

Malawi: Of electoral politics and Tippex

Last week, Malawi's constitutional court made a landmark ruling nullifying the Malawian Presidential Election of 21 May 2019.

President Peter Mutharika was declared the winner of last year's polls after garnering 38.6% of votes cast. His main contender, Lazarus Chakwera of the opposition Malawi Congress Party (MCP), attained 35.41% of votes, with Deputy President Saulos Chilima getting 20.24%, according to results from the Malawi Electoral Commission (MEC).

Before the election results were announced, the opposition asserted that the poll was flawed, in a typical narrative which has characterised polls across African nations.

It was not anticipated that the opposition's reservations for the electoral process would have any bearing, even after they had lodged a complaint.

That was not until last week's landmark ruling annulling the 2019 election results on the basis of massive irregularities, having a bearing on the credibility of the entire electoral process. In the unanimous ruling, the panel of five judges called for fresh elections to be held within 150 days.

The ruling crowned Malawi's democratic culture and credentials, in a nation which has been accustomed to disputes after every election. At the same time, the ruling gave restive youths, some hope for a more credible election ahead. Following last year's elections, chaos erupted in Malawi with hard-pressed youths calling for President Peter Mutharika to vacate office over allegations of vote rigging. In its 500-page ruling, documenting acts of electoral fraud, some which have since gone viral on social media, the judges managed to

confirm and give credence to the claims of vote rigging which had been raised by the opposition parties and youths in general.

There is no doubt that the court's ruling which cited that Mutharika was "unduly elected" posed an indictment of the country's electoral process. The judges may have done their work diligently as is constitutionally expected of them. But the complicity of MEC, which is supposed to act independently, is in question, especially after presiding over a blatant process.

Even with a rescheduled election, it remains doubtful whether MEC would have proper systems within the short space of time. The ruling by the court only effectively puts the MEC under much pressure, which is what will characterise the complexity of the problem especially given the need to have a fair electoral process. With elections now scheduled within the 150 days, unless the table turns somehow, there is the obvious concern about running another poll, which is a costly expedition, especially given indications that Malawi will likely seek additional external support. For now, however, the cost element seems not an issue, given that the criticism is mainly directed towards the role which Electoral Observer Missions (EOM) played in the entire electoral process. That is the biggest story, if not scandal, which observers and analysts have focused on.

At the last elections, the observers included the Southern African Development Community (SADC), the European Union (EU), the United States (US) and even the Commonwealth.

While this criticism is understandable, the responsibility to ensure proper conduct of elections rests with Malawi and its institutions, just in the same vein as the court has done in rescinding the outcome of an evidently fraudulent electoral process. We should be asking about who has resigned at MEC before putting the blame on some external forces. With all the

talk about sovereignty and territorial integrity, it is incumbent on African countries to understand the power and responsibility they hold for what happens internally, as opposed to putting the blame on the West, whether out of real or imagined grievances!

For opposition movements, who have been in a celebratory mood following the judgement, the chief lesson is that internal disputes are best rectified within the nation state. Any external voice or support should only be complementary to the work done across the respective countries. This is where the mammoth task is, for opposition parties to convince institutions of the state of electoral malpractices. The fact that the opposition parties in Zambia and Zimbabwe were on cloud nine about the ruling depicts the consternation about the conduct of elections even across the region. The commendations extended towards Malawi speaks volumes of the problem of partial judiciary systems and partisan judges. With Malawi's judiciary having shown the way in addressing an endemic problem of post-electoral conflict, there is a telling story being written about a veneer of independence within the state.

The ruling by the court is important because it embodies the principle of judicial independence. Closer to home in Zimbabwe, the opposition Movement for Democratic Change (MDC) Alliance equally argued that its leader Nelson Chamisa had been "robbed" of victory by Emmerson Mnangagwa.

A historic appeal was lodged and subsequently broadcast live, with the MDC chronicling some convincing evidence. However, the evidence was seen as insufficient for the end result of Mnangagwa's win, whose margin had to be changed several times, depicting how sham the exercise was!

The problem obtaining across most African countries is that incumbents ride so much on the law for their convenience! Whenever confronted with a situation, sitting heads of state

and their machinery invoke the law in line with constitutional provisions. Quite often this is done on a technical basis, which often means ignoring the moral imperatives of particular issues.

Unfortunately, African politicians have tended to see the electoral process as a matter of life and death. This would explain why President Mutharika together with the MEC made an appeal to have his "victory" upheld. Without doubt, it is the incumbent's constitutional right to appeal, which also shows some veneer of the principle of separation of powers, but it casts him in extremely bad light. Incumbents across the continent have a tendency of wanting to hang around at the expense of their credibility, if they still have any.

Robert Mugabe successfully did it many times, but with a sad demise engineered by the army. African leaders simply need to understand that even if a sham electoral process is legitimised by the court giving a false sense of victory and transparency, there is also that danger of the military positioning itself in the power matrix and the political process in general! Malawi is not very far off the mark given the history of military involvement in the country's politics.

