



## **PRESS RELEASE:**

### ***The Good, the Bad and the Ugly: A review of human rights and governance in 2017***

#### **Introduction**

More than three years have now passed since the current president, Professor Peter Mutharika, and his Democratic Progressive Party (DPP), assumed leadership of the country. Mutharika and his DPP swept to power during the 20<sup>th</sup> May 2014 tripartite elections with a promise to lead the country to prosperity.

As the year 2017 comes to a close, the Centre for Human Rights and Rehabilitation (CHRR) reflects on the performance of the DPP-led administration on human rights and governance in the country. In this review, we assess what progress has been made and how much work remains to be done. The idea behind this review is to provide the DPP-led administration with a mirror to look at itself and perform better in the coming year.

#### **THE GOOD**

In the just-ended year, there have been some positive developments worth highlighting. Below are some of the most notable developments:

#### **The invalidation of the law on rogue and vagabond.**

The first positive development we would like to highlight is the new found ability for people in Malawi to move freely at any time of day, following the High Court decision to declare the rogue and vagabond law as unconstitutional.

The development came hot on the heels of a challenge on the constitutionality of rogue and vagabond by a vendor named Mayeso Gwanda. In their ruling, Judges Sylvester Kalembera, Michael Mtambo, and Zione Ntaba said section 184 subsection 1C had been declared unconstitutional arguing that it reflected discrimination in the country.

The case delivered an emphatic victory to human rights. In the judgment, the learned judges emphasized that the rights to dignity and freedom from cruel, inhuman and

degrading punishment are violated when individuals are arbitrarily arrested and detained in the absence of any offence having been committed.

### **Constitutional amendments on the marriage age.**

Another thing worth highlighting is the amendment of the Constitution by the Parliament to raise the marriage age to 18 years. The amendments set a constitutional framework for the protection of all children from early marriage and harmonise legal instruments prohibiting child marriage.

With the amendments now part of the law after being assented to by the President, we now have the legal basis to put an end to child marriages. The Malawi Demographic and Health Survey (2015-16), revealed that 46.7 percent of girls and women get married before the age of 18. Among other things, child marriages have contributed to the failure by the girl child to access education. We, therefore, hope that the Constitutional amendment will help to keep girls in school and to reduce the scourge of early marriages, which is hampering efforts to educate the girl-child.

While applauding Parliament for this amendment, CHRR joins other human rights organizations in calling for a review of all laws governing the protection and welfare of children to reflect the spirit of the Constitutional amendments. CHRR also calls upon the Government to produce a comprehensive child protection policy to guide the implementation of the Child Care Protection and Justice Act of 2010 and other laws.

### **Successful implementation of the national registration exercise.**

The successful roll-out of the national registration exercise is one of the top achievements of the DPP-led administration. Implemented with support from donors, the national registration system will not only give legal identity to Malawians but also help improve planning and delivery of social services in the country.

### **The holding of credible by-elections by MEC.**

Another positive development worth-highlighting is the holding of credible, free and fair by-elections in October 2017. While without flaws, Malawians were generally able to freely express themselves by electing candidates of their choice.

### **Reducing the rate of inflation.**

The DPP-led administration should also be commended for ensuring that there is a reduction in the inflation rate. Thanks to good rains last year, headline inflation has now dropped to a single digit, hovering around 8.4 percent, according to the National Statistical Office (NSO), the first time inflation has dropped that low in nearly 6 years.

However, the DPP-led administration should ensure that this falling inflation rate translates into improved living standards for ordinary Malawians. It is sad to note that despite the inflation falling to the lowest levels in 6 years, there appears to be no real improvement in the standards of living for ordinary Malawians. The majority of the people in Malawi are still living in abject poverty, civil servants are still underpaid and farmers have no markets to sell their produce.

Government should also ensure that people from all tribes have an equal chance of being appointed into influential positions. Malawi is also facing one of the most serious unemployment crises and one of the highest poverty rates in the world.

## **THE BAD**

### **Threats against press freedom.**

Although no journalist was arrested in 2017, there is ample evidence to suggest that the DPP-led administration has been hostile to the media. This hostility has come in various forms, including verbal threats made through public remarks made by the President, government officials and senior members of the ruling party.

