



KEYNOTE ADDRESS

by

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CHAIRMAN OF THE MALAWI ELECTORAL COMMISSION**

**DURING THE CONSULTATIVE MEETING ON ELECTORAL
REFORMS IN MALAWI**

3rd SEPTEMBER, 2020

LILONGWE

- The Guest of Honour, Minister of Justice and Constitutional Affairs, Hon. Mr. Titus Mvalo
- Mr. Ivo Hoefkens, Charge d'Affaires, European Union Delegation to Malawi
- Mrs. Getrude Hiwa, Solicitor General and Principal Secretary to the Ministry of Justice
- NICE Executive Director, Mr. Ollen Mwalubunju
- Distinguished Facilitators and Participants
- Members of the Press
- Ladies and gentlemen

First, I welcome and thank everyone of you for sparing your time to attend this meeting in Lilongwe.

Honourable Minister, Ladies and Gentlemen,

The remarkable events of the past year transformed the political and constitutional landscape and understanding of democracy in the country and globally. It is a very strong and positive democratic story written by people – but it is also fair to observe that the story has just begun, it does not end there.

That is why we are here today. Our understanding of democracy is that citizens have to take an active role in democracy, and one such an opportunity is granted to them through voting. And in order for the voting to be a credible process, it has to be governed by laws that truly reflect and safeguard the will of the people. And in order to attain such a status, the Electoral Commission continues to make strides in the electoral legal reform process.

Several lessons have been learnt from the experiences of the 2019 Tripartite Election was conducted, the costly, lengthy and exhausting court processes that ensued after immediately following the determination of the results on 27th May 2019. These are lessons that must not be pushed aside and forgotten. Recently we just had an opportunity to share with our colleagues at a webinar convened by the Electoral Commissions Forum for SADC Countries where we shared lessons learnt from the past election. Maybe I can share a few of those lessons:

Electoral management bodies are as integral to democracy as midwives are to safe motherhood. In other words, elections can be threatened when elections management bodies fail to exercise their mandate in a manner that expresses legal validity and popular legitimacy.

We were also reflecting on the lesson that Constitutionalism demands cultural transformation in order to deliver democratically acceptable outcomes; Beyond amending the aspects of the law, we need to have certain attitudes that give premium to the concept of democracy, that the governed must consent to the government without which we cannot have a functional democracy .

But also, democracy requires a commitment to play by the rules from all stakeholders; Electoral Management Bodies must run polls with strict adherence to the applicable laws, contestants and the public should seek to vindicate their interests through the legal mechanisms.

In a democratic society, there should not be censoring of opinions, as Chairperson of Malawi Electoral Commission, it was gratifying to learn

that after the lengthy and very contested process, the outcome of the Fresh Presidential Election, was never subjected to another judicial process, and that required acceptance from all contesting political parties. And I think that's important to observe because without that attitude, we can be going around in circles.

But further, one important lesson we can take from the previous election and the whole judicial process is that democracy works well when the vote is given the weight and value it deserves as the expression of the will of the governed on the choice of their rulers. Therefore, as we think of reforming the law, we should not fall captive to the notion that democracy is a question of rules and laws we must seek to create systems that enforce the culture of participation, inclusion and accountability.

It is through a reflection of the manner of administration and conduct of the 2019 Tripartite Election and the 2020 Fresh Presidential Elections that we can become assured that future elections will be well managed. In undertaking this reflection, the legal framework must be reviewed. Where it falls short, reforms must be mooted, proposed and if agreed by all key stakeholders, passed into new law.

As we reflect on legal reforms, it's important to also reflect on some of the things that have worked well in our system and take lessons that will ensure that our future elections are better managed and generate results that are more acceptable and it is in that line that the issue of reviewing the legal framework becomes very paramount but I also think it will be very important to acknowledge that efforts have already been invested in designing and creating legal texts that may seem to address

the gaps that have been found in our electoral system. And this meeting should devote time to investigate why those legal reforms seem to stale.

In my own reflection, I think one thing we should never forget is that democracy is not a machine. It involves people and the process of legal reforms involves people and various stakeholders that should be engaged if you desire to get certain outcomes. We should know what scared parliamentarians from enacting those reforms, and how can we address their doubts. We should find out, what was the executive scared about, and how we can take out those fears.

Honourable Minister, Ladies and Gentlemen;

May I take this opportunity to record that your Electoral Commission believes that this initiative by the National Initiative for Civic Education will complement the process that the Commission has already commissioned to review the current legal framework and propose areas of reform.

In accordance with section 8 (1)(m) of the Electoral Commission Act, it is incumbent on our Commission *“to take measures and to do such other things as are necessary for conducting free and fair elections.”* And we would like to play a leading role in electoral law reform is one of the activities that this Commission has embarked on.

I am pleased to inform you Honourable Minister that your Commission has established two key Committees to assist in the better carrying into effect of its function. Two Committees were added to the number of Committees that were established by the 5th Cohort of the Commission. This Commission has established the Legal Services Committee and the Research, Monitoring and Evaluation Committee.