While the judgement is being celebrated (hoping that it won't be overturned by a higher court), the fact still remains that Malawi has been thrown into a cloud of political uncertainty. The judiciary stands in a tight spot, should they uphold last year's shambolic exercise! Any decision of this nature will give the restive youths the armoury to go back to the streets, casting Mutharika in a despicable light. That is the problem which Malawi finds itself in.

At the same time, Mutharika knows fully well that he is in a precarious position. Only three percent separated him from his main contender Lazarus Chakwera of the MCP and some 18%, if compared to Chilima. At face value, this was a very close election, even by the disputed official figures. Perhaps, it

would have been better for the candidates to have united for the sake of moving the nation forward in order to calm the riotous youths, especially. Of course, such an arrangement would, in real terms, be seen as apathetic to electoral democracy, which is premised on respecting the people's will! Even in Zimbabwe, all indications pointed that Mnangagwa's "win" was too narrow to ignore Nelson Chamisa. The "winner takes it all" approach has caused all manner of problems which most African states encounter after an election. Most of the times, the political landscape is characterised by divisive undertones of the "revolutionaries" and the "sell outs" and the "old" versus the "young".

In Namibia, for example, the tell-tale signs of the ruling South West Africa People's Organisation (SWAPO) diminishing base are equally apparent with the entrance of Panduleni Itula, who shrunk the ruling party's base by some thirty percent! In real terms, electoral politics should never be about the carnal preoccupations of who the winner or the loser is, without seeing the bigger underlying picture of consolidating the cohesion of the state.

In Malawi's case, a re-election puts Mutharika in an extremely difficult position because the process will tend to favour Chakwera, who is the main contender. Just last week there were some discussions around Chakwera and Chilima considering entering into a coalition which would give them an overwhelming advantage over the incumbent. However, Chilima now appears not in favour of alliances "which will place certain individuals in power." It is either Chilima has made a volte-face as he has expressed his "readiness" to work with President Peter Mutharika. Or it is perhaps a work of brinkmanship on his political calculative part as the drama unfolds in Malawi.

Beyond the political game, however, Malawi's situation poses difficult to EOMs, who were complicit in the very first place. The court of public opinion currently favours a decision which

would uphold a win by the main opposition leader Lazarus Chakwera. Anything outside that would fall short of the public's expectations. That is the problem. Much as EOMs were complicit, the issue at hand is largely about weak state institutions more than anything else!

And then in the actual conduct of the election, with election officers extensively using white correction fluid (commonly known as Tippex), to a point of affecting the credibility of the poll. There is very strong evidence with the recklessness with which officials conducted themselves, as they used Tippex to change results at some stations. With all the technological changes which have made voting less mechanical, most African states still rely on the old troublesome methods of manually compiling statistics.

The blatant use of Tippex in the election reminds me of very old experiences during high school, in the late 80s in Zimbabwe! Tippex was commonly used by teachers to whitewash some changes, especially on student report cards. Often the teacher had piles of progress reports and used the correction fluid in several areas where they made mistakes with scores.

However, the MEC overused Tippex to a point of obliterating results. In their use of Tippex, MEC embodied a notorious student who was in the habit of skipping classes and literally failed all tests, only to pull out a bag of tricks from the woodwork! Such students ended up coming up with a hard-sell that they had done well during the course of the term, at times portraying themselves as having even outclassed the brightest student of the class. This student would often connive with accomplices, who would forge signatures and use different pens and handwriting, to give a veneer of authenticity to a progress report, which would end up being soiled, beyond reasonable doubt! The use of Tippex and handwriting which bears resemblance to hieroglyphics embodies the notorious student!

The conduct of MEC, not the observer missions, is the bigger

problem. The fact that Thabo Mbeki, who led a group of 12 “eminent persons from the Commonwealth”, lauded the process depicts the limitation of EOMs. It is fair to demand that SADC on the other hand may have to account for its endorsement of the grand heist. The important lesson for Malawi is primarily about the weakness of state institutions. Democracy, just like good governance, is about asserting the good for the benefit of locals first. While the role of the EOMs is understandable, it should not be the definite benchmark for validating an electoral process, which authorities are fully positioned to adjudicate, however difficult as it may be due to the interwoven politics between the executive and the judiciary which often serves as an appendage of the ruling elites across African states!

It is disingenuous to expect much from observers for many reasons! In any case, most of the times observers fly in a month or two before the election, some without the requisite background and appreciation of the complex political environment, which cannot be adduced by merely digesting online reports. There is a story which is often told of observers who are often government officials or representatives of regional, international organisations or even members of civil society. Most of the time, they are simply in their hotel rooms dining and winning, unaware of what goes on in the electoral fields. Instead of focusing on the mission, they tend to holiday at will and dispense lofty reports at the end of a mission, often regurgitating a template from another similar mission!