Apart from verbal threats, we have also seen the DPP –led administration using other means to suppress the media, including using the Malawi Communications Regulatory Authority (MACRA) and the Malawi Revenue Authority (MRA). For instance, we recall that in January 2017, MRA pounced upon and closed the offices of Times Group offices in Blantyre over alleged 'unpaid taxes'. While this initially seemed like an innocent action by the tax body, the timing of the action raised eyebrows. The MRA's action came less than a week after the Agricultural Development and Marketing Corporation (Admarc) sought a court injunction restraining the media house from publishing stories on the infamous maize-gate scandal, which the media house being investigated had unearthed. The scandal involved irregularities in the purchase of 100, 000 tons of maize from a Zambian company by the government through the then Minister of Agriculture, Irrigation and Water Development, Dr. George Chaponda.

During his campaign in the run up to the May 2014 Tripartite Elections, President Mutharika made several promises on media freedom, including the commitment to sign the Table Mountain Declaration –an international instrument that seeks African heads of state's undertaking to repeal all laws that infringe upon media freedom in their respective countries. Despite being served with a copy of the Declaration upon assuming the reins of power, President Mutharika has kept quiet on the issue and has so far given no indication of his commitment to sign up to the Declaration.

**CHRR strongly urges the Mutharika administration to live up to its promise and sign up the Table Mountain Declaration as a matter of urgency preferably before the next elections.**

### **ATI law implementation delays.**

Although the DPP-led administration should be commended for passing the much-awaited Access to Information (ATI) Bill, it is unfortunate that the administration has in 2017 sent mixed signals about the importance it attaches to the ATI law.

Citizens' access to information is vital for the promotion of democracy, human rights, rule of law as well as entrenching accountability and transparency in the state which are all determinants of the quality of the governance. Access to information is also key in addressing corruption. Article 9 of the African Union Convention on Preventing and Combating Corruption obliges State Parties to adopt and effectively implement national access to information laws as a means to fight and prevent corruption. Therefore, Malawi did well to enact the ATI Bill.

It is, however, frustrating that despite the hype, implementation of this law remains pending for the Malawian citizenry. A number of reasons have been provided for this unwarranted delay, including what the Malawi Human Rights Commission has described as 'resource limitations'. Apparently, the funds required to efficiently and effectively oversee the implementation of the Act are higher than the Commission's current budget.

**We urge the government to demonstrate commitment to the ATI law by allocating sufficient resources to the Commission to ensure smooth implementation of the law.**

### **Threats against free speech.**

There is ample evidence to suggest that free speech deteriorated in 2017. Our observation is consistent with a new Afrobarometer survey which was conducted between December 2016 and January 2017 by the Centre for Social Research. The survey shows that Malawians were increasingly cautious about exercising their right to free political speech. According to the survey, while 77 percent of Malawians feel "somewhat free" to say what they think, the proportion of those who feel "completely free" has dropped by 29 percentage since 2014 to 48 percent. More than two-thirds of Malawians reported not feeling free to criticize Mutharika and more than half said they didn't feel free to criticize their member of parliament.

The survey findings are hardly surprising. A consistent observation has been made by civil society organizations and academics that the DPP-led administration is becoming more and more paranoid and intolerant of criticism, especially criticism on issues of governance, hence it was using every trick in the book to silence the critical voice.

There were many ways the state was stifling the critical voice. First is through the use of verbal threats against those critical of the administration. For instance, we saw the President describing those opposed to his policies as "stupid". Critics were also labelled

as “agents of the opposition”, “unpatriots” or hell-bent at tarnishing the “good” image of the current administration simply for holding the government accountable.

### **Threats against human rights defenders.**

Related to the above were threats against human rights defenders who were critical of the DPP-led administration. A number of human rights defenders, such as Charles Kajoloweka, Timothy Mtambo, Giff Trapence, Billy Mayaya, among many others, have been receiving threats from unknown people linked to the ruling party as per their claims. This was soon after the said individuals obtained a court order restraining Dr Goerge Chaponda from executing his duties as a Minister of Agriculture. We have also witnessed threats being issued to an opposition legislator, Kamlepo Kalua of the Peoples Party for the simple reason that he performed his role ably of providing checks and balances as a legislator by reminding the government to tackle corruption fully.

The administration was using all sorts of tricks to silence human rights defenders, including branding them as “opposition agents”. For instance, following criticism over government's handling of the proposed electoral law reforms, the Public Affairs Committee (PAC)'s leadership was accused of colluding with the opposition to bring the government down.

We also witnessed a growing tendency of using chiefs to castigate and threaten human rights defenders and using the NGO Board to threaten CSOs deemed critical of government with closure. Some CSOs were constantly under threat of de-registration for advocacy work that has been deemed critical of the Malawi Government.

The administration also resorted to divide-and-rule tactics so as to weaken and isolate civil society in the country. The government was doing this by appointing some of the vocal human rights defenders into government positions. We also saw ‘state infiltration’ with government seeking to infiltrate civil society organizations using different tactics, including using fellow activists to spy on their colleagues and influencing elections of civil society leaders in civil society networks and platforms by supporting their stooges.

