

**REPORT**

**OF THE**

**COMMISSION OF INQUIRY**  
**INTO CIRCUMSTANCES OF THE DEATH**  
**OF THE LATE PRESIDENT**  
**NGWAZI PROF. BINGU WA MUTHARIKA**  
**AND INTO THE POLITICAL TRANSITION**  
**FOLLOWING HIS DEATH**



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REPUBLIC OF MALAWI

**COMMISSION OF INQUIRY INTO THE DEATH OF THE PRESIDENT  
NGWAZI PROFESSOR BINGU WA MUTHARIKA**

Ref. No: CI/BWM/03/2012

31st January 2013

**LETTER TO THE PRESIDENT**

Her Excellency Mrs Joyce Banda,  
President of the Republic of Malawi,  
Mrs. Joyce Banda,  
State House.

Your Excellency,

**REPORT OF THE COMMISSION OF INQUIRY**

On 1st June 2012, Your Excellency appointed a Commission of Inquiry to inquire into all aspects surrounding the death of His Excellency Ngwazi Prof. Bingu wa Mutharika, late President of the Republic of Malawi, and into issues of transition of State power following the President's death; and it pleased Your Excellency to appoint us as Commissioners to undertake the Inquiry and to report our findings and recommendations to Your Excellency.

We, the Commissioners, now have the honour to present our Report to Your Excellency.

Yours respectfully,

Justice Elton Singini, SC (Retired)  
*Chairman*

Dr. Charles Dzamalala  
*Member*

Mr. Joseph Elwyn Aironi  
*Member*

Dr. Tiwonge Loga  
*Member*



.....

Dr Elizabeth Sibale  
*Member*



.....

Fr. Joseph Mpinganjira  
*Member*



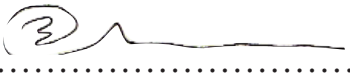
.....

Mr. Brian Nyasulu  
*Member*



.....

Mrs. Esther Chioko  
*Member*



.....

Mr. Jabbar Alide  
*Member*



.....

## LIST OF COMMISSIONERS AND SECRETARIAT

1.	Justice Elton Singini, SC. (Retired)	<i>Chairman</i>
2.	Dr. Charles Dzamalala	<i>Member</i>
3.	Mr. Joseph Elwyn Aironi	<i>Member</i>
4.	Dr. Tiwonge Loga	<i>Member</i>
5.	Dr. Elizabeth Sibale	<i>Member</i>
6.	Fr. Joseph Mpinganjira	<i>Member</i>
7.	Mrs. Esther Chioko	<i>Member</i>
8.	Mr. Brian Nyasulu	<i>Member</i>
9.	Mr. Jabbar Alide	<i>Member</i>
10.	Mr. Pacharo Kayira	<i>Secretary</i>

## LIST OF SUPPORT STAFF

1.	Mrs. Jean Simwaka	<i>Principal Accountant</i>
2.	Mrs. Fanny Vanessa Mussa	<i>Personal Secretary</i>
3.	Mr. Samuel Mbweza	<i>Researcher</i>
4.	Ms. Zelia Mthunzi	<i>Stenographer</i>
5.	Mrs. Sophie Mbewe	<i>Stenographer</i>
6.	Mr. Fanuel Herbert Chagunda	<i>Security</i>
7.	Mr. Nelson Chamalonda	<i>Security</i>
8.	Mrs. Agness Mulenga	<i>Security</i>
9.	Mrs. Pyra Chitukwi	<i>Security</i>
10.	Mr. Lovemore Simba	<i>Security</i>
11.	Ms. Taona Gondwe	<i>Messenger</i>
12.	Ms. Mercy Zaombampeni	<i>Driver</i>
13.	Mr. Fred Chitsulo	<i>Driver</i>

## LIST OF ABBREVIATIONS

ADC	Aide De Camp
AG	Attorney General
BBC	British Broadcasting Corporation
CPR	Cardial Pulmonary Resuscitation
DPP	Democratic Progressive Party
ECG	Electrocardiogram
ICU	Intensive Care Unit
KCH	Kamuzu Central Hospital
KIA	Kamuzu International Airport
MBC	Malawi Broadcasting Corporation
MDF	Malawi Defence Force
NGC	National Governing Council
NIS	National Intelligence Service
OPC	Office of the President and Cabinet
SABC	South African Broadcasting Corporation
SANDF	South Africa National Defence Force
ZBS	Zodiak Broadcasting Station



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## ACKNOWLEDGEMENTS

We, the Commissioners, wish to take this opportunity to express our gratitude to the State President, Her Excellency Mrs Joyce Banda, for the honour in appointing us to the Commission of Inquiry into the death of the Late President Ngwazi Professor Bingu wa Mutharika and into issues of transition of State power following his death.

The Commissioners acknowledge, with appreciation, the financial and administrative support from the Government of Malawi, through the Office of the President and Cabinet and the Ministry of Finance, to facilitate the work of the Commission.

The Commissioners would like to thank the management and staff of Ufulu Gardens in Lilongwe which was the base of the Commission for the most part of its work.

The Commissioners would like to thank the Secretary for the Commission, Mr. Pacharo Kayira, for competently managing the entire process of the Commission

Lastly, but not least, the Commissioners express their gratitude to the support staff of the Commission who worked diligently behind the scenes.

## EXECUTIVE SUMMARY

This is the Report of the Commission of Inquiry that was appointed by Her Excellency the President of the Republic of Malawi, Mrs. Joyce Banda, to inquire into the circumstances of the death of the former President of the Republic of Malawi, Ngwazi Prof. Bingu wa Mutharika, and into issues of transition of State power following his death. The Report has been divided into chapters as follows:-

Chapter 1 outlines the scope of this Report and gives the background to the appointment of the Commission of Inquiry. It outlines Terms of Reference for the Commission, the procedure that was adopted during the Inquiry and the methodology and work plan for the Commission.

Chapter 2 examines the evidence that the Commission heard on the aspect of the death of the President. Several testimonies were examined under this head and the Commission has highlighted the key evidence taken relevant to the issue. The Report has tackled the evidence by following the sequence of events. It has considered evidence from the time that the President fell ill at State House to the time that the President's body was brought back from South Africa to Malawi and to the time it was buried.

Chapter 3 examines the evidence that the Commission received on the issue of transition of State power during the period. It also examines the role that various people played during the period and analyses the activities that took place at the time. The Report has looked at various meetings that took place during that period and the key events that happened during the period.

