



Report on a Consultative Review Meeting of Civic and Voter Education Service Providers in view of Fresh Presidential Election



Date of Meeting:

30 March, 2020

Venue:

*Wankulu Palace,
Lilongwe.*

1.0. Introduction and Background

On 30 March, 2020, civic and voter education service providers met to reflect on their preparedness for fresh presidential elections set for 2nd July 2020. This followed the nullification of the May 21, 2019 presidential election by Constitutional Court Ruling of 3rd February 2020.

The court ruled that the elections were marred with a lot of irregularities and that, MEC had mismanaged the elections, and that, their capacity and competence was questionable requiring investigation by Parliament. The Court therefore had ordered fresh Elections to be conducted within 150 days from the day of judgement. In addition, the Court had ordered that the legislature make necessary reforms to the electoral laws that govern the elections so that the fresh election should be held using the amended laws.

In compliance with the determinations and orders of the Constitutional Court in so far as they related to electoral reforms, the Malawi Parliament had moved swiftly to amend the laws in readiness of the elections. The president had however refused to assent to the Bills on grounds that the same infringed upon Constitutional provisions as well as acceptable legislative principles. In a related manner, Parliament had also conducted a parliamentary inquiry into the capacity of MEC and the individual commissioners and a report with recommendations, among others to have them removed from their positions had also been presented to the President who also communicated his refusal to act upon the recommendations of the Public Appointments Committee of Parliament.

MEC organized a National Consultative Meeting in Blantyre on 13th. March, but, no concrete recommendations were reached on strategies that can address the problem at hand. This was a missed opportunity because all critical electoral stakeholders were present at the Forum. Instead, unfortunately, the Forum had mainly concentrated on the legitimacy of MEC and the demand for their resignation/firing.

In view of the above, as well as the urgent need for civic education service providers to prepare for civic and voter education and election observation for the fresh presidential election and contribute to a free, fair and credible election, NICE proposed and convened a Review meeting of stakeholders to bang heads together to understand the issues and think of how to proceed. This report is a record of proceedings of the review meeting.

2.0. Workshop design and moderation

The workshop was designed and moderated by the Institute for Policy Research & Social Empowerment (IPRSE) with advisory support from the National Institute for Civic Education (NICE). The IPRSE worked out and managed the logistics, moderation and reporting of the workshop.

2.1. Objectives of the workshop

The workshop sought to accomplish the following objectives:

1. To reflect on the level of the country's preparedness for the July, 2020 Elections and re-examine whether the proposed time was realistic to hold a free, fair and credible elections.
2. To brainstorm on the crisis of the moment and come up with concrete strategy that could contribute towards resolving the problems.
3. To re-examine the preparedness of civic and voter education providers for the fresh presidential election
4. To map up the available resources and identify the resource gaps for civic education
5. To explore ways of collaboration and establish an effective voter education and election observation mechanism.

3.0. Key messages in the opening remarks

The meeting was opened by the Executive Director of the National Initiative for Civic Education (NICE), Mr. Ollen Mwalubunju who gave the background, objectives and expectations for the workshop. He brought to the attention of the working group the orders from the Constitutional court for fresh elections as well as other recommendations that parliament was asked to act on. He also reminded the participants that the elections have to be conducted within 150 days from the day the ruling was made and that time was passing yet many issues remained unresolved. He therefore urged participants that in addition to discussing issues on civic education they needed to reflect on the working relationship between different arms of government in view of implementation of Constitutional Court ruling.

The Executive Director thanked organisations that had made the meeting possible through technical and logistical input. He therefore, recognized the presence of representatives of NDI, IFES and IPRSE who were present at the meeting.

4.0. Topics for Discussion.

In line with the key objectives stated above, the workshop was planned to be consultative and praxis oriented. The moderator (Dr. Henry Chingaibe) presented a discussion paper on: Key Observations on the State and Delivery of Civic Education for the May 2019 General election. This was followed by a presentation on the 'Constitutional Court Ruling: Effect and Way Forward' by Advocate Justin Dzonzi. Then discussions and plenary sessions on several topics followed. These included: Assessing Preparedness of Electoral Stakeholders; contemporary issues for CVE and how to address them during the fresh election as well as financing CVE.

