



MALAWI ELECTORAL COMMISSION

REPORT BY MEC CHAIRMAN, JUSTICE DR CHIFUNDO

KACHALE DURING NECOF

11th September, 2020

Lilongwe

- MEC Commissioners
- MEC Chief Elections Officer, Mr Sam Alfandika and your two deputies:
 - Mr Harris Potani (DCEO Operations)
 - Mr Phaniel Hamsini (Finance and Administration)
- Mr Cliff Chiunda, Principal Secretary (Administration) in the Office of the President and Cabinet
- Principal Secretaries and Representatives of various government ministries, departments and agencies
- The Chairperson of Centre for Multiparty Democracy (CMD), Hon Kandi Padambo and all board members of CMD
- Secretaries General and all leaders of various political parties
- Brigadier Kalisha, Representing the Commander of the Malawi Defence Force
- Mr Levision Mangani, Senior Assistant Commissioner of Police, representing the Inspector General of Malawi Police Service,
- Mrs Mercy Kanyuka, Commissioner of Statistics at the National Statistical Office
- Representatives of Diplomatic Missions accredited to Malawi and all representatives of Development Partners
- Chairperson of the Women Caucus of the Parliament, Hon Lonnie Chijere Phiri
- Hon Sameer Suleman, Representing the Chairperson of the Parliamentary Legal Affairs Committee
- Paramount Chiefs, Senior Chiefs and all chiefs present here

- The Executive Director of National Initiative for Civic Education (NICE), Mr Ollen Mwalubunju
- Mr Ezekiel Kumwenda, Executive Director for VIHEMA
- The representatives of various civil society organisations
- Faith and religious leaders present here
- Members of the press
- Staff from Malawi Electoral Commission
- Ladies and gentlemen

Greetings

Let me start by thanking you for sparing your time to attend this important meeting. For the meeting today, the Commission wanted to share on three things:

1. Highlights on the conduct of the Fresh Presidential Election
2. Preparation and the process to be followed on determination and review of constituency and ward boundaries process
3. Holding of by-elections in view of the new Covid-19 regulations

1. Highlight on the Fresh Presidential Elections

On 3rd February, 2020, the High Court sitting as a Constitutional Court delivered judgement in Constitutional Reference Case No.1 of 2019 that the results of the presidential elections held on 21st May, 2019 be nullified and ordered that a fresh presidential election be held within 150 days from the date of the judgment.

The judgment of the High Court was upheld by the Supreme Court of Appeal in judgment delivered on 8th May 2020. The Court upheld the order that the fresh presidential election be held within 150 days. It was clarified by the Court that the winner in the fresh presidential election should be declared and sworn in within the given 150 days

Malawians went to the polls peacefully on the 23rd of June 2020. All polling stations managed to open and run uninterrupted for the 12 hours as stipulated by the law.

Vote counting began at polling station level immediately after the close of polls. No ballot box was removed from the polling station before its contents were counted. As required by law, the polling station results were collated at the District Tally Centre before they were physically transmitted to the National Tally Centre for a final tally, determination and announcement.

In order to enhance transparency and accountability, Party Representatives and Observers monitored, signed and received copy of the results at polling station and district tally centre levels. They also monitored and received results at the national tally centre. In addition, Presiding Officers posted copies of the results at the polling station and District Returning Officers posted copies of constituency and district results at the office of the District Commissioner.

Before determination of the results, the Commission resolved all complaints and examined all votes classified as null and void votes to affirm or correct the decisions of the Presiding Officers. The

Commission examined a total of 51,027 null and void votes, affirmed 49,720 as indeed null and void votes and corrected 1,307 votes which were distributed as follows:

- Dr Lazarus Chakwera 650 votes
- Professor Arthur Peter Mutharika 627 votes
- Peter Dominico Sinosi Driver Kuwani 30 votes

In the election, the total number of registered voters was 6,859,570. A total of 4,445,385 turned out to vote and that translated to 64.81 percent. There was a total of 56,082 null and void votes representing 1.26 percent of the total votes cast. Total valid votes were 4, 389,303

The Commission received a total of 10 complaints at the National Tally Centre and all of them were resolved. The resolutions were communicated in writing to the complainants or their representatives in a timely fashion.