Chapter 4 looks at the issue of the alleged looting and unauthorized removal of Government property at State House during the period. It has examined key evidence in respect of the matter with a view to establishing whether there was indeed looting, stealing and/or unauthorized removal of Government property.

Chapter 5 examines the evidence that was received in respect of some unusual occurrences and issues that were present during the period immediately before the President's death. The Report notes that there were certain occurrences during the period which may have exerted pressure on the late President. The Commission therefore received evidence on the issue of the prophesy by T.B. Joshua about the death of an African President. It has also examined the prevailing political and economic conditions in the country during that period.

Chapter 6 lays down the Findings that Commission has made in the relation to its Terms of Reference.

Chapter 7 deals with the recommendations of the Commission. The Commission has made several recommendations relevant to the issues of the Inquiry.

The Commission recommends that this Report should be read as a whole, as one document. All the parts are related, and must be understood as part of the whole.

# CHAPTER 1

## INTRODUCTION

### 1.1 SCOPE OF THE REPORT

This is the Report of the Commission of Inquiry that was appointed by the State President of the Republic of Malawi, Her Excellency Mrs. Joyce Banda on 1st June 2012. The main tasks of the Commission were two fold<sup>1</sup>.

Firstly, the Commission was mandated to inquire into circumstances surrounding the death of the former President of the Republic of Malawi, Ngwazi Prof. Bingu wa Mutharika, who died in April 2012 during his term of office.

Secondly, the Commission was mandated to investigate the role of various individuals, on the issue of transition of State power following his death.

Accordingly, the Report has tackled these two main issues of its mandate under the statutory Order issued by Her Excellency establishing the Commission and published in the *Gazette* issue of 22nd June 2012.

Apart from these two main issues, the Commission has examined the issue of health facilities accorded to the former President prior to his death and has also examined the general state of health facilities and health care accorded to the holder of the office of President in Malawi. In addition, the Report has looked at the coincidence of the presence of some unusual occurrences prior to the death of the late President and has looked at issues about media reports of looting and missing property at State House during the period.

At the end of the Report, the Commission has made recommendations to the President on the two main aspects of the Inquiry and also on other related and pertinent issues covered during the Inquiry.

### 1.2 BACKGROUND

On the afternoon of 5th April 2012, a dark cloud hung above the Republic of Malawi. There were rumours, shortly after midday, that the President of the Republic of Malawi, Ngwazi Professor Bingu wa Mutharika, had collapsed at State House in Lilongwe, and had been rushed to Kamuzu Central Hospital (KCH) for medical attention.

As the day progressed, the rumours grew stronger. Unconfirmed reports on the matter started to emerge from local private radio stations<sup>2</sup>, some international media<sup>3</sup>, and also social networking internet sites such as Facebook and twitter. Some media houses, most notably Zodiak Broadcasting Station radio, pursued the rumours further and ended up sending reporters to KCH where the President was reported to have been referred to. The radio station made live broadcasts of the events at the hospital as they

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<sup>1</sup> See Government Notice of Appointment of the Commission in the *Gazette* dated 22nd June 2012 attached as Annex 1

<sup>2</sup> Such as Zodiak Broadcasting Station, Capital Radio, Joy Radio, MIJ FM.

<sup>3</sup> Such as British Broadcasting Corporation, CNN, Aljazeera, Sky News.

unfolded. Among other reports, the station confirmed that there were indeed some unusual activities at the hospital that pointed to the fact that the President, as it was largely perceived, or a very senior member in the Malawi Government, may indeed have been taken ill and referred there for medical attention. The radio station reported that apart from the heavy police and State House security presence at the hospital, several high profile people in Government and politicians, and also members of the family of the Head of State including the First Lady, Madam Callista Mutharika, were seen arriving at the hospital. At this point, there was no official statement from State House or from the Office of the President and Cabinet (OPC), neither was there any report from the state broadcaster, Malawi Broadcasting Corporation (MBC) on radio or television.

The radio reports from private radio stations were initially not conclusive regarding the exact person who had been taken ill and referred to the hospital. However, the information unofficially gathered by the media at the hospital strengthened the indication that it was the President who had been taken ill and referred to the hospital. By late afternoon, it became clear that the person admitted at the hospital was indeed the President. This became the news on the private radio stations and social media.

As the day progressed, it was reported that preparations were underway to fly the President to South Africa for further treatment. At this point, the media reported about fresh strange occurrences at the hospital. It was reported that people who had earlier in the day gone to see the President in hospital had all left the hospital. This led to speculation of death. The people reported to have left included the First Lady, Madam Calista Mutharika, and the President's daughter, Mrs. Duwa Mutharika-Mubaira, and the President's brother, Hon. Peter Mutharika.

While confirming about the possible transfer of the President from KCH to South Africa, the media reported that the State House ambulance that was meant to take the President to Kamuzu International Airport (KIA) en-route to South Africa, had been stationed at the exit normally used for patients who have died and were being moved to the mortuary through the basement of the hospital. The reports further indicated that people who had earlier gone to the hospital to visit their relations were being cleared from hospital corridors by state security personnel. This included media reporters. Reports actually emerged that one reporter<sup>4</sup> was briefly arrested by the police for being found around the hospital premises and for relaying the events at the hospital live on radio. He was verbally cautioned and later released and told to immediately leave the hospital premises.

In the evening, news was widespread that confirmed that the President had indeed been taken ill earlier in the day, and was the high profile person referred to KCH. News was also widespread that the President had been moved from KCH to KIA for evacuation to South Africa. A press statement from the State House Press Office was released later in the evening on MBC radio and television<sup>5</sup> to the effect that the President had fallen ill and would be moved to South Africa for further specialist treatment.

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<sup>4</sup> Norman Fulatila of Zodiak Broadcasting Station.

<sup>5</sup> 8 O'clock News Bulletin, see transcript attached hereto as Annex 8

At the airport, it was noted by reporters from the private media, who kept informing people about what was happening, that some unusual events were taking place there. It was reported that the ambulance carrying the President from KCH had passed through the technical section of the airport instead of the VIP section that he would normally use when leaving or entering the country. It was further reported that the air ambulance from South Africa that had been chartered to evacuate the President to South Africa was being delayed for several hours for inexplicable reasons. It was later reported that the plane finally departed KIA around midnight for South Africa.