4.1. Key observations on the state and delivery of Civic Education for the May 2019 General election

The presentation was prepared and delivered by Dr. Henry Chingaibe of IPRSE. He observed that the mandate for civic and voter education is given to the Electoral Commission under section 8 (j) of the Electoral Commission Act and that MEC delegates to Civil Society Organisations through a process of accreditation. In the 2019 elections, there was limited delivery of CVE and

CSO involvement in monitoring, and mass mobilization was at its lowest level. This was mainly due to severe resource constraints as donors shifted their support away from civic and voter education.

The 2019 election saw the escalation of issue-based civic education by CVE providers however election results suggest the resilience of identity politics, especially the power of ethnicity and regionalism as significant determinants of voters' choices at presidential and parliamentary elections especially in the southern and central regions. The pursuit of issue-based politics is still an uphill task and calls for a reconsideration of approaches for delivering civic education to shift mindsets from an obsession with parochial identities of tribe and region

The 2019 elections registered an increased number of null and void votes increasing from 1.09 per cent in 2014, to 2 per cent in parliamentary votes 1.5 per cent in presidential votes. Location based extreme cases were identified as central and southern regions had the higher number of null and void votes than Northern region and Chikwawa had the highest number 3.4% at parliamentary election and 2.5% at presidential polls. At constituency level it went as high as 7.7% in Mulanje North in parliamentary election. The null and void votes imply an indictment on CVE or electoral training of polling staff and party monitors

Voter turnout is one measure of citizen participation in politics and an indicator of the effectiveness of civic and voter education. There were differences in the figures indicating Voter Turn Out for parliamentary and presidential polls with the former being less (74.3%) than the latter (74.8%). This entails that the number of ballots cast in parliamentary elections does not match with those in presidential elections causing a discrepancy as the voting was held concurrently. This in itself makes reconciliation of figures during determination of results difficult or impossible and inherently defeats the utility of voter turn-out as a tool for checking the validity of vote counts.

The presenter made some recommendations on CVE especially focusing CVE efforts on the regions, districts and constituencies that showed more null and void votes and voter apathy. He observed that identification of N&V vote has been complicated by lack of clarity in the Law as the Presidential and Parliamentary Elections Act does not sufficiently define a null and void vote. He left issues of funding modality to be discussed in the plenary.

4.2. Constitutional Court Ruling: Effect and Way Forward' by Advocate Justin Dzonzi

The court ruled that the elections were marred by a lot of irregularities and that, MEC mismanaged the elections, and that, their capacity and competence was questionable requiring investigation by Parliament. The Court therefore had ordered fresh Elections to be conducted in 150 days from the day of judgement. In addition, the Court had ordered that the legislature make necessary reforms to the electoral laws that govern the elections so that the fresh elections should be done under the amended laws as well as looking into the capacity of MEC.

The presenter reminded the workshop that the source of court orders is the Constitution, Section 46(3) that states that the courts "**shall have the power to make any orders that are necessary and appropriate to secure the enjoyment of those rights**" which clearly conveys the sense that it is up to the Court to determine the best order for purposes of dealing with a particular situation. In compliance with the determinations and orders of the Constitutional Court in so far as they related to electoral reforms, the Malawi Parliament had moved swiftly to amend the laws in readiness of the elections. The president had however refused to assent to the Bills on grounds that the same infringed upon Constitutional provisions as well as acceptable legislative principles. In a related manner, Parliament had also conducted a hearing into the capacity of MEC and a report with recommendations, among others to have them fired had also been presented before the President who also communicated his refusal to act upon the PAC recommendations to fire

the MEC Commissioners with reasons for so doing. MEC had also set a date of 2 July 2020 for the fresh elections contradicting the date set by parliament of 19 May 2020.