CHRR calls upon the ruling party and government to respect, protect and safeguard the rights of human rights defenders, by among others, desisting from making threats against them. We also urge government to pass a law protecting human rights defenders in the country.

### **Threats against the right to freedom of assembly.**

Although 2017 saw a number of demonstrations being held in 2017, there were a number of challenges that threatened the exercise of this right. Firstly, demonstrations were allowed to take place under very restrictive circumstances. For example, demonstrators were given specific locations where to demonstrate, usually the distance

between Area 18 roundabout and Capital Hotel roundabout. This raised questions as to why demonstrators could not demonstrate in other parts of the city.

Secondly, most demonstrations were characterized by high security presence. In most cases, armed police officers outnumbered protesters, creating a climate of fear. In the context of freedom of assembly, this cannot be called an improvement.

The arrest of a woman carrying a placard deemed 'offensive' by some members of the public during a solidarity demonstration by concerned citizens against gender based violence (GBV) best exemplifies the restrictive atmosphere under which these demonstrations were held.

### **Arrest of 14 NRB officers in Mzuzu.**

Related to the above is the arrest in Mzuzu of 14 National Registration Bureau (NRB) workers for discussing matters affecting their work conditions.

The 14 were arrested by Malawi Police Service in September 2017 allegedly following orders from the Home Affairs and Internal Security Minister, Grace Chiumia, following demonstrations the 14 and their colleagues held over their pay and poor conditions of service. The arrest violated the officers' constitutional rights, including the right to freedom of expression and the right to freedom of assembly.

The incident exposed weaknesses in the ruling DPP's leadership, and portrayed the party as one that lacks respect for workers' rights. The failure by the party leadership to condemn or discipline the Minister for her appalling actions hinted at either lack of understanding or a sheer lack of respect by the party leadership for workers' rights.

### **Failure to curb rampant corruption in government.**

The DPP-led administration's zero tolerance rhetoric was once again proved empty in 2017 by numerous instances of corruption in government, involving senior government officials and even ministers.

Contrary to the promise he made when he assumed power in May 2014, Malawi continues to be significantly more corrupt under the leadership of President Mutharika, a fact acknowledged by the country's development partners, who have urged government to step up efforts to fight against 'corrupt gangsters' in the corridors of power.

The maize-gate scandal, which former Agriculture, Irrigation and Water Development Minister, George Chaponda was implicated in, is but one example of the numerous instances of corruption involving high profile government officials. Chaponda was fired as minister after investigators from the Anti-Corruption Bureau found cash in various currencies, including US\$58,000 and 124 million Malawian Kwacha at his residence.

One of the most recent cases involved the awarding of 78-megawatts stand-by electricity generators allegedly to a company with links to senior ruling party members. Amidst all this, the President has demonstrated failure to act against the allegations of serious misconduct involving senior officials in his own government and ESCOM, which has portrayed the President as sleeping on the job, unconcerned about the millions of dollars being siphoned by his own party officials. His party's option for public stunts has only added salt to injury as such stunts have borne no fruits to suffering Malawians.

**Corruption is a serious human rights violation as it acts as a barrier to poverty reduction diverting much-needed resources away from healthcare, schools and water provision. CHRR, therefore, urges President Mutharika and his DPP-led administration to walk the talk on his campaign promise to stamp out corruption in government.**

**CHRR also appeals for speedy of prosecution of Dr Goerge Chaponda and everyone else involved in the Maizegate and for an investigation into what caused the fire at the Ministry of Agriculture office at the Capitol Hill in Lilongwe.**

#### **Politicization of operations of governance institutions.**

We at CHRR are deeply concerned about the growing politicization of the governance institutions in the country. These institutions include, the Anti- Corruption Bureau (ACB) NGO Board, MACRA and National Intelligence Bureau, to name but a few. It is now an open secret that these governance institutions have become a governance curse, due to government's inordinate interference in their operations. This is a huge disservice to tax-payers who fund these institutions. It is a shame that heads of these institutions are at times behaving like ruling party spokespersons when in actual sense there are supposed to be accountable to Malawians.

**CHRR calls upon the DPP-led government to unshackle these governance institutions by providing all the necessary resource support as well as guarantee their operational independence. Principally, we urge government and all parliamentarians to amend the laws on these institutions by removing the President as the appointing authority of the heads of some of these institutions. This will improve accountability and bring an end to impunity.**

#### **Persistent water shortages.**

While Malawi is relatively rich in water resources, having a number of lakes and rivers, the country continued to experience water scarcity particularly in 2017.