The Commission announced the final results of the election on the evening of 27th June 2020. The results were as follows:

- i. Lazarus Chakwera, Malawi Congress Party (MCP), received 2,604,300 votes representing 59.33 percent of the votes cast;
- ii. Peter Dominico Sinosi Driver Kuwani, Mbakuwaku Movement for Development (MMD) received 32,473 votes representing 0.74 percent of the votes cast; and

- iii. Arthur Peter Mutharika, Democratic Progressive Party (DPP) received 1,752,530 votes representing 39.93 percent of the votes cast.

Dr Lazarus Chakwera of the Malawi Congress Party was, therefore, declared winner of the election.

There was no appeal or petition lodged with the High Court in respect of any decision made by the Commission on the complaints or alleging that an undue return or undue election of the winner in the fresh presidential election.

In accordance with section 119 of the Parliamentary and Presidential Elections Act the Commission deposited all documents that formed the official record of the election with the Clerk of Parliament who is expected to retain and preserve the documents in safe custody for a period of not less than 12 months.

The Commission has reviewed the entire process and is in the process of conducting an external review of the fresh presidential election. On a date to be fixed, and probably in a similar forum, the Commission will hold a consultative engagement with all stakeholders to share areas which the Commission has identified as areas that need reform.

Cost-Cutting Measures deployed by the Commission

Hon ladies and gentlemen, mindful of the fact that the Commission was faced with inadequate funding for the implementation of the

election, cost-cutting measures had to be deployed some of which were as follows:

- a. **Simplified approach to inspection of the register:** The inspection of the register was initially planned for five days per phase, using two field staff per registration centre. However, this activity was done for only two days per phase, with one staff per registration centre.
- b. **Reduction of ballot paper size from A4 to A5:** The nomination of candidates yielded only 3 three candidates and the Commission made a decision to print ballot papers using an A5 size instead of the budgeted A4 size, thereby reducing the printing cost by almost 50 per cent.

Eventually, the actual expenditure incurred for the Fresh Presidential Election went down to MK27.8 billion.

Challenges faced during the electoral period

Hon Ladies and gentlemen, this election met its own challenges which included:

- a. **Uncertainty on the date of elections:** There was uncertainty on the date of the election as it changed three times. On 3rd February, 2020, the High Court sitting as a Constitutional Court had ordered that a fresh presidential election be held within 150 days from the date of the ruling. The Commission resolved to set the polling date on the 2nd July 2020.

Meanwhile, Parliament had passed a bill for 19th May 2020 as polling date but the bill was not assented to by the then Head of State. The Supreme Court of Appeal in its ruling on 8th May 2020 stated that the order of the Court meant by the 151st day from the date of the Constitutional Court judgment, there should be a President in place. It was stated by the Court that Parliament needed to set the date of the election.

It is in this context that the Clerk of Parliament through a letter dated 9th June 2020 informed this cohort of the electoral commission that Parliament had resolved that the electoral Commission should publish in the *Gazette* the 23rd June 2020 as the date of polling for the fresh presidential election.

- b. **Political will and funding challenges:** Funding for the elections was erratic and not in line with the cash flow projections. It took the intervention of Parliament through a meeting with the Electoral Commission, the Office of the President and Cabinet, The Treasury and the Reserve Bank of Malawi with less than one week before the polling day. A resolution was made at that meeting that funds should be released immediately and directly to the Electoral Commission operations account to enable it effectively conduct the polling process.
- c. **Covid-19 pandemic:** At the time the electoral process commenced, the Covid-19 pandemic was somehow remote. However, during the second month of the process, the country

recorded the first positive case. This had posed a threat as elections entail large crowds while at the same preventive measures for the spread of the pandemic require social distance.

The government had instituted lockdown order, the measures of which would have effectively stopped implementation of the electoral process. However, the lockdown was challenged in Court and the Commission proceeded with the electoral process. This meant that the Commission needed to implement the process while protecting its staff, the voters and candidates. In this regard, the Commission had to change some implementation modalities as well as ensure provision of personal protective equipment to all its staff. It was widely observed that political parties and candidates did not adhere to Covid-19 preventive measures during the campaign period.

d. End of Tenure of the Commission and appointment of a new

Commission: Hon ladies and gentlemen, as you recall, the tenure of office for the previous commission ended on 5th June 2020. The current Commission was appointed on 7th June 2020, two weeks before the polling day. Therefore, the Commission had to hit the ground running right from the day it was sworn in on 9th June 2020. Fortunately, the previous Commission had done most of the major tasks except for ballot paper printing, the polling exercise and results management.