On the morning of 6th April 2012, one of the local newspapers<sup>6</sup> carried a report which described the events of the previous day. The paper reported that the President had been taken ill the previous day at State House and was referred to KCH. It further reported that the President had suffered cardiac arrest and had since been airlifted to South Africa for specialist treatment. In the article the then Minister of Energy and Mining, Hon. Goodall Gondwe, was reported to have confirmed to the paper that the President had been evacuated to South Africa. When the paper asked Hon. Gondwe about the condition of the President he was reported to have responded that *“he was not in very good condition but I am told his health is improving now.”* By this time, however, rumours were rife in the country that the President had passed away. The international media<sup>7</sup> in particular started reporting about the death of the President in South Africa. The news of the death of the President was commonplace on the day and was abundant in the social internet sites and online publications. There was however no such confirmation from the appropriate authorities in the country.

Late in the morning of the same day, 6th April, the former President of the Republic of Malawi, Dr. Bakili Muluzi, addressed a press conference at his BCA Hill residence in Blantyre. At the press conference, the former President issued a statement calling for respect for constitutional order in the country following the events of the previous day. He pointed out that the law was very clear on the issue of succession of power in the event that the incumbent was not able to perform his or her duties.<sup>8</sup>

In the afternoon, civil society organizations in the country through the civil society coalition group also held a press conference at Riverside Hotel in Lilongwe where they issued a press statement calling for the proper constitutional order to be observed in the country during the time by all in authority.

Later in the afternoon, the Vice President of the Republic of Malawi, Rt. Hon. Mrs. Joyce Banda, also called a press conference which she addressed at her official residence in Area 12 in Lilongwe<sup>9</sup>. This press conference was aired on Zodiak Broadcasting Station and other private radio stations, but the state broadcaster, Malawi Broadcasting Corporation (MBC), did not air the press conference. At the press conference, the Vice President informed the nation that the President was unwell, and that she was in touch with the authorities in the Government of the Republic of South Africa who were providing her with updates of the President’s condition. She further informed the nation that the President had been incapacitated and that the Constitution will have to take its course.

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<sup>6</sup> The Daily Times, 6th of April 2012, front page article titled ‘Bingu’s’ illness creates anxiety’ by Macdonald Thom.

<sup>7</sup> Such as BBC, CNN, Sky News, Aljazeera, SABC, eTV.

<sup>8</sup> See the statement of former President Dr. Bakili Muluzi dated 6th April 2012, attached as Annex 9

<sup>9</sup> Monitored on Zodiak Broadcasting Station, see Transcript attached as Annex 10.

In the evening of the same day, 6th April, MBC announced that there was going to be a press conference by Government on MBC late in the evening. At or around midnight, a group of six Cabinet Ministers, namely, Hon. Mrs. Patricia Kaliati, Minister of Information and Civic Education, Hon. Symon Vuwa Kaunda, Minister of Sports, Youth Development and Welfare, Hon. Henry Mussa, Minister of Local Government and Rural Development, Hon. Dr. Jean Kalirani, Minister of Health, Hon. Nicholas Dausi, Deputy Minister in the Office of President and Cabinet and Hon. Kondwani Nankhumwa, Deputy Minister of Foreign Affairs and International Cooperation, appeared on the MBC Television where they read out a statement<sup>10</sup>. The statement was to the effect that the statements made earlier in the day by the then Vice President, Right Hon. Mrs. Joyce Banda, and the former President, Dr. Bakili Muluzi, at their respective press conferences, regarding the issue of succession to the Presidency, were misleading. It further stated that the conduct of the Vice President in forming her own political party precluded her from succeeding the Presidency. The statement further appealed to Malawians “*to remain calm and not to listen to any misleading information coming from anyone except official government sources*”.

In the morning of 7th April, the Malawi Law Society issued a strongly worded press statement warning against attempts to subvert the country’s constitutional order. The statement is attached as Annex 38.

On 7th April 2012, as the morning was breaking, one of the weekend newspapers, *Malawi News*<sup>11</sup> carried an article titled “*Bingu Dead*”. The news of the death was confirmed by an official announcement from the Office of the President and Cabinet (OPC) at 8 am.<sup>12</sup> The announcement from OPC further confirmed that the President had suffered cardiac arrest and had died at One Military Hospital in South Africa.

Later in the morning around 11 am that day, the Vice President held a press conference at her official residence in Area 12 in Lilongwe, where she also officially announced to the Malawi nation the death of the President, Ngwazi Prof. Bingu wa Mutharika. She informed the nation that the President was pronounced dead on arrival at One Military Hospital in South Africa. She further informed the nation that there was going to be a Cabinet meeting in the afternoon that day. She appealed to the people of Malawi to maintain law and order. In response to a question from the press which alluded to looting at state residences, she appealed for a stop to such conduct.

Cabinet met in the afternoon as scheduled and the Vice President presided over the meeting. All Ministers attended the meeting except three, namely, Hon. Dr. George Chabonda, who was reportedly out of the country, Hon. Reene Kachere, who was reported to be unwell, and Hon. Peter Mutharika, who was in mourning as family member.

As this Report will indicate, on 6th April 2012, Cabinet Ministers met among themselves without the Vice President when they resolved to pursue a court case to seek an order to prevent the Vice President from succeeding the late President in the circumstances. At the Cabinet meeting on 7th April, which was called by the Vice President, all Cabinet Ministers present pledged their support to the Vice President and reversed the earlier decision to contest her succession to the Presidency and agreed to withdraw the court application. Cabinet then resolved to have the Vice President sworn in as President that afternoon.

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<sup>10</sup> See the Midnight Press Statement attached as Annex 11

<sup>11</sup> The Malawi News, 7th April 2012.

<sup>12</sup> See the Official announcement of the death of President Mutharika by the Office of the President and Cabinet Attached as Annex 12

Late on that day, 7th April, the Vice President was sworn into office as the fourth President of the Republic of Malawi by the Chief Justice at a ceremony held at Parliament Building in Lilongwe. During the swearing ceremony the President addressed the Malawi nation after taking oath. Among other things, she announced the formation of a committee to oversee the funeral arrangements of the late President. She emphasized the need to accord the late President decent burial befitting a Head of State and declared 10 days of national mourning. Government later declared 30 days to be the period of mourning.

The remains of the late President returned in the country from South Africa on Saturday, 14th April 2012, through Kamuzu International Airport aboard a South African National Defence Force (SANDF) plane escorted by members of SANDF officers. At the airport, the body was handed over to members of the Malawi Defence Force (MDF) with full military honours. The body was officially received by the President, Her Excellency Mrs. Joyce Banda, and by Cabinet Ministers among other dignitaries and multitude of people.

