAP Livingstonia Synod who were deemed critical of Mutharika’s regime and hence their respective applications couldn’t get the nod of the most often “politicized” MACRA.

However, a few months down the line the “rulling” Peoples Party’s attitude towards the private media began to change from better to worse especially with the coming in of cash-gate scandal. Addressing a delegation of Media Institute of Southern Africa (MISA) on certain occasion, Joyce Banda said she had stopped reading newspapers because of their growing criticism on her administration. Said Banda: “When I became the President. I thought the media were my partners. But I have serious problems especially with the Newspapers. At first I thought Bingu was wrong. But I have now realized that you have no compassion and you can kill a sitting President”. President Banda’s press conferences graduated from being platforms for the President to engage with her esteemed scribes into Peoples Party’s functionalities where journalists could be subjected to all sorts of intimidation and name calling. Some media houses and journalists like Blantyre Newspapers Limited and Justice Mponda found themselves in the bad books of the administration through either lawsuits or arrests just because of publishing materials which were deemed critical of Banda’s regimes. If this was not enough, one of People’s Party top brass publicly advised the former President and her government to stop giving business to private media houses as they tended to be critical of her administration.

To what extent is Malawi Human Rights Commission (MHRC) Independent and authoritative?

By reflecting on the role of the Malawi Human Rights Commission (MHRC) over the recent years in exerting influence on governance, we cannot agree more with the United Nations last year observation that national human rights institutions have become more independent and authoritative globally. The Malawi Human Rights Commission have in several instances worked

hand in hand with the Civil Society in exerting influence on human rights and issues especially in the scenario where there have been gross human rights violations. So passionate has the Malawi Human Rights Commission been in its human rights obligations that some of her personalities have found themselves in bad books with the existing “authoritarian” governments. The case of John Kapito (Former Chairperson of MHRC) and Bingu Wa Mutharika (Former President of Malawi) between 2010-2011 stands out.

Human Rights Defenders and the state; friends or foes?

We also concur with UN’s observation, particularly when applied to Malawi’s context, that the Civil Society has been at the forefront of human rights promotion and protection, pinpointing problems and proposing innovative solutions, pushing for new standards, contributing to public policies, giving voice to the powerless, building worldwide awareness about rights and freedoms and helping to build sustainable change on the ground. However, this is not to suggest that the civil society has played an “angelic” role since the advent of democracy. There have certainly been instances when some of its advocacy work may have left a lot to be desired due to a number of challenges including those to do with lack of adequate resources to effectively provide adequate awareness to the general public to appreciate the status quo on various issues of national interest and lack of preparation. Despite its shortfalls, the civil society has all along especially for the past 15 years cultivated a sense of public trust in its engagement with government and the opposition in the face of human rights violations- No wonder whenever it has tended to be silent or acted in “undesirable” manner on matters the public feel are of great nation interest the civil society has come under public ridicule. For no doubt, the Civil society has the great task of jealously safeguarding its good legacy, and endeavor not to allow anything erode such public trust.

As to whether the Malawi governments have over the years recognized the pivotal role the civil society play in the advancement of human rights, rule of law and good governance is a question that can be ably answered depending on what perspective one is looking at the issue. While our governments especially since 1994 have time and again professed their recognition of the pivotal role played by the civil society as development partners in the advancement of human rights, little has been done to translate such theory into action. The civil society working in the realm of democratic governance and human rights advancement have often been in government’s bad books over the years.

It’s a well-documented fact that during the MCP regime, there was no space for critical voices as most critics were forced into exile, ‘accidentalised’, killed or detained for years on end. Civil society organisations were banned. Private media was undreamed-of. Academic freedom was unheard-of. No wonder, this culture of tyranny that reigned supreme necessitated strong calls for new Malawi in 1993. Malawians wanted freedom, respect for human rights and multiparty democracy. In short, Malawians hankered civil and political space which they duly achieved through a referendum.

The UDF regime started on a good note in consolidating some multiparty democracy gains, through amongst others, opening up some civil and political space. Private media mushroomed, civil society organisations emerged and various political parties emerged on the bloc. However, the Dr. Bakili Muluzi administration started reversing the gains through undemocratic tendencies that started emerging. A Chancellor College student Fanikiso Phiri was short in cold blood for simply demonstrating against government’s style of running universities. A prominent

civil servant Kalonga Stambuli mysteriously died and the family and nation are yet to know what really happened to this son of the land. The emergency of the ruthless 'terrorists', the young democrats only exacerbated the already dismal performance by the UDF regime in the second term. Then came the open and third term bids for the country's democracy. The rest, they say, is history.