2. Holding of by-elections in five constituencies and one ward

Now allow me to talk about by-elections. The Commission has planned to hold by-elections on 10th November, 2020 to fill five constituencies and one ward that are currently vacant. Three of the constituencies fell vacant because the court nullified their 2019 election results. One constituency fell vacant due to resignation while the other one, due to the death of its Member of Parliament.

The Constituencies and the ward that are vacant are as follows:

1. Mangochi West which fell vacant on 20th December, 2019
2. Mangochi North East which fell vacant on 8th June, 2020
3. Phalombe North which fell vacant on 22nd June, 2020
4. Lilongwe North West which fell vacant on 8th May, 2020.
5. Karonga Central which fell vacant on 16th July, 2020
6. Makhuwira South Ward, Chikwawa East Constituency fell vacant on 25 August, 2020

Having done all the preparatory work, I am pleased to announce to you that the process of holding by-elections in these areas will be as follows:

Voter Verification and Registration

The Commission will open centres for two weeks for registration and voter verification from 14 to 27th September, 2020 in all the five

constituencies and one ward. Centres will be open from 8AM to 4PM throughout the period.

The Commission will register those who are 18 and above or will attain the voting age by the last date of voter registration period for these by-elections which is the 27th September, 2020.

When going for registration, all new registrants are encouraged to take their national IDs. Those that have not registered for the national ID should do so now at the District Commissioner's Office and designated post offices. When coming to register as a voter they should bring the slip they will be given as proof of national registration.

All those that registered for the 2019 Tripartite Elections, whether they voted or not, they need not to register again but rather go and verify their names in the voters' register from 14 to 27th September, 2020. No transfers will be accepted.

All those that registered in preparation of the Fresh Presidential Election this year need to register again. You are aware that on 8 May, 2020 the Supreme Court had ruled that only 2019 registered voters should be the ones to vote. However, by this time the Commission had conducted fresh voter registration in some councils. Those people hold voter certificates that start with F20. All these people need to go and register afresh because these certificates won't be used during voting. When they come their names will not be found in the voters' register.

All registered voters in these five constituencies and the ward who lost their voter certificates should go to the centre where they registered to get a duplicate certificate.

During this exercise all covid-19 preventive measures will be followed. No one will be accepted to be present at the centres without a face mask, queuing should be at two arms' length and there will be hand washing.

The Commission had communicated on 5th September that the deadline for submitting names of party representatives and observers for voter registration and verification was yesterday, 10 September, 2020. It was our sincere expectation that all stakeholders concerned would meet the deadline and we hope you have done so. Names were supposed to be submitted to the District Office.

Nomination of candidates

Nomination papers are now available for collection from the respective District Commissioners' offices, Constituency Returning Officers and Ward Returning Officer.

All candidates interested should get the nomination papers.

The Commission has put a specific day in the by-elections' calendar (6th October, 2020) to give opportunity to aspiring candidates or their representatives to come to their respective Returning Officers for pre-examination of the nomination papers. This arrangement does not preclude candidates from requesting the Returning Officers at any

other point to examine the nomination papers and supporting documents before they are submitted. There have been cases in past whereby candidates have been returned on the nomination day due to deficiencies in their nomination papers. This is an administrative arrangement in an attempt by the Commission to ensure that irregularities and shortfalls on nomination requirements are spotted and corrected before the nomination day.

Presentation of nominations of candidates shall take place on 7th October, 2020. Due to Covid-19 pandemic candidates will be allowed to come with not more than 10 members escorting them. No other supporters will be allowed to escort the candidate or be present within 100-metre radius of the nomination venue. A candidate and his or her entourage will need to wear face masks and other Covid-19 preventive measures which will include hand washing and physical distancing will be enforced.