From the airport, the body was taken to State House where laying-in-state began. The first viewing of the body was led by the President, family members and a number of VIPs on the same day. Viewing continued at State House the following day, 15th April. On Monday, 16th April, the body was moved from State House to Parliament Building for public viewing. There, too, viewing was led by the State President. From Lilongwe the body was taken to Mzuzu for viewing on 17th April at Mzuzu State Lodge and then later to Blantyre on 18th April, for viewing at Sanjika Palace on 19th and 20th April and finally to the late President's Ndata Farm in Thyolo on 21st April for viewing on the same day, 21st, and on 22nd April 2012. The late President was buried on 23rd April 2012 in the family mausoleum called *Mpumulo wa Bata* at that farm in which his late wife, Madam Ethel Mutharika, who predeceased him, was also buried. His burial was attended by several Heads of State and Government and other foreign dignitaries.

### **1.3 ISSUES ARISING FROM THE DEATH OF THE PRESIDENT**

The sudden death of the late President was a shock to the nation. There were no previous reports of the President's sickness. Questions started circulating around as to what actually caused the death of the President. People started wondering if the death had a connection with the earlier prophecy of the death of a President by a well-known evangelist, Temitope Balogun Joshua (T.B. Joshua), of Nigeria. Earlier in the month of February 2012, T.B. Joshua had predicted the death of an African President. Up to the point of appointing this Commission of Inquiry, there had been no confirmation of the cause of the death of President Bingu wa Mutharika or the circumstances surrounding his death by the authorities.

Related to the death, questions were being asked as to whether the late President had received proper medical attention to during the time prior to his death. People were still asking as to whether everything possible had been done to save his life after he had collapsed at State House.



It was further noted that during the viewing period, the President's date of death that was inscribed on a cross placed on the casket kept changing. *The Daily Times* newspaper<sup>13</sup> covered a story titled "*Confusion Over Bingu's Death*" which highlighted different dates of death indicated on the cross. The article observed that on the day that the body arrived from South Africa, the cross had an inscription that the late President died on 7th April 2012. The following day, however, the date of 7th was crossed out and another date, 5th April 2012, was inscribed. The article further noted that according to the officials, the President died on arrival at One Military Hospital in South Africa, which was on 6th of April. The article further noted that according to some KCH officials, the President had been brought to KCH "*clinically dead*" just before lunch hour on 5th April 2012. Accordingly, the nation was asking questions as to where and when the late President died.

The nation was also asking questions as to why the announcement of death had been delayed. There were rumours of the death of the President much earlier than the announcement of his death by the Office of the President and Cabinet. Questions were being asked as to why the international media was first to announce the death of the President while our own state media was silent on the issue.

The late announcement of the President's death also posed questions as to whether there were indeed attempts to hide the President's death by those in authority or in the then ruling party and for what purpose.

The nation was further asking questions regarding the events that happened during the period in respect of transition of State power. It was reported that during the period there were attempts by certain individuals to derail the constitutional handover of State power to the then Vice President. That was why several people and organizations quickly moved in to address press conferences or to issue statements in support of, and calling for, constitutional order in the country. The issue of the statement read close to midnight on 6th April 2012 raised questions regarding its authorship and intended goals. A newspaper article in *The Nation on Sunday* newspaper titled "*DPP Wanted To Install Peter Mutharika - Ministers*"<sup>14</sup> quotes several individuals on how attempts were made to circumvent the constitutional provisions regarding succession of the late President.

The *Nation* newspaper of 13th April 2012 carried an article<sup>15</sup> on how the then ruling party panicked over the death of the late President and how the party wanted to swear another person as acting President, other than the Vice President who was supposed to be the one to be sworn as provided by the Constitution. Paragraph 2 of the article states:

*"DPP was so overwhelmingly against Banda that, The Nation can reveal, the party was ready to have Peter sworn in as Acting President on Friday night."*

Further the issue of the statement that was read close to midnight of 6th April 2012 was widely discussed in the press. An article in *The Nation* newspaper<sup>16</sup> titled "*OPC*

<sup>13</sup> *The Daily Times* newspaper dated 18th April, 2012, article by Golden Matonga.

<sup>14</sup> *Nation on Sunday*, by Steven Pembamoyo, dated 8th April, 2012.

<sup>15</sup> Article titled "*How DPP Panicked*" by Kondwani Munthali.

<sup>16</sup> *The Nation*, Monday 9th April, 2012.

*Disowns DPP Cabinet Meeting*” with a sub-heading “*Kaliati Explains Her Role in Succession Statement*” stated that it was clear that there were contradictions between Government officials and the Ministers on the issue of the statement and the meetings that took place at OPC. The article stated that while the Ministers on one side indicated that these meetings took place and were called by OPC, the Deputy Chief Secretary in the Office of the President and Cabinet, Mr. Necton Mhura, was quoted as saying that OPC did not call for these meetings and that they did not sanction the so called “Midnight Six Statement”.

It is clear that the death of the late President brought about several issues and questions whose answers were not available. Accordingly, Her Excellency proceeded to set up this Commission of Inquiry to look into these issues.

#### 1.4 APPOINTMENT OF THE COMMISSION OF INQUIRY

In her first State of the Nation Address as she was opening the 44th session of Parliament on 18th May 2012 the State President, Her Excellency Mrs. Joyce Banda, informed the nation that there were so many unanswered questions regarding the death of the former President. The President stated that she was therefore going to appoint a Commission of Inquiry to inquire into the circumstances surrounding the death of the President and events that followed. Accordingly, on 1st June 2012, the State President appointed this Commission of Inquiry to inquire into the death of the former President of the Republic of Malawi, Ngwazi Professor Bingu wa Mutharika, and the role and activity of various individuals during and in managing the transition.

The Commission consisted of nine members as follows:

Justice Elton Singini, SC. (Retired)	<i>Chairman</i>
Dr. Charles Dzamalala	<i>Member</i>
Joseph Elwyn Aironi	<i>Member</i>
Dr. Tiwonge Loga	<i>Member</i>
Dr. Elizabeth Sibale	<i>Member</i>
Fr. Joseph Mpinganjira	<i>Member</i>
Mrs. Esther Chioko	<i>Member</i>
Mr. Brian Nyasulu	<i>Member</i>
Mr. Jabbar Alide	<i>Member</i>
Mr. Pacharo Kayira	<i>Secretary</i>

Swearing of Commissioners took place on Monday 4th of June 2012 at OPC before the Vice President, Rt. Hon. Mr. Khumbo Kachali. The Commission commenced its work after the order establishing it was published in the Gazette issue of 22nd June 2012.<sup>17</sup>

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<sup>17</sup>. See Annex 1.