Just as in previous years, the reporting period witnessed water scarcity in various cities and districts, with poor households being the hardest hit. Women carrying empty buckets as they went about in search of water were a common sight in both towns and cities as residents scrambled for the few running water pipes. In June, it was reported in

the local media that over 7, 000 households in Salima North West constituency were grappling for one borehole, 53 years after Malawi gained independence.

This was happening despite the fact that the water and electricity tariffs are way too high for most ordinary Malawians. In fact, the Malawi Revenue Authority introduced tax on water. What is even worse is the fact that there seems to be no clear direction as far as finding lasting solutions to persistent water problems is concerned.

**CHRR urges the DPP-led administration to practice the visionary and dynamic leadership which the ruling DPP promised during the campaign period in its manifesto and find a lasting solution to the problem of water shortages. The DPP-led administration should not take Malawians for a ride. Access to water is a basic human right that every Malawian should be able to enjoy.**

#### **Failure to stop nepotism.**

Another unfortunate development that needs to be highlighted is failure by the government to stop practicing nepotism, especially with regards to public appointments. In 2017 there have been a continued public outcry on practice of giving an unfair advantage to people from one tribe. It was sad to note that most key positions were given to people from the tribe of the president. A consistent observation has been made by CSOs, politicians and the academic that most of key positions in government including the parastatals are given to the president's tribe.

**CHRR categorically condemns this despicable practice, as it undermines the issue of meritocracy, and calls on the President to give a fair chance to all tribes when making public appointments. Malawi belongs to us all, and not to a single tribe.**

#### **THE UGLY**

Below are some of the negative developments that we feel extremely undermined the observance of human rights in 2017:

#### **Never-ending power outages.**

The government has fared woefully in the energy sector as evidenced by the never-ending power outages. Despite promises that the blackouts will be contained by in December 2017, the country has witnessed some of the worst blackouts in history, with outages lasting 25 hours or more, leading to preventable deaths in the public hospitals and paralyzing small-scale businesses, like barbershops, salons, bars, welding shops and others that rely on electricity to survive. The development virtually threatened the right to life, enshrined under section 16 of the Constitution of Malawi, and a number of social and economic rights protected in the constitution and in other international instruments that the country is party to.



It is high time government provided lasting solution to the never-ending blackouts for people to stop struggling and dying needlessly of preventable causes.

### **Supplying sewer-contaminated water to Area 18 residents.**

While some parts of the capital city were experiencing dry taps, Area 18 residents had a rude awakening when they were supplied tap water that had been mixed with sewage. The situation prompted some well-to-do residents to resort to bottled water while the poor suffered an outbreak of diarrhea and abdominal pains.

Although the Lilongwe Water Board and the Lilongwe City Council were to blame for this gross human rights violation, the responsibility falls squarely on the government, as the ultimate duty bearer. The Ministry of Agriculture, Irrigation and Water Development stepped on people's toes by assuring the residents that the water was safe when an independent laboratory analysis carried out by the Malawi Environmental Health Association (Meha) revealed that the water was still contaminated.

What happened in Area 18 should be a wakeup call to all service providers to ensure that such blatant disregard of human rights should never happen again.

### **Forcing donations out of struggling parastatal organizations.**

During the period under review, the country witnessed the ruling DPP literally squeezing and forcing councils, water boards, Escom and many other struggling parastatal organizations to make donations to the ruling party during the so-called 'blue-nights'.

In July 2017, the DPP held a fundraising dinner and dance at Kamuzu Palace in Lilongwe where the above-mentioned state enterprises made financial contributions, reportedly totaling K13.5 million. The DPP actions were in contravention of the doctrine of public trust enshrined in sections 12 and section 178 of the Constitution of the Republic of Malawi and other laws of Malawi. Under Section 23 of the Public Finance Management Act, no single kwacha of public money is supposed to be expended unless such expenditure is authorized by an Appropriation Act or is a statutory expenditure.

The DPP's actions also smacked of hypocrisy of the highest order as during the 2014 tripartite elections campaign period, the same party openly opposed the practice of using resources of parastatals for political gain. They criticized previous ruling parties MCP, UDF and PP for doing this. Here they were now doing exactly the same thing.

### **Botched handling of the violence linked to blood-sucking rumours.**

The months of September and October 2017 witnessed an unprecedented spate of mob killings linked to "blood sucking" rumours in the southern region districts of Mulanje and surrounding districts, a situation that led the UN and other aid organizations temporarily suspending operations in the region.