When President Bingu wa Mutharika came onto the scene in 2004, a lot was expected. Malawians needed a leader who would spur economic development, bring to an end a political culture of terror and politicizing national development. Remarkably, Mutharika started responding well to some of the expectations. But the situation became different in after 2009. The President turned himself into the worst dictator ever in a multiparty democracy. Any one critical of his administration was 'smoked out'.

Mutharika close all civil and political space. The Bingu Wa Mutharika regime was in fact hell-bent at completely bring to an end the noble human rights service rendered by civil society organizations working in the realm of democratic governance and human rights. Activists were harassed left and centre with some receiving death threats and living in their own country as if they were slaves. Emma Kaliya, Dorothy Ngoma, Habiba Osman, Robert Mkwezalamba, Ben Chiza Mkandawire, Benedicto Kondowe, Moses Mkandawire, Undule Mwakasungula, Gift Trapence, Rafik Hajat, Macdonald Sembereka, Peter Chinoko, Billy Mayaya, Martha Kwataine, Voice Mhone, and John Kapito (just to mention a few) all suffered under Bingu Wa Mutharika's tyrannical rule. At the peak of the infamous cashgate scandal, civil society organized "Black Monday" to protest the economic meltdown due to lack of government's financial discipline in managing public resources. Joyce Banda's administration unleashed excessive political diatribes at the Civil Society Grand Coalition for Defence of good government leader Voice Mhone, describing the black Monday initiative as "Satanic". The civil society also incurred resistance from the United Democratic Front leadership when it stood its ground against Bakili Muluzi third term bid. All these illustrations clearly point to the fact that our governments have over the years shown some resistance towards civil society organizations working for the advancement of human rights particularly in scenarios when such governments are kept on their toes to account for the prevailing serious human rights violations. Nevertheless, the civil society looks into the future with great optimism towards improved relations with the existing and future governments of the day. Interestingly, the same DPP led government that brought the human rights to peripheral is in power again, albeit with a minority government. Malawians will be keen to see if the DPP regime is a changed party. The onus, is therefore on the party to drop off its own olive branch or not.

The growing homophobia against LGBTI Community; repealing draconian laws is the way

Despite the rights of lesbians, gays, bisexual and transgender individuals being placed on the international agenda, Malawi's legal framework remains hostile to the LGBT community, a scenario that is exposing the group to various forms of discrimination. While initially showing some commitments towards abolishing existing laws that criminalize homosexuality, former President Joyce Banda chose to remain mum on such matters especially as we drew closer to the elections. Contrary to human rights norms, some of Malawi's big political parties United Democratic Front (UDF), Malawi Congress Party (MCP), and Peoples Party (PP) during the campaign period even went further to suggest that they would subject the human rights issue of minority LGBT to a proposed referendum, where the majority of Malawians should choose

whether to maintain the status quo or not. Appealing to the democratic principle of “majority rule” to justify a referendum concerning a universally recognised human rights issue of the minority LGBT displays not only sheer ignorance of the very core and spirit of democracy, but also hides the issue behind smoke and mirrors.

Nevertheless, we find solace in the commitments made by the Democratic Progressive Party through spokesperson Nicolaus Dausi during the election debates organized by Zodiak at Crossroads Hotel in Lilongwe that DPP would follow the constitution of Malawi on the matter. Now that the DPP is in power, we expect that it will take the lead in repealing the existing penal code, including those provisions which criminalise same sex marriages. As such this penal code provision is in conflict with section 20 of the constitution of Malawi, which is the Supreme law of the land. Besides, the recent commitments of the new President Author Peter Mutharika towards protection and promotion of human rights is a positive move and also an opportunity for his government to walk its talk by, amongst other things, taking a leading role in repealing the existing penal code which infringes on the human rights of the LGBTI community. We at will not relent in reminding the current government to honour its commitments towards promotion and protection of human rights for all.

When Impunities are legitimized; The perennial failure to come to the bottom of Chasowa, Stambuli and July 20 saga

We also agree with UN’s observation that there is a global consensus that serious violations of human rights must not go unpunished and that the victims have the right to claim justice. However, the developments that have characterized the country over the years in as far as adhering to such global consensus leaves a lot to be desired. There are several serious violations of human rights issues hanging which pose a threat on our commitment to protect right to life, liberty and security of person and access to justice. For instance, reference to the case of Francis Kafantayeni Versus the Attorney General. In that case, the High Court ordered that all murder convicts should be re-sentenced. As at now, only few of them were re-sentenced. We therefore urge the government of Malawi to unveil the steps it has put in place in order to ensure that all these murder convicts are re-sentenced. This matter is certainly of great concern because it means that all current sentences are unlawful and the state cannot continue holding onto convicts illegally and violate their right to fair trial as guaranteed in the Malawi constitution.