## 1.5 TERMS OF REFERENCE OF THE COMMISSION

The Commission of Inquiry was given the full mandate to consider, determine and inquire into all aspects surrounding the death of the late President including but not limited to the following:

- (i) Establishing the date and place of death;
- (ii) Establishing the cause of death;
- (iii) The medical attention available to the late President at the time immediately preceding his death;
- (iv) The role and activities of various individuals during, and in managing the period (the “transition”) between the death of the late President and swearing in of the President; and
- (v) Making such inquiry, and such findings and recommendations, as are incidental to and connected with the death of His Excellency the Late Ngwazi Prof. Bingu wa Mutharika, and the role and activities of various individuals during, and in managing the transition.

## 1.6 METHODOLOGY AND WORKPLAN

The Commission held its first planning meeting on 18th June 2012. It was agreed that the method that it was going to follow for conducting the Inquiry was through hearings that were to be held mainly in Lilongwe and also in other parts of the country if necessary. It was further resolved that there was going to be review meetings after hearing sessions in order to scrutinize and consider evidence the Commission had received. The Commission further set down the procedure for its meetings and for summoning of witnesses. On procedure, the Commission resolved to hold all its hearings in camera.

The Commission further resolved that public notices be placed in newspapers calling for information from people who knew anything regarding the death of the President or regarding issues of transition of state power. In order for the Commission to have a full appreciation of what had taken place during the concerned period, it was also resolved that the Commission would conduct site visits where necessary.

On how to proceed with the Inquiry the Commission resolved that it was going to follow the sequence of events during the period. This was going to begin with the events at the State House on the day in question, the referral to KCH, the evacuation through the Kamuzu International Airport to South Africa, the events in South Africa and the return of the body to Malawi and burial and, finally, the issues of transition of state power.

During the Inquiry the Commission interviewed 123 witnesses in all<sup>18</sup>.

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<sup>18</sup>. List of witnesses interviewed, Annex 3

## CHAPTER 2

### EVIDENCE TAKEN REGARDING THE DEATH OF THE PRESIDENT

#### 2.1 MEDICAL ATTENTION AVAILABLE TO THE LATE PRESIDENT IMMEDIATELY PRECEDING HIS DEATH

One of the terms of reference for the Commission was to examine the medical attention available to the late President at the time immediately preceding his death. The Commission considered this specific term of reference and agreed that it was a very important aspect that needed to be looked at holistically. The Commission understood this part to include the immediate attention that was given to the late President when he collapsed at State House on the fateful day, and the general medical care that was available to the late President prior to this occurrence. In examining this latter aspect, the Commission considered the issue of medical personnel and medical facilities that were available to the late President.

In Part I of the Schedule to the Presidents (Salaries and Benefits) Act, Cap 2:02 of the Laws of Malawi, it is provided that the President shall be entitled to:

*“Free medical services and a personal physician for the President, spouse and children under the age of 18 years.”*

Thus, in terms of statutory entitlement, this is the only provision regarding the medical benefits of the President.

It was heard in evidence that the late President had the services of a personal physician, Dr. Dan Namarika. He was appointed to that position on 9th July 2009.<sup>19</sup> According to the information given to the Commission, the President did not have a personal physician prior to the appointment of Dr. Namarika.

In addition to the personal physician, the President also had a personal nurse, Mrs. Thenjiwe Dissi Mittawa, a Medical Assistant by training, who also happened to be the President’s niece, on the side of President’s late wife, Madam Ethel Mutharika. The personal nurse served both the President and State House staff and was based at the State House clinic. Both the physician and the nurse were the President’s personal choices.

On the composition of the medical team available to the President, the Commission heard in evidence that the former President of the Republic of Malawi, Dr. Bakili Muluzi had the service of a personal physician and an anesthetist. This was also the case with the other former President, the late Ngwazi Dr. Hastings Kamuzu Banda.

It was in evidence during the Inquiry that the late President had adequate medical equipment to cater for any eventuality of a medical emergency.<sup>20</sup> This equipment did not belong to the Government as it was personally bought by the President in Germany

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<sup>19</sup> Testimony of Dr. Dan Namarika

<sup>20</sup> List of Medical Equipment for the President as supplied to the Commission by his physician Dr. Dan Namarika, Annex 13.

during one of his visits to that country. The personal physician explained to the Commission that he personally guided the President on what to buy, and the President paid for it with his own money. This equipment was always in the custody of the President's personal physician, and he took it with him everywhere he went with the President.

The Commission heard that a week prior to the death of the President, the President's physician had conducted a thorough medical check upon the President and had presented the results to him on Tuesday 3rd April 2012, two days before his collapse. It was submitted in evidence that the results of the medical check-up were satisfactory and the physician and the President were both happy with them. According to the personal physician, the results were not a surprise to him because such had always been the trend. He told the Commission that the President was a fit and healthy person. This position was also supported by other testimonies that the Commission heard from those that closely worked with the President.<sup>21</sup> However, according to the personal physician, the President was hypertensive and diabetic. These conditions were ably managed in his daily routine.

## **2.2 EVENTS AT STATE HOUSE ON THE 5th OF APRIL 2012**

The Commission received testimony that the day started normally. The late President had breakfast as usual.<sup>22</sup> The Presidential Food Taster, Mr. Harrison Mackenzie Nkhoma, told the Commission that on that morning he, as usual, tasted the President's breakfast to ensure that it did not contain harmful substances. He confirmed the food to be fine and it was served for breakfast. He also told the Commission that the President was very busy that day and did not take tea morning tea at the office as he usually did.

The State House housekeeper, Mrs. Elizabeth Mvinda, told the Commission that she met the President and the First Lady around 9 o'clock in the morning as they were having breakfast. She had joined them as usual at the table to discuss the programme for the day. In accordance with the daily routine, the housekeeper was given the tasks for the day during this meeting. On this particular day, the President indicated to the housekeeper that he was not going to take tea around the usual time that he did which was around 10 o'clock in the morning. The housekeeper told the Commission that at that time, the President looked fine and his normal self, and there seemed to be no problem at all with him.

After breakfast, the President was led to his office by his close protection security officer a Mr. Francisco Gideon. As usual, Mr. Gideon carried the late President's briefcase and office keys. Upon arrival in the office, Mr. Gideon opened the windows and took leave of the President. He then proceeded to his normal position near the lift close to the door leading into the President's office.