The Commission remains cognizant of the fact that electoral processes are legal in nature and such there is need to have in place a legal framework that streamlines the processes while also bringing certainty in the process. One of such observation for example is the judgement from Judge Kenyatta in 2014 about the adequacy of seven days as the time which The Commission should determine the results. People are eager to hear the results while stakeholders already have results and, in the end, people wonder why the Commission is taking too long to release the results. As we sit as a Commission, we are tasked by the law to look at the results from each polling station. So, if it requires the Commission to vet the results already verified by Returning offices that are signed off by Political party representations and observers, why are we making the Commission repeat the same process. Why don't we have trust in our own systems? Therefore, it is important that as we propose reforms to the legal systems, it is important to reflect on why we need those reforms. Is the problem the system or its part of cultural problem? Is diligence and unreasonable suspicion one and the same thing? When people have so little trust in their own system; is the solution amending the system or creating ways that enable people to have confidence in the system? Its not all of always a legal problem, so as a Commission, we would like very much to have a say in the electoral agenda reform drive.

On behalf of the Commission I personally believe that, while the Commission has an internal perspective of the electoral laws reform agenda as an electoral management body, we are conscious that the success of democratic governance depends on the existence of both a robust state and a healthy and active civil society. Robust echelons of civic engagement are an essential element of participatory governance which today increasingly focuses on creating inclusive

and responsive democratic institutions and increasing opportunities for citizen voice. Therefore, we applaud efforts being undertaken by NICE and other stakeholders in electoral law reforms.

Honourable Minister, Ladies and gentlemen;

Without entirely pre-empting, the elements of reforms agenda that is being championed by the Commission, allow me to highlight to you the areas that the Commission is concentrating on in its electoral law reforms agenda. The efforts of the Commission are being guided by Reports of the Law Commission, Reports and Statements of Election Observer Missions, Electoral Commission Elections Reports, Recommendations made by various stakeholders and the Directions issued by the Courts.

In its electoral reform drive, the Commission will be covering almost all areas of the legal framework as follows:

- (i) harmonisation and consolidation of electoral laws
- (ii) name of the Commission
- (iii) independence of the commission covering: financial autonomy, accountability, appointment of commissioners, tenure of office and all areas that are relevant to the independence of the Commission
 - On appointment of Commissioners, there is need for alignment of professions and expertise when Commissioners are being nominated.
- (iv) General provisions relevant to election administration and management
- (v) Electoral system
- (vi) Campaign financing

- This has led to misuse of state resources and needs to be looked into as we reform.

(vii) Campaign, polling, and publication of results,

Honourable Minister, Ladies and Gentlemen

The significance of electoral reforms to the consolidation of electoral democracy need no emphasis.

And one issue that I haven't seen reflected in the agenda is the issue of technology. How do we cater for technology? there are systems in the world that at the end of the polling day you can have results ready, such technologies are being used in countries like the DRC.

It is well known that electoral processes must be modern, progressive and match the developments that have taken place over the years. Electoral processes must be seen to be in line with prevailing best practices. For example, in areas where there has been advancement of technology, the legal framework must move in quickly to legislate for the technological advancement. A pre-emptive example can be given of the recent adoption of biometric voter registration by the Commission. This calls for reform in areas of proof of eligibility, prescribed minimum period of voter registration. Embracing technology through reforms in the legal framework is the surest way of introducing efficiencies in the electoral processes.

Further, the advent of social media platforms and proliferation of radio and television stations should trigger debate as whether we should still insist on prescribing period of campaign as is the case at the moment.

It is undeniable that elections are significant and central to the constitutional and democratic order. We must always remember that

the Constitution of the Republic of Malawi is founded on the indispensable principle that *“all legal and political authority of the state, derives from the people of Malawi and shall be exercised in accordance with the Constitution solely to serve and protect their interest”*.

Honourable Minister, Ladies Gentleman

There always need that the will of the people must be ascertained on who should be their governors. This is only guaranteed through credible elections. It is provided by the Constitution that *“the authority to govern derives from the people of Malawi as expressed through universal and equal suffrage in elections held in accordance with the Constitution and Acts of Parliament.”*

It is therefore, of paramount importance that elections must at all times be managed with a legal framework that guarantees certainty in all electoral processes. This can be achieved through periodic electoral reforms which are implemented to ensure the holding of genuine elections.

Honourable Minister, Ladies and Gentlemen,

I should emphasize that the Commission is hopeful that this process will be carried through until Bills are finally tabled, debated and passed into law.

I, also legitimately expect that the efforts of the Commission as completed by the Civil Society Organisations and all other relevant stakeholders will be supported by the technical expertise of the Ministry Justice and the Law Commission in ensuring that the legal framework the currently governs the administration and management of elections

is entirely reviewed and reformed to bring it up-to-date with prevailing international best practices in holding credible elections.

As I conclude, allow me to point out the very obvious but critical aspect to legal reforms which I would urge us all of not to ignore:

The Political Dynamic; No matter how well thought out the proposals for reforms, if the critical actors in the law-making process are not fully on board then we cannot hope to achieve our purposes. I would therefore kindly urge all involved in this reflection process to intentionally create avenues of engagement to ensure that inclusivity extends to the various political actors such as cabinet and parliament to ensure early buy into the Reform agenda.

Thank you for your attention.