Then, there is the issue of late Kalonga Stambuli and the subsequent Commission of Inquiry instituted to find out the causes of his death. Dr Kalonga Stambuli is on record to have died under very mysterious circumstances and Malawians have all along been eager to know the cause of the death through the outcome of the said report. A few years down the line since the Commission of Inquiry started its expected tasks, the final report is yet to be realised and there seems to be clear indications that the release of such an important report may now be water under bridge. We also remain concerned at the pace at which Robert Chasowa’s murder and July 20 issues are moving as well as July 20 issue. Justice delayed, is justice denied.

The continued lack of awareness on gender-related laws

We observe that through various government, development partners and civil society’s interventions issues relating to women’s rights are gradually being acknowledged as fundamental human rights across the nation, and discriminatory acts of violence against women

and girls are now at the centre of human rights discourse. Just recently the government of Malawi ratified the SADC Gender Protocol as part of her continued commitment towards achieving gender equality and women empowerment. However, despite progress registered towards gender equality and women's empowerment, as well as the fight against gender based violence there are still some gaps which ought to be addressed by all stakeholders involved with urgency. There still remains lack of awareness amongst girls and women of the existing gender related laws to help them combat gender based violence, including early marriage, human trafficking, and the continued influence of patriarchal gendered norms. While it has been widely acknowledged that gender is a cross-cutting issue, the process of gender-mainstreaming has not been given the required due attention it deserves in order to ensure that women and girls issues are mainstreamed within the sectorial plans and budgets. A case in point is the recent cabinet which lacks gender balance by a far margin. The nation expected President Prof. Peter Mutharika to appoint quite a good number of women in the cabinet to signal government's commitment to uplift women in various key sectors of the society. We believe the nation has many women who have what it takes to deliver in most cabinet posts given to men. As a nation, we must not just talk, but also be seen to be implementing gender parity and it's only prudent that government take lead in advancing the gender cause.

Separation of party and government functions

Since attaining multiparty democracy, the nation has witnessed a very thin line-- if at all it exists—between a state and a ruling political party function. The painful tendency has always seen the ruling party using state resources to advance the affairs of its political party. Consequently, tax-payers' money which was meant for essential services such as water, education and health are put to unintended use, which is very unfortunate. We condemn this tendency in strongest terms and call upon the current government to come up with measures to ensure that no political party, let alone the ruling party, benefits from tax-payers resources. We also insist that it is crucial that Malawi avoid politicizing its development agenda or placing projects under the 'ownership' of political figures, which can only increase the disturbing trends of patronage, corruption, and nepotism. We encourage Malawians and government itself to take stock of the tendency of each new government to bring in new development policies to glorify their own positions, leading to non-continuity and inhibiting follow through of agendas and projects. We look forward to the day when senior public positions will be allocated based on merit not on networks of loyalty, filiations, or ethnicity (as is evident in the recent appointments).

4.0. LOOKING INTO THE FUTURE; A GOLDEN OPPORTUNITY TO BEND THE HAND OF CLOCK TOWARDS A TRUE DEMOCRATIC STATE BUILT ON RESPECT OF ALL HUMAN RIGHTS, RULE OF LAW AND CONSTITUTIONALISM

However, reminiscent of the troubled path the country has travelled to reach this far, we refuse to get lost in the frenzy of celebration, but instead, would like to seize the historical moment to bring to the attention of the country---specifically government--- long-standing issues which have for a long time undermined the democracy creed we pride ourselves in. Thus, as the country celebrate; we humbly submit the following issues to be critically looked into as the county starts a post-50 life:

Reforming electoral laws

It's a cardinal point that free, fair and credible elections are a fundamental indicator of democracy. Elections legitimize leadership and define the general will of the governed. However, the just-ended tripartite elections have—for lack of a more precise expression—fallen short of measuring up to expected score. Of major concern is that the electoral body-- the Malawi Electoral Commission--- went ahead to announce the presidential results despite an admission to a number of irregularities, simply because the body wanted to fulfill an eight-day rule. The undue influence by the judiciary in whole electoral process through issuing of endless injunctions and counter-injunctions was unfortunate and unnecessary in a democratic event like tripartite elections, to say the least. What could sound as a mockery to multiparty democracy Malawians fought for and attained in 1993 is that five elections down the lane, the country is still stuck with the fast-past thepost electoral system despite the unfortunate bearing the system has on the meaning of majority rule. The current FPTP electoral system creates problems for democratic governance because it allows for weak minority-led governments, led by a President elected by a minority at the expense of parties that might have majority representation in Parliament. With the exception of the 2009 elections, the system has repeatedly handed victory to the minority-supported candidates with all winners under the Presidential race in the 1994, 1999, 2004, and 2014 below 50%.

Thus, looking ahead, we call for the immediate reform of the electoral laws, especially the eight-day rule and first-past-post system. Malawi needs to adopt the 50+1percent system as a matter of urgency if the next president is to have genuine trust and legitimacy of the electorate. The onus is on the current crop of parliamentarians to right this wrong for posterity's sake. Otherwise, the current system has the potential of creating divisions, a recipe so delicate for the smooth running of the country.

Section 65 vis-à-vis Section 64

We also note with concern an intriguing turn of events that has characterized Section 65 in the country's August House. Parliamentarians have always found a loophole in the constitutional provision to become 'cross-stitutes' in parliament, thereby betraying the will of their constituents. Obviously, it has always been the electorate crying foul in this whole democratic equation. Much as most parliamentarians argue that their move in parliament gets the blessing of their constituents, we found it grotesque to believe their assertion in absence of a well proven and verifiable democratic exercise to validate the parliamentarians' actions. We, thus, feel re-introduction of Section 64, also known as the 'Recall Provision' is the only democratic leverage the constituents may have as regards the questionable representation of their parliamentarians. Without the 'Recall Provision' section 65 risks becoming irrelevant in the eye of the constituents.

Reviewing Section 193 (4) which prohibits the use of public resources for political parties

Section 193 (4) of the Malawi constitution prohibits the use of public resources for political purposes. At the same time, there are restrictions on the use of civil service employees in political party activities. The constitution, in fact, mandates the civil service commission, set-up under chapter xx of the constitution to take up legal proceedings in the High Court against a government or a political party or a member of a political party who contravenes these rules. Regrettably, politicians particularly those in the ruling party have gone escort free despite

abusing public resources for political purposes as well as subjecting civil servants particularly women in political party activities like dancing and others. It's high time we as a nation began reflecting on the current legal framework if it's effective in curbing the malpractice especially when viewed in relation to legal impunities on the President of a ruling party, who historically, has reportedly tended to be the main culprit in this scenario. How would the Civil Service Commission take up legal proceedings against a sitting, implicated, President who enjoys maximum legal impunity?

Strengthening and de-politicizing Governance institutions

Of late, we have witnessed steps being taken to inculcate a culture of transparency and accountability in government. This is evident in the establishment of offices such as the Malawi Police Services (MPS), Ant-Corruption Bureau (ACB) the Office of Accountant General, the National Audit Office, the Directorate of Public Procurement, the Directorate of Public Prosecution and the soon-to-established office of Assets Declaration. Despite the offices being established with good intentions, we continue to note weak capacities of such offices as well undue interference by the ruling party to use the institutions for ill motives. It beats all reasoning that the institutions entrusted with championing governance in the country are not adequately funded, thereby paralyzing their operations. Government must consider giving adequate capacity to these institutions so that they perform their duties to the expectations of the citizens.

Most importantly, however, is the need to de-politicise and ensure independence of the institutions. A case in point is the political performance of the MPS and ACB which have resultantly failed Malawians for so long. It's now a naked fact that the two institutions have become government tools for silencing critical voices in the opposition. This, in all fairness, is a huge disservice to Malawians who depend upon the same institutions for peace and security purposes. The present government, therefore, has the opportunity to change the negative perception of Malawians towards the governance institutions by ensuring that they operate professionally and independently. It's possible.

The Call to expedite and implement a series of hanging Commission of Inquiries Recommendations

This country has left a lot of impunity unpunished right from Kamuzu Banda, Bakili Muluzi regime, and Joyce Banda regimes. Consequently, we have found ourselves setting a very bad precedence for this country. We have continued to let acts of injustice go unpunished. It's high time all the prevailing impunities tracing from the times of Kamuzu Banda to-date which had gone unpunished should face justice. In the same vein, we would like to call upon the state to implement and bring to the logical conclusion all the recommendations of the previous commissions of inquiries including those relating to the Karonga Stambuli, Robert Chasowa, 20 July Killings, the death of Bingu wa Muthalika to mention just to mention a few.