After the President had arrived in his office, his personal secretary, Mrs. Flora Muhara, went into the office around just after 9 o'clock to greet the President as a usual

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<sup>21</sup> Testimony of the Former ADC, Major Cyprian Kondowe, and testimony of former Guard COmmander, Mr. Duncan Mwapasa.

<sup>22</sup> Testimony of Francisco Gideon, Harrison Mackenzie Nkhoma, and Elizabeth Mvinda.

courtesy, and also to give him some letters to sign, but she was not able to do so as she retreated because the President was on the phone.

That morning, the President spoke on the phone to several Government officials before attending to his appointments. He spoke with the State House Press Officer, Mr. Albert Mungomo, around 8 am. The President instructed Mr. Mungomo to put members of the media on alert because he wanted to deliver an Easter message to the nation in the afternoon. He also spoke on the phone with the Deputy Chief Secretary, Mr. Necton Mhura, who had called him to find out about the status of his request for approval to go outside the country for medical treatment. The President gave his approval.

The Inspector General of Police, Mr. Peter Mukhito, also told the Commission that he too spoke on the phone to the President while the President was in the office that morning. It was the President who called him concerning the issue of security of property at the Presidential Villas in Lilongwe.

The President also spoke to the Director of National Intelligence Services, Mr. Bintony Kutsaira, around 9:30 that morning. Mr. Kutsaira told the Commission that the President sounded jovial. The President gave him certain assignments to do in Blantyre.

The President's Advisor on Religious Affairs, Rev. Billy Gama, also talked to the President the same morning before 10 o'clock. Their discussion centered on the statement that Rev. Gama had drafted for the President for the Easter address to the nation. The message was meant to be aired out to the Malawi nation the following day on Good Friday. They also discussed where the President was planning to go and pray the following day being Good Friday.

### 2.2.1 *The President's Appointments for the Day*

The President had a schedule of eight appointments on this particular day.<sup>23</sup> He had four appointments in the morning and four in the afternoon. His morning appointments were as follows:

- 10:00 - Hon. Mrs. Patricia Kaliati, MP, Minister of Information and Civic Education.
- 10:30 - Hon. Mrs. Margaret Roka Mauwa MP, Deputy Minister of Agriculture, Irrigation and Water Development.
- 11:00 - Hon. Mrs. Agnes Penemulungu, MP for Lilongwe City South East.
- 12:00 - Hon. Dr. Jean Kalirani, MP, Minister of Health

His appointments in the afternoon were due to start at 3 o'clock and were as follows:

- 3:00 - Dr. Bruce Munthali, Chief Executive Officer of Tobacco Control Commission.
- 3:30 - Mr. Bright Mangulama, formerly Director of Public Procurement but was retired at the time.

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<sup>23</sup>. Evidence of Former ADC, Major Cyprian Kondowe.

- 4:00 - Dr. Zikhale Ng'oma, Democratic Progressive Party Campaign Director.
- 4:30 - Mr. Chikumbutso Mtumodzi from Ministry of Disability.

Around 10:00 o'clock that morning, Hon. Patricia Kaliati arrived as expected for her appointment. The Presidential *aide de camp* (ADC), Major Cyprian Kondowe, informed the President that the Minister had arrived and was waiting for her appointment. The President told the ADC to lead her to the audience room. The ADC led the Hon. Minister to the audience room, and then proceeded to fetch the President from his office. After the President and the Minister greeted each other, the ADC left the room. After some 30 minutes, Hon. Kaliati was through with her audience and she came out and left.

The ADC then went again into the President's office and informed the President that Hon. Roka Mauwa was also in for her appointment. The same process was followed. The Hon. Minister met the President at the allocated time and left.

### 2.2.2 *Appointment With Hon. Mrs. Agnes Penemulungu, MP*

Hon. Mrs. Agnes Penemulungu, MP, testified to the Commission that on the previous day, 4th April 2012, she received a call from the ADC advising her that the President had granted her request for an appointment to meet him. She was advised that she was to meet the President the following day, 5th April 2012, at 11 o'clock in the morning. She however explained to the ADC that the day was not convenient to her because she was scheduled to go to the Kamuzu International Airport to receive the body of her uncle who had passed away in South Africa. She told the ADC that the body was going to come through the airport aboard a South African Airways at around 12:30 in the afternoon. The ADC advised her to consider adjusting her programme to the airport bearing in mind that she had waited for a long time for her appointment to be granted. He advised her not lose that chance. Accordingly, she adjusted her airport programme to accommodate her appointment with the President.

On the day in question, 5th April 2012, Hon. Penemulungu proceeded to State House and arrived at around 10:30 in the morning. She was searched at the entrance and was advised to leave the discussion notes that she had prepared on a piece of paper at the reception. She was ushered to the waiting room. The notes were later handed back to her as she was in the waiting room.

It was Hon. Penemulungu's recollection that around 11am, the ADC came to the waiting room and advised her that she was to wait a little longer because the President was yet to conclude the appointment before her. She recalled that it was around 11:11 am, when the ADC came to take her to the audience room. Since this was the first time for her to meet the President at State House, the ADC advised her of the courtesy to stand up as the President will be entering the room.

Once Hon. Penemulungu was in the audience room, the ADC proceeded to bring the President. When the President walked into the audience room, Hon. Penemulungu stood up as advised and the President greeted her in Chichewa, "*Muli bwanji a Nandau?*" She

responded to the greeting also in Chichewa, “*Ndiri bwino Bwana*”. She explained to the Commission that the name Nandau is what she is popularly known by in political circles as well as in Parliament. After the greeting, the President sat down and she also sat down. The ADC then left the room.

During the audience with the President, which was in Chichewa, Hon. Penemulungu started by thanking the President for giving her the appointment. In her own words she said to the President as follows:

*“Zikomo kwambiri Bwana. Ndathokoza kuti mwandipatsa appointment yanga patapita nthawi yayitali. Ndikudziwa kuti tilipo ma MP ambiri koma mwandivomera ine. Ndathokoza kwambiri. Chinanso ndithokoze Bwana kuti ine ndinawina ku Lilongwe City South East chifukwa cha pambuyo pa inu. Munandithandiza misonkhano. Munabwera. Ndikukuthokozani kwambiri Bwana. Ndikukuthokozaninso Bwana pa malonjezo amene ine ndinapatsa anthu anga. Lonjezo limodzi munandithandiza mseu munandiyikira tala. Ndiye Bwana ndikukuthokozani kwambiri. Pamene ndimalankhula choncho anali akugwedeza mutu akuvomera”.*

[Thank you very much Your Excellency Sir. I am very grateful that you granted me this appointment after some time. I know that there are many of us MPs who would like to come and see you. But it has pleased Your Excellency to grant me this appointment. Thank you very much Your Excellency. I also want to thank Your Excellency that I won in my constituency, Lilongwe City South East, because of your support. You supported me during my campaign meetings. Thank you very much Your Excellency. I also thank you Sir for supporting me in the promises that I made to the people of my constituency. One of the pledges on which you have helped me was the construction of a tarmac road in my constituency. Thank you very much Sir. As I was speaking the President was nodding in appreciation].