The nomination fee for parliamentary elections is K500,000 for male candidates while female candidates and people with disabilities is K250,000. The youth, that is less than 35 years on the day of nomination, will pay K375,000.

The nomination fee for Local Government Election is K40,000 for male candidates while female candidates and people with disabilities is K20,000. The youth, that is those less than 35 years on the day of nomination, will pay K30,000.

People with disabilities need to bring a letter of endorsement from the Federation of Disability Organisations in Malawi (FEDOMA) together with their nomination papers.

Candidates are advised to deposit their nomination fees with FDH Bank using the special deposit slips that will be provided during collection of nomination papers. The deposit should be done before submission of nomination papers to the Returning Officer.

Official Campaign period

The official campaign period started yesterday, 10th September 2020. This is to provide more time for aspirants to market themselves to the electorate. With Covid-19 measures in place, reaching out to wider electorate at one rally might be a challenge and candidates are encouraged to engage more targeted and less crowd pulling strategies. As per requirement of the law, campaign shall end at 06.00AM on 8th November, 2020. Any campaign activity conducted after this period is illegal and the Commission will not hesitate to take necessary measures against those who indulge in such violations of the law.

During this campaign period, the Commission is urging all candidates, political parties and their followers to refrain from inflammatory language because this stirs violence and infringes on other people's rights to campaign freely. Candidates should practice issue-based campaigning and express themselves within the confines of the law.

People will not vote for you for using improper language during elections but your candid manifesto.

The Commission is also advising political parties and candidates to ensure that Covid-19 regulations as gazetted by government are strictly followed. All people attending rallies are also reminded that it is their personal responsibility to ensure that they take precautionary measures to protect themselves by wearing face masks, standing at a distance and washing their hands while attending campaign activities.

Pre-checking of polling materials

The Commission has included a date on the calendar for pre-checking of polling materials. For these by-elections this will be on 9th November, 2020 from 9AM in all polling stations. On this date the Presiding Officers are allowed to open and check all the election materials, including cartons for ballot papers, to ensure that they are correct and in right quantities. Representatives for all candidates and contesting parties are encouraged to be present for the exercise. This is part of the Commission's efforts towards enhancing transparency in the electoral processes and ensuring that all materials are available before polling. However, I should state it clearly here that this exercise shall proceed even in the absence of political party representatives should they fail or delay to show up.

Polling, vote counting and results announcement

Hon Ladies and gentlemen, polling will take place on 10th November, 2020 starting from 6.00AM up to 6.00PM. When going for voting remember to take your voter certificate for easy identification. If you happen to have lost your voter registration certificate, you should still go to the centre where you registered and the presiding officer will assist you to vote.

Vote counting will start immediately after polling at the polling station. Results for each polling station will be presented to the District Commissioner who will collate for the constituency or ward and in the end deliver the results physically to the Commission in Blantyre. The Commission is expected to announce the results by 11th November, 2020 in Blantyre.

Special message on Covid-19

The Commission engaged the Presidential Task Force on Covid-19 and also leaders of political parties through the Centre for Multiparty Democracy (CMD) regarding holding of by-elections amidst the pandemic. From the technical advice provided by the Task Force on Covid-19, we need to follow all Covid-19 preventive measures.

The Commission appeals to political parties and candidates to ensure that they observe the Covid-19 regulations and put every measure to protect their followers and supporters.

The Commission will be closely monitoring the Covid-19 situation in the country. Should the situation be threatening to lives, measures will be

taken that might even mean postponing the by-elections, in case of emergency.

Participation of women in elections

Hon ladies and gentlemen, the Commission is encouraging women to take part in these by-elections by contesting as candidates. MEC has still maintained 50 percent lower nomination fees for women candidates as one way of encouraging their participation in elections. I urge political parties to take affirmative steps to support the candidature of women since their election can make a difference in the number of female representatives in parliament and wards. Since May 2019, the Commission has conducted three by-elections but in all these areas there has never been a female candidate and only three political parties have participated. By-elections offer an opportunity to improve the statistics regarding women representation in parliament and councils. The Commission is expecting parties to come up with measures that will attract and protect women candidates when running for political office.

