

MALAWI HUMAN RIGHTS COMMISSION



A CLARIFICATION ON THE MEETINGS OF THE MALAWI ELECTORAL COMMISSION (MEC) HELD WITH THE PRESIDING OFFICERS (POs) OF THE 21 MAY 2019 TRIPARTITE ELECTIONS

The Malawi Human rights Commission (Commission) followed, with concern, the conflict that arose between MEC and various electoral stakeholders in mainly Chitipa, Karonga, Rumphu, Nkhata Bay, Mzimba and Kasungu when officers of the former were meeting with various presiding officers. The Commission also noted that in some parts of these districts, mainly in Kasungu, the conflict turned violent. The Commission noted further through various platforms and especially the statement released by Malawi Congress Party (MCP) on 13th July 2019 that the conflict herein was largely premised on the erosion of public trust in MEC, characterised by enormous suspicion that MEC would be manipulating those presiding officers in order to create fresh electoral result sheets.

The foregoing notwithstanding, the Commission learnt through MEC'S own statement dated 14th July 2019 in response to MCP'S statement above that MEC was in fact engaging selected presiding officers in the said districts in order to prepare affidavits as part of its defence to be submitted to court on 22 July 2019. The Commission also learnt that following the fracas, especially at Kasungu, MEC decided to suspend the activity, fearing that its officers would risk their lives.

The Commission is aware of the fact that behind the names mentioned as parties to this election case there are millions of Malawians whose electoral rights are at stake. Most importantly the Commission is aware that at the moment the country has largely come to a standstill thereby affecting other social economic rights of millions of Malawians. This election case therefore will go a long way in protecting and promoting the electoral rights as above mentioned and most importantly will play a big role in determining how we move forward as a nation after the disputed presidential election results of the 21st May 2019 election. It is therefore the Commission's considered view that the dignity of this court process should be

protected at all costs because the stakes surrounding this case are high for this country.

In view of this, and to ensure that the case does not suffer possible delays the Commission decided to intervene in the matter in a two-pronged approach. First, the Commission conducted a fact finding of the type of business MEC officers conducted with presiding officers. Secondly, the Commission conducted bilateral sessions with leaders of the UTM Party, the Democratic Progressive Party (DPP) and the MCP and the management of MEC as led by the Chief Elections Officer (CEO) who are parties to the case. The purpose of these sessions, which were premised on Quiet Diplomacy, aimed to understand the attendant issues and engage the political parties and MEC on an effective way forward that would address the concerns and also inject the confidence in the court case herein. The Quiet Diplomacy Sessions were moderated by Commissioner Martha Chizuma.

Through the Quiet Diplomacy sessions and fact finding mission, the Commission established that:

- MEC met the presiding officers in order to sign sworn in statements (affidavits) for its defence in the case herein;
- The meetings MEC held with presiding officers did not aim at or focus on creating fresh result sheets;
- The meetings that MEC held with presiding officers were not designed to take place at night. However, as these meetings could take longer than planned itinerary, in some cases MEC would meet those presiding officers, who kept waiting for MEC officers to arrive, during the night due to its tight schedule;
- MEC did not make an advance notice to the electoral stakeholders, including the political parties listed here, police and District Commissioners ;
- MEC did not involve the said electoral stakeholders as observers in the process as this is not an electoral process but a court process;

The Commission clarified to all the political parties involved that they had to differentiate between an electoral process and court process. MEC as a legal entity with the capacity to be sued and the right to sue, has a right to meet its witnesses in private. However, considering that stakeholders confidence in MEC has tremendously reduced, there was need that MEC should consider pursuing efforts that would help it regain stakeholder confidence in the court process. Resultantly, both the political parties and MEC expressed the following common positions:

- All the Parties to this case are desirous to see to it that the election case is disposed of expeditiously and without any interruptions;
- That MEC should continue with its meetings with presiding officers without being disrupted;

- That, to ensure that the process is transparent, MEC should consider involving an independent institution in its process and;
- That subject to the court outcome of the application by MEC for an extension of time within which to file and serve sworn statement, all the Parties to the case have settled on the Human Rights Commission, as such an independent institution, to witness MEC's meetings with the presiding officers.
- That all political parties should effectively communicate to their bases about the true nature of the process being carried out by MEC and encourage their supporters to remain calm.
- That MEC being a Public body should in the conduct of this case and its other related affairs, without diluting its status as a legal entity that can sue or be sued, ensure that it is doing so in public interest and in a manner that promotes public trust

With the foregoing in mind, the Commission calls upon all the people of Malawi to cooperate with and refrain from disrupting or hindering the work of MEC as it meets with the various presiding officers so that the court process should go on smoothly. The Commission further wishes to emphasise that every Malawian has a right to belong to a political party of her or his choice. Therefore when actual hearing of the court case starts the Commission expects that every person shall respect the rights of others who may wish to witness the court proceedings in support of the party of their choice.

The Commission also applauds all the leaders of the said political parties and MEC for reaching this amicable solution to the current stand-off.



Martha Chizuma

COMMISSIONER

24th July, 2019