She went on and thanked the President for constantly helping her constituency in many ways.

After thanking the President, she informed him that there were still so many challenges that her constituency was facing. She advised the President that her constituency did not have a clinic and requested if consideration could be given to have a clinic in the area. At this point, the President asked Hon. Penemulungu where the nearest clinic was and how far it was. Her response was that the nearest clinic was in Kawale which is about 10 to 15 kilometers from her constituency. She further advised the President about the road in her constituency that goes to T/A Tsabango and asked if that road could be upgraded to tarmac. She also asked the President to consider looking into another road from Area 23 Market to Chipasula.

### **2.2.3 *The President’s Collapse.***

The Commission heard that barely 10 minutes into the appointment with Hon. Mrs. Penemulungu, as she was looking at her prepared notes which she had in her hands at the time, she noticed when she looked up that the President was just sitting still,



motionless. His hands and legs were stretched straight and the head was leaning against the backrest of the chair in which he sat. (She gave a graphic demonstration to the Commission of the President's posture at that time.) Upon noticing that, she called out "Bwana Bwana!", but there was no response. She then called again "Bwana!" but still there was no response. Quoting her own words, she said:

*"Bwana, Bwana! Ndikuona kuti sakundiyankha. Bwana! Ndinakuwa tsopano, sakundiyankha. Ndiye ndinayimirira kuthamangira kumene ndatulukira ku chitseko cha ADC. Ndinathamanga kukamuyitana ADC, bwera udzawone kuno Bwana sakundiyankha. Ndimalankhulana nawo. Ndiye ADC analowa mwa msanga msanga anawapeza abwanawo ali choncho ndithu."*

[Your Excellency, Your Excellency, I could see that he was not responding. Your Excellency! I now raised my voice, still he was not responding. So I stood up and ran towards the door I came through with the ADC. I rushed and called the ADC in. I said come in and see, His Excellency is not responding to me. I was talking to him. The ADC rushed in very quickly and found His Excellency still in the same posture.]

She told the Commission that she was very terrified.

As he was going to the audience room, the ADC asked Mr. Benfrey Kamanga, one of the NIS security detail sitting with him, to accompany him into the audience room. At the same time, the ADC called the President's personal physician, Dr. Dan Namarika, who was in his office in the State House at that time. The Presidential Guard Commander, Mr. Duncan Mwapasa, the most senior security officer at State House, was also called.

#### **2.2.4 Immediate Response to the Collapse of the President.**

When the ADC, Mr. Kondowe went into the audience room in the company of Mr. Kamanga, they found that the President was seated in the chair and was breathing with difficulties. He was not blinking. The ADC tried to talk to the President but got no response. He touched his head and called "Your Excellency, Your Excellency", but he stayed still and did not respond. He was breathing heavily and was facing forward, upwards, without looking at a particular person, even if you looked straight at him. It showed that he was not paying any attention to anything being said to him. He was unconscious.

Upon realizing the gravity of situation, the ADC and Mr. Kamanga carried the President to his office where they laid him on the carpet and loosened his jacket and removed his wrist watch and took off his shoes. At that time, the President was still breathing with difficulties. In no time, the President's personal physician, Dr. Dan Namarika, arrived in the room. He noted upon arrival that the President was struggling to breathe. He tried to call him but there was no response. He checked his pulse and armpits and also checked his blood pressure.

Dr. Dan Namarika told the Commission that at that time he did not have with him the presidential emergency medical kit. He told the Commission that he had left it in the ambulance and he tried to call for the ambulance. Dr. Namarika further told the

Commission that he called the Director General of State Residences, Mr. Edward Sawerengera, advising him that the President had collapsed and he immediately needed an ambulance to take the President to hospital.

From several testimonies, the Commission learnt that Dr. Namarika had actually left his equipment at his house within the State House compound. Seeing the emergency of the situation he advised Mr. Kondowe, Mr. Kamanga and Mr. Mwapasa, who by then were together in the President's office, to quickly rush the President downstairs to take him to hospital.

After giving the instruction to rush the President to hospital, Dr. Namarika left the late President unattended and proceeded downstairs to the office of the Director General of State Residences.

It is in the testimony received by the Commission that while downstairs, Dr. Namarika burst into the office of the Director General, who at the time was in a meeting with the Deputy Director General, Dr. Charles Thupi, shouting in panic that he needed an ambulance. After passing the message Dr. Namarika rushed out of the office and fortunately he met one of the Presidential convoy drivers, Mr. Aaron Matabwa. He instructed him to rush and quickly get the ambulance and bring it to the front of the building. After giving that instruction, Dr. Namarika jumped into the Deputy Director General's car and asked the driver, Mr. Yesaya Khuze, to drive him to his house to pick his medical equipment.

On the way to his house, Dr. Namarika met with the President's personal nurse, Mrs. Thenjiwe Dissi Mittawa, at one of the gates to State House. Dr. Namarika advised her that the President had collapsed. The nurse accordingly rushed to the entrance of the State House where she met the ADC, the Guard Commander, and Mr. Kamanga who had got downstairs through the lift carrying the President. It is in evidence that at this point the President's nurse took the President's blood pressure which read 102/57, his pulse rate was 74 and blood sugar was 14.3.

#### ***2.2.5 Referral to Kamuzu Central Hospital***

It is in evidence that when the President was brought downstairs he was briefly kept in the lift as they were waiting for the arrival of the ambulance. When the ambulance arrived, the President was immediately taken into the ambulance that had been parked directly by the entrance of the State House. The ambulance was a black Toyota Land Cruiser registration number MG944AB. At this moment Dr. Namarika had just returned from his house and he jumped into the ambulance which then started off for Kamuzu Central Hospital.

In the ambulance were the ADC, Dr. Namarika and Mrs. Thenjiwe Dissi Mittawa. Then another vehicle carried the Presidential Guard Commander, Mr. Mwapasa, the Director General of State Residences, Mr. Sawerengera, and Mr. Benfrey Kamanga. The Commission heard in evidence that at the time that the President was being carried into the ambulance, he was gasping for breath and groaning deeply. The two vehicles started off at the same time.