Towards recognizing the sexual minority rights as well as domestication of the Rome Statutes

We would also like to issue a clarion call upon the current regime to rise above politics and start recognizing and respecting all the human rights, including the sexual minority rights. It is unfortunate that political party leaders have repeatedly promised to subject the issue of minority rights to a popular vote in name of referendum. We would like to categorically

condemn this kind of hypocrisy and insensitivity. Since when have issues of human rights been subjected to popular vote? We would like to remind political party leaders that human rights, let alone sexual minority rights should never be held at ransom for political expediency or indeed, aid. Human rights are never enjoyed by a popular vote as these are birth entitlements meant to be applied universally, equally, indivisibly, and interdependently. In the same breath, we would like to call upon the current government to consider domesticating the Rome Statutes which seek to punish any citizen including the citing president involved in most serious crimes of international concern. Reluctance to domesticate the statutes does not bode well with the country's seriousness to combat injustices currently dogging the international community. In the same vein the current government must take the lead role towards the repeal of draconian laws which criminalise homosexuality – laws which do not augur well with the provision of the constitution of Malawi (section 20).

Access to Information Bill should be tabled in Parliament; The President should sign the Table Mountain Declaration as promised

We appeal to the government to stick to its promise of tabling the access to information bill in Parliament once all processes over the reviewing of the bill are exhausted soon. The recently passed declaration of assets legislation remains toothless in the absence of access to information legislation. In the same breath, the government must walk its talk by signing the table mountain declaration which fosters freedom of the press.

Moving away from misplaced priorities

We have also noted that misplaced priorities have been the driving factors behind the country's stunted development. Malawi as a country has always blinked opportunities to get things right thanks to ill-defined priorities which are meant to benefit a few. These misplaced priorities could be in form of bloated cabinet, misallocation of resources and what have you. In the first place commend the DPP government for coming up with a lean cabinet that reflects the size of the country's economy. As civil society institutions, we can only hope that the size of the cabinet, though it lacks gender balance, will live up to the billing. We, however, shudder to see DPP clining to its nepotistic behavior in most of its public appointments. As civil society organisations, we have witnessed number of appointments mostly based on nepotism and patronage. We find this attitude un-called for and a recipe for divisions in the country. We call upon the head of state to rise above this pettiness and start looking at Malawi a one single bloc. By the way, is it not the same president who promised to be the president for all? Turning to the President's advisory team, we find, the size of the country's economy too small to accommodate more resources drainers in the name of presidential advisors or whatever they are called as the President already has cabinet ministers who can dutifully perform the advisory roles. Still on misplaced priorities we find it paradoxically funny that just when the Finance Minister is decrying excessive borrowing by government which made formulating the 2014/15 national budget almost unattainable, the same Minister asked parliament to approve a loan in the region of K9 billion for drilling boreholes and toilets at the expense of pressing needs such as road maintenance and drugs in the country's hospital. Should toilets be the priority now when most students cannot access tertiary education due to limited spaces and crumbling infrastructure? Seriously, are the toilets a priority now when most prisons are congested, government departments underfunded and civil servants under-paid? These questions sound like platitudes but they speak volumes of how our misplaced priorities can cripple the country's development agenda. On a positive note, however, we commend the current sitting of Parliament for rejecting the bill which was meant to extend loans to students in all colleges, including private

ones. Surely, the country needs to focus on providing enough infrastructure including the renovating the existing ones before focusing on giving loans to student.

To the CSOs

Finally, we compel our colleagues in civil society organizations to also take this Jubilee as a moment to critically reflect on their own roles, agendas, and alliances. We insist that an autonomous civil society is a fundamental building block of a truly democratic nation. In this regard, we hope that CSOs will take pause to inventory their own complicity in oppressive, nepotist, and non-democratic networks of benefit and financial distribution. CSOs should desist from being used as pawns by political figures for their own personal gain. Since the advent of the democratic era, governments have permitted CSOs different degrees of operation and voice; we hope the current government will respect and nurture freedom of expression.

5. CONCLUSION

As human rights defenders, will continue to monitor the human rights situation in Malawi and engage in lobbying and advocacy with relevant authorities towards a better Malawi where all human rights and fundamental freedoms are respected in the general interest of all.

Signed by

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