I wish to strongly appeal to traditional, religious and faith leaders, media houses, head teachers and all others leaders, whether elected or hereditary, to ensure that they encourage eligible voters to participate in electoral activities. They encourage them to register, patronize political rallies of all candidates during the campaign period and to cast their vote on the polling day.

3. Review of wards and constituencies boundaries

The Malawi Electoral Commission is mandated, under Section 76 (2) of the Constitution of the Republic of Malawi, the Commission is mandated to:

- a. determine constituency boundaries impartially on the basis of ensuring that constituencies contain approximately equal numbers of voters eligible to register, subject only to considerations:
 - i. population density
 - ii. ease of communication and
 - iii. geographical features and administrative boundaries.

- b. review existing constituency boundaries at intervals of not more than five years and alter them in accordance with the principles laid down in subsection 2(a) above.

The last comprehensive review exercise was conducted in 1998 where it considered only constituencies which were glaringly large. The understanding was that a full review exercise would be conducted following the 1999 elections. Today, 21 years later, the exercise is yet to be undertaken. The Commission has not been able to conduct the exercise not because of lack of interest, but as you must appreciate, this is a very delicate and sensitive exercise.

With passage of time the situation shows glaring differences in population size of various constituencies. This is against the constitutional spirit which mandates approximation of equality of voters' representation on the registers for the various constituencies.

The Commission has planned for a thorough review exercise ahead of the next tripartite elections. The process already started with the previous Commission. There was a study visit to other countries to draw lessons from them. On 5th August, 2020 the Commission held a one-day workshop which was meant to acquaint the new Commission with the process before field activities are rolled off.

Since demarcation of constituencies and wards can have consequences not only for parliamentarians and councilors but also the constituents, the Commission will conduct this in a very simple, transparent and participatory manner.

As we speak, the Commission is already getting requests from across the country to split some constituencies. However, the Commission would like to advise all interested parties that the process may result in increase or reduction or amalgamation of various constituencies depending on the formula and the decision to be made by the Commission after taking into account all considerations allowed to be taken by law. The Commission will ensure that all key stakeholders are consulted from the district level up to national level. The Commission

is commits itself to ensure that all stakeholders will be consulted through public hearings and other means announced. The Commission will consciously avoid creating any perception of gerrymandering; that is creating constituencies that don't make any demographic or geographical sense.

The views gathered during the public hearings will be considered when developing the preliminary scenarios for new constituencies and wards. And the maps that will be developed through the preliminary process will be displayed for public viewing for two to three weeks in all the councils and public places including headquarters of Traditional Authorities. And the purpose of that is so that stakeholders can go and comment on the proposed reviews.

After that process of public viewing, the Commission will conduct further public hearings to get final views of stakeholders on the draft maps. And the feedback from that final process will feed into the development of final drafts which will be included in the reports that will be given to parliament. And it is important to emphasize that the decision on the constituency review is ultimately a parliamentary decision. We make a report in as so far as the constituencies are concerned but its parliament which makes the final decision. In as so far as the wards are concerned, our Commission's decisions are final. There is a distinction there. As you might imagine, this is not only a legal

process, it is a political process. It has huge political ramifications, so parliamentarians must settle that political score.

We would like to mention that the Commission recognizes the roles of various stakeholders like political party leaders and where appropriate meetings will be held with them especially on critical stages like determining the new number of constituencies. The Commission will also be holding meetings with political leaders at various levels to present the various scenarios. We are very much aware that there are many different expectations out there, but as a Commission, we would like to begin from a place of transparency so that we can manage the issue of constituencies. The reality is that this process has huge budgetary implications and the decision cannot just be a technical decision. The decision must reflect the combined will of the key political actors through parliament as to what parliamentary review would they like to see in the constituencies.

And it is very much encouraged that all stakeholders should apprise themselves with the law guiding the determination and review constituency and ward boundaries especially in as so far as the various windows for consultation are concerned. Just writing the Commission privately at this stage may not add much value to the process, lets engage the process according to the program that has been laid out and lets recognize that however strongly we may feel about the process, it is a participatory and consultative process and

as key stakeholders, we can only make representation, but the decision is not entirely in the hands of one entity.

Conclusion

With these, I would like thank you all for your kind attention. May God Bless you and bless Malawi