Effect of The Presidential Actions on the Conduct of Fresh Elections

- At the moment Malawi does not have a law governing presidential run-off elections in the event the fresh elections do not produce a clear majoritarian winner;
- Malawi is stuck with the same commissioners who are already carrying out preparatory electoral activities for the fresh presidential election;
- The term of Members of Parliament and of the President to be elected have not yet been synchronised to enable the holding of joint/tripartite elections
- MEC chair has informed the nation that unless the Supreme Court of Appeal should uphold the Constitutional Court interpretation of section 80(2) of the Constitution to mean an absolute majority (50% + 1), the fresh elections shall be held on the basis of plurality of votes as has been the case in the past elections
- The terms of office of the rest of the commissioners shall expire on or about 6th June 2020 while that of the chair will expire around October 2020
- MEC has set the date for the fresh elections on 2nd July 2020 and based on the above, this means that only the MEC chair may be available for the determination of results

The presenter observed that the situation created by the said actions required making some difficult, if not, inconvenient choices on the part of the parties to the court action, parliament, the judiciary and the citizenry at large. He cited some options available:

- Options on the bills: (i) follow the provisions of section 73 or (ii) mount a legal challenge
- On refusal to fire the Commissioners: (i) let it be (ii) take legal action against the president (iii) delay the elections until their terms expire in June 2020
- On MEC's insistence to use FPTP for the fresh elections: (i) mount a legal action against this or (ii) wait for the Supreme Court determination on the way forward

Defining the whole spectrum of the effect of the presidential actions on the conduct of the fresh elections was therefore left as the collective business of the workshop.

5.0. Plenary Discussions

Following the issues and questions on the feasibility of holding the elections under the current circumstances posed by the second presentation, the workshop agreed to change the structure of the discussions. Instead of group discussions on Assessing preparedness of electoral stakeholders (duty bearers) for fresh elections, they agreed to have an in-house assessment and combine it with a resource mapping to be submitted later as they wished to consult with their organisations. They also agreed to allocate more time to identifying issues in the political-legal impasse in relation to the fresh presidential election, analyze them and recommend solutions to relevant authorities through a communique. Therefore, more time was allocated to plenary discussions.

5.1. Question/ concerns and answers

Participants raised questions, made comments or observation. Relevant duty bearers provided some responses. The key issues that were discussed include the following:

- Who has mandate to set the elections date in view of the fact that parliament proposed 19th May and MEC set 2nd July?

Elections dates are set by the constitution and once the court ruled, the Electoral Commission had the mandate to set the date for the fresh election. Parliament should not have bothered with the issue.

- Since some court orders or directives have not been complied with, whose responsibility is it to take up the matters?
Parliament can challenge the president legally or reconvene to take out sections that are not in tune with the constitution. Petitions can be made as citizen action; courts can also move on their own to ensure judgement is complied with –suo moto. Presidency should also have acted responsibly and advised parliament to meet and correct the bills.
- Inability of the executive or refusal to draft the electoral bills demanded by the court:
This amounts to abdication of duty and may attract disciplinary action. Legal practitioners and technocrats need to be advised not to be influenced by politicians but act professionally.
- What happens if parliament meets again as prescribed in the laws and passes the laws as they were?
President can assent to the laws but they might still be challenged in a court of law as there are legal grounds for challenging them. The Constitution can only be amended following the procedure for constitutional amendment; and bills not assented to cannot be amended as if they were already statute law.
- Is the country in constitutional crisis?
Not yet. A crisis would imply we are trapped in a little corner or circle with no way out except abrogation of the constitution itself. There are still options available out of this situation.
- How to deal with issues of lack of integrity in law making and in political dialogue.
This is expected as a political process full of interests and incentives. The process has to be managed well by those handling the dialogue process.
- MPs being asked to make laws that would benefit themselves by extending their terms of office by a year – is there conflict of interest?:
Such situations are inevitable but since its another branch that demands thus necessary amendment, issue of advantage does not arise.
- Demarcation between the law and politics:
When political processes are disputed it is the duty of the courts to come in. courts cannot afford to be apolitical as they are part of government and have the duty to interpret the law.
- On Presidential accountability to the taxpayer where decisions are costly, this can be solved by clarity of the law on the powers of the president or separation of the state and government.
- Concerns raised by commissioners on losing benefits if they resigned, there is need to engage authorities and consider early retirement with benefits as their tenure end on June 6. This would give ample time for the process of recruitment of new commissioners to run the fresh elections.