It is therefore unfortunate to cry out for European Union’s endorsement of the process, or even the US Secretary of State Michael Pompeo for congratulating the people of Malawi for organising “successful elections underscoring the nation’s commitment to shared democratic principles.” African nations cannot advance as long as they accord Western nations with a high priesthood role of pinpointing the continent’s omissions

with regard to electoral democracy, good governance, human rights and even the rule of law! The aspirations of African states, even during colonial rule were tied to the values and ethos of yearning for democracy. It is duplicitous to attack Western nations for endorsing a flawed process, which ordinarily require internal introspection. Even more, it is a double standard to raise allegations of interference and claims of wanting to institute a regime change, whenever Westerners (especially Americans) involve themselves in pinpointing the shortfalls of an electoral process.

Instead of attacking observers, which is quite understandable given an endorsement of fraud, African states should be channelling their energies in asking why elections across the continent require EOMs in the first place. Africa is the only continent which requires much validation, especially from Western EOMs. With the judiciary in Malawi demonstrating some independence, there is this reminder about African states longing for the West to hold its hand in purely democratic processes. But the voice of reason is saying, Africa, you have been independent for long, it is your time to get your act together!

In fact, an electoral validation is often a fundamental requirement, for things like aid, unlocking investment and so on. Even in Zimbabwe, Robert Mugabe who was a darling of the West ended up shunting Western EOMs on the basis of his belief of a regime change agenda being led by "Britain and its allies. With the demise of Robert Mugabe, one of Mnangagwa's first tasks was to assert the "second coming" of Western EOMs as part of an attempt to validate the electoral processes during the 2018 elections. Mnangagwa needed this endorsement from all corners, given that he assumed the presidency through a coup d'état.

It is also key to read SADC's endorsement of the 2019 polls as part of a defining culture of solidarity and comradeship across former liberation movements! SADC is different from

other regional groups such as the Economic Community of West African States (ECOWAS), which drew the line in the sand, after dismissing former Ivorian president Laurent Gbagbo as winner of elections in 2010. ECOWAS simply said Alassane Ouattara was the winner and that was it! The undue influence by France, in the electoral affairs of its former colonies has been apparent within ECOWAS. The same also applies for the British, who have influenced the poll processes in Nigeria, Ghana and The Gambia.

As things stand in Malawi, three scenarios are certain. If the election is conducted freely and fairly, the circumstances favour the main opposition leader Lazarus Chakwera. Even the three percent difference in the disputed results will give him some confidence, before even considering additional votes from Chilima. It is immaterial at this point to talk about Chilima, whether he stands during the fresh poll or not. It appears there may have been a background political concession between Chakwera and Chilima.

The second scenario, which remains unlikely now, is a win for Peter Mutharika. He may have been indefatigable in pronouncing that the 2019 election was done and dusted, with the next window being the 2023 elections, which seems long enough for Malawians, reeling from all forms of problems which include corruption and youth unemployment. But at this pertinent stage, it is unwise to read into his defiance which commonly characterises old African leaders in the wake of momentous challenges, often from youthful politicians. Under the second scenario, a win may be difficult to comprehend, unless Mutharika manages to pull a Mugabe trick of 2008, were the state instituted a reign of terror on opposition leaders and supporters, eventually leading Morgan Tsvangirai into withdrawing from the poll. From 43.2 percent of the votes, Mugabe suddenly mustered 85.5% which was unbelievable! Mutharika can only achieve such a feat with the state apparatuses, especially the army on his part. Currently, it

does not appear like the army is on his side, especially given its background alliances with the judiciary in recent weeks! Should Mutharika win by any means necessary, SADC may facilitate talks for a dialogue, which will conveniently target a Government of National Unity (GNU). This would give birth to the third likely scenario.

The circumstances in Malawi currently may make it difficult for such an arrangement, which obtained in the Zimbabwean case in 2009. Such a scenario may be difficult for Malawi, as it would need SADC's facilitation and of course the opposition's acceptance for such a political arrangement. In the Zimbabwean case, however, Mugabe's stay in 2009 was a combination of factors which included his statesmanship role within the region and of course his political gamesmanship which gave him a comparative advantage over the MDC. Mutharika does not appear to embody the same gravitas, however. In any case, a consideration for any power-sharing arrangement is subject to intense political negotiations including things such as ministerial posts and concessions such as a move for reforms, especially in the country's electoral body. Such a process will painstakingly keep Malawi at suspense and even on the brink of street protests.

In real terms, despite the celebratory mood currently obtaining in Malawi, the country stands at a precipice. The lingering role of the army will continue to define the country's politics in the foreseeable future. The army are the power brokers in this conflagration. The democratic template exists on one hand, but the army will be deciding the politics of "who gets what, when and how" as Malawi seeks to find itself once again at this defining time!