At least 6 people suspected of being vampires were violently killed by irate mobs in Mulanje, Phalombe and Blantyre. The mob killings created a climate of fear as vigilante groups, armed with anything from *panga* knives to stones, set up roadblocks in search of 'vampires'.

When the violence first broke out in Mulanje, government was expected to swiftly move in and stop these senseless killings before they spread. But two weeks elapsed before any decisive action was taken. Instead, some government officials were busy politicking and pointing fingers at the Malawi Congress Party and NGOs of spreading the rumours, purportedly to have Malawi labeled as a 'failed state'.

### **Failure to tackle political violence and to arrest alleged DPP cadets.**

The year 2017 also witnessed a spate of violence across the country perpetrated by thugs affiliated to some political parties. An example of such violence occurred on 15<sup>th</sup> January 2017 when Democratic Progressive Party (DPP) youth cadets reportedly attacked members of opposition Malawi Congress Party (MCP) at Providence Industrial Mission (PIM) where people from all walks of life had gathered to celebrate the life of the Reverend John Chilembwe. According to media reports, the notorious Cadets, dressed in their DPP regalia, started beating the opposition members in full view of the police after President Peter Mutharika, who was in attendance, had left the venue.

Political violence reared its ugly head again on Saturday, 30<sup>th</sup> September, 2017 during the Gonapamuhanya, a Tumbuka cultural event held at Bolero in Rumphi District. Thugs allegedly clad in DPP regalia pelted stones at leaders of opposition political parties that attended the ceremony. While some opposition political party members may have had a hand in all these despicable acts of violence, it was disappointing to learn that no one had been arrested in connection with this violence. The President's failure to apologise for the fracas, and the party's attempts to put a spin to the violence, fed into a culture of impunity, which has characterized such politically-motivated violence.

What is even more disappointing is that, in all these cases, the Malawi Police Service, a body bankrolled by the taxpayer to ensure law and order, has consistently demonstrated its compromised position by failing to conduct meaningful investigations and/or prosecutions. The result has been that as long as the thugs belong to the party in power at the time, violence on political opponents has gone unpunished. This is a very sad reflection of the State of professionalism within the police service. Violence of any kind should never go unpunished. In fact, the worst enemy of safety is impunity. Every time a case of violence occurs and is not investigated and the perpetrators not held accountable many more cases will occur.

**Leaders of all political parties must ensure that their rank and file, walk the talk of non-violence in politics. They must unreservedly condemn any violence perpetrated in their names or in the names of their political parties.**

## **Electoral reforms shenanigans.**

Malawians were deeply shocked and disappointed over government's failure to table the Electoral Reforms Bills in the last sitting of Parliament.

The absence of the bills on the initial list of bills to be tabled in Parliament gave a clear indication that the reforms are not a priority to the government. Following criticisms by NGOs and the opposition, government tabled the bills; however, this effort by the DPP-led administration has amounted to little more than window dressing as government MPs proceeded to shoot down the bills when they were tabled in Parliament.

To most of us, the move was hardly surprising as the DPP all along was not in favour of the bills and was clearly seeking ways to further delay or suppress them.

## **Conclusion**

As CHRR, we are ready and will continue to support government in 2018. As a human rights non-governmental institution, we will continue, in line with our mandate, to monitor the human rights situation in Malawi and engage the government to ensure that we all move towards a better Malawi where all human rights and fundamental freedoms are respected in the general interest of all. It is, therefore, our expectation that the government will build on its achievements in the New Year and that it will address shortfalls so as to serve the citizens of this nation better. CHRR would like to remind the government that the primary role of every government is to protect its citizens. The President and the cabinet took an oath to protect and defend the Republican Constitution where human rights and good governance are enshrined. Failure to deliver is tantamount to violating the human rights of Malawians.

Finally, we wish the government and all the people of Malawi a prosperous New Year. May the Almighty God continue to bless Malawi in the coming year.

## **About CHRR**

Centre for Human Rights and Rehabilitation (CHRR) is a Human Rights and Governance organizations in Malawi. CHRR's vision is of a Malawi with a vibrant culture which embraces the values of democracy, human rights and rule of law.

Since its inception in 1995, CHRR has championed its work at national level, SADC level through the SADC Human Rights Defenders Network at which it sits in the board, continental level through the African Commission on Human and Peoples' Rights using its observer status, and at UN level through different UN mechanisms such as the International Covenant on Civil and Political Rights (ICCPR). Founded in February 1995 as a non-profit making organization, CHRR got registered under the Trustees Incorporation Act of 1962.

**Signed:**

**Timothy Mtambo**

**Executive Director—CHRR**

**31<sup>st</sup> December 2017**