5.2 MEC clarification on topical issues

Preparedness for fresh elections: The process is on course as they have started recruiting elections personnel, messages for CVE have been prepared and will be printed soon to be shared. Other important information delivered by the Deputy Chief Elections Officer include:

- That transfers of voters from one centre to another and registration will be done concurrently;
- Inspection of voter registers will not be phased or staggered. It will be done simultaneously at all centres;
- Outreach will be done using old strategies like loudhailers and the social media will as well be utilized;
- All accredited CSOs from 2019 are automatically accredited for the delivery of CVE for the fresh elections;
- The observations of the Concourt on the electoral process shortcomings are already being addressed by the Commission;
- The MEC will not use the services of auditors in the management of the fresh presidential election;
- The decision on transfers of student voters will be made in due course as registration may happen when they are out of school and polling when they are back to school.
- MEC is preparing CVE materials for people with special needs
- Training of poll staff will be more intensive this time to avoid previous mistakes and presiding officers' recruitment will be on merit and only for those with at least a diploma and serving in the public service.

6.3. Themes for the communique

The workshop agreed on the themes for the communique and these are:

- Civic and Voter Education
- Electoral Bills
- Other Key Bottlenecks in the Current Political Environment
- Electoral Violence
- Levelling the Political Field
- Political Dialogue
- COVID-19

The meeting advised drafters of the communique to exercise their minds but ensure that that the key themes and issues were addressed.

6.0. Way Forward

The workshop agreed that the facilitator should circulate the resource gap matrix to organisations (CVE providers) and that completed matrices should be submitted by organisations by 1 April, 2020. IPRSE will consolidate/merge the matrices for use by NICE.

A communique would be drafted by Thursday 3 April and shared with institutions by Friday, 4 April. Feedback from institutions would be expected by Monday 6 April so that the communique is released on Tuesday, 7 April, 2020.

7.0. Closing

The meeting was closed by the Executive Director of NICE who thanked members for enduring the long day of work and remaining productive throughout. He also thanked facilitators for the rich presentation that had increased the knowledge of participants on legal issues they had less knowledge on.

Appendix: List of Participants

The following institutions and individuals participated in the CVE Review Meeting

1. Ollen Mwalubunju, Executive Director, NICE
2. Harris Potani, Deputy Chief Elections Officer, MEC
3. Steve Duwa, Chairperson, MESN
4. Dalitso Chikwembani, Director of Civic Education, Ministry of Information and Civic Education
5. Ronald Mtonga, Executive Director, CONGOMA
6. Justin Dzozi, Resource Person (Law)
7. Gray Kalindekafe, NICE
8. Boniface Chibwana, Catholic Commission for Justice and Peace
9. Viwemi Chavula, 50 50 Campaign
10. Ennette Mbuka, Democracy Works Foundation
11. Mc Arthur Matukuta, Mtendere Network
12. Moses Kaufa, Media Council of Malawi
13. Pemphero Manyawa, National Democratic Institute (NDI)
14. Christopher Chirambo, NDI
15. Cydric Damala, Centre for multiparty Democracy (CMD)
16. Charles Banda, FEDOMA
17. Vincent Kumwenda, Mhub
18. Ezekiel Kumwenda, MUB – Lilongwe
19. Stella Chikombole, PAC
20. Mc Donald Sembereka, HRDC
21. Mr. David Nungu, Malawi Human Rights Commission
22. Thandizo Mphwiyo, CHRR
23. Martin Chimphwanya, IFES
24. Hajira Ali, NICE, Lilongwe Rural and Urban
25. Daniel Malango, NICE
26. Christopher Naphiyo, NICE, Central Region
27. Dr Henry Chingaipe, IPRSE - Facilitator
28. Clemence Alfazema, IPRSE – Rapporteur
29. Gomezga Chipofya, IPRSE
30. Grace Hara, NICE