The Commission was informed that while on the way to the hospital, the personal physician was trying to secure the airway to ensure that the President was breathing and that there was circulation (the medical procedure called ABC). He was however not able to complete the process.

The Commission was informed that about November 2011, Dr. Namarika was involved in a road accident on his way to Ndata Farm House, the President's private residence in Thyolo. Following the accident, Dr. Namarika suffered a dislocation of his left arm and was undergoing physiotherapy at the time of the President's collapse. Dr. Namarika told the Commission that he could not effectively use his left arm because it had very limited movement. The Commission established that the doctor could not successfully secure the airway at the time of the President's collapse because for him to do that he had to intubate the President. He could not intubate the President because to do that, he had to elevate the President to get the path to the neck. The doctor could not manage to do that because of the limitation that he had in the use of his arm and that, in his own words, "the President was so big". This was coupled with the fact that he did not have the intubation kit at the time that he had proceeded to check the situation in the President's office after receiving a call from the ADC. The doctor told the Commission that he therefore only resorted to mouth to mouth resuscitation while in transit to the hospital. An attempt was made to put an intravenous line (IV line), a drip as it is commonly known, on the President but this was not possible. They only managed to insert a canula but no IV line was mounted.

The Commission was informed that while in transit, attempts were made to call Kamuzu Central Hospital on its numbers 01754725 and 01756900 so that the hospital could prepare to receive the President as a patient. But the calls could not get through. Dr. Namarika told the Commission that out of the 10 switchboard numbers only those two numbers were working. He explained that the Hospital Director of KCH, Dr. Noordeen Alide, was not informed about the emergency because Dr. Namarika did not have his number readily. Apart from that Dr. Namarika noted that the Hospital Director in that capacity was an administrator and it was going to be necessary to call him after stabilization of the patient. The hospital was therefore not warned or made aware that the President was being rushed to the hospital.

The Commission was informed that in the accompanying vehicle to the hospital, the Presidential Guard Commander made calls to the Inspector General of Police, Mr. Peter Mukhito, and to the Director of National Intelligence Service, Mr. Bintony Kutsaira, advising them on the developments. The Director General of State Residences made calls to Hon. Peter Mutharika. He also called the First Lady, who at the time was in her office within the State House attending to her morning appointments.

According to the testimony, the drive to the hospital took approximately 15 to 20 minutes.

#### ***2.2.6 Arrival and Reception at Kamuzu Central Hospital***

Upon arrival at Kamuzu Central Hospital, the ambulance went straight to the casualty section and parked at the car park adjacent to the entrance of the Casualty

Department. The ADC and the Presidential Guard Commander rushed to the intensive care unit (ICU) where they met an anesthetist, Mrs. Stella Warren, and asked for help. Upon hearing of the emergency involving the State President, Mrs. Warren immediately rushed out and went into the ambulance that was waiting outside. She told the Commission that as she was rushing there she met Dr. Isyu Mwakasungula of the Casualty Department, who had also been alerted about the situation and was looking for a trolley on which to take the President into the ICU. When a trolley was identified, the ambulance was beckoned to reverse to the entrance of the casualty section. It reversed and the medical staff carried the President onto the trolley.

Mrs. Stella Warren testified to the Commission that at the time she went into the ambulance where the President was, she noticed that *“the President was dead”*. Dr. Isyu Mwakasungula also testified that at the time that they were carrying the President onto the trolley, he was motionless and there was no response of any sort from him. His eyes were closed. In Dr. Mwakasungula’s opinion it gave the impression that the President was critically ill or unconscious or was dead.

### *2.2.7 Admission and Treatment in the ICU*

After the President was hoisted onto the trolley, he was taken straight into the ICU. He was laid on bed Number 1. The bed was vacant at the time because the patient who was there before had been discharged earlier that morning. The ICU records indicate that the President was admitted in the ICU at 11:30 am. At the time of the President’s admission there were also other beds which were vacant in the ICU. The Commission established that some statements that had been made in some quarters to the effect that some patients were moved out of the ICU to make room for the President were not true.

The medical personnel who received the President in the ICU observed that the President was unresponsive as they were bringing him in the ICU. His pupils were fixed and dilated. This was confirmed on the ICU records presented to the Commission. On the records, the Glasgow Comma Scale (GCS) was recorded as 3 out of 15, meaning that there was no eye response, no verbal response and no movement. The Commission was informed that, medically, this is the lowest a patient can get to on that scale. The chances were that the President had already died.

After placing the President on the bed Mr. William Banda, an anesthetist, took an intubation kit and started intubating the President. In his own evidence, Mr. Banda explained that the process of intubation is a difficult one. It is very painful to the patient and he stated that, even in the case of a person who is unconscious, it is usually a difficult process because such people do react. This renders it a rather difficult medical procedure to administer. Mr. William Banda testified that in this case, however, there was no problem at all when he was intubating the President. There was no reaction whatsoever and the tube just went in without any problems as there was no response from the President. To Mr. Banda, this was a sign of no life.

After the President was intubated, he was also ventilated through an ambubag and then connected to an electrocardiogram (ECG) machine. It was noted that the ECG reading produced a straight line, which in medical terms is referred to as *“asystole”*. A

straight line is usually a sign of no life. A central line was also inserted and the medical personnel started giving the President adrenaline and other drugs. However the Commission received testimony that some essential emergency drugs were not immediately available in the ICU such that some ICU staff were assigned to look for those drugs elsewhere within or outside the hospital. A catheter was also inserted in a bid to collect urine samples. However there was no urine output, which was another sign of no life.

After this preliminary process, the ICU team started cardiopulmonary resuscitation (CPR) on the President. The process was being supervised by the President's personal physician, Dr. Dan Namarika. He could not himself take part in the process because of the limitations in the use of his arms as has been explained.

It was heard in evidence that due to the compressions during the CPR, there were some readings on the ECG monitor. These were however disappearing at each interval and the ICU team concluded that such readings were CPR dependent. After doing CPR continuously for about 30 minutes, it was the view of the ICU staff that the President was dead and that they should abandon the procedure. However, the President's personal physician, Dr. Dan Namarika, advised that the CPR should continue.

During the CPR procedure defibrillators were also brought in to try and shock the President to induce heartbeat. These were tried on the President up to the maximum level for four times but there was still no response. After carrying on with the CPR for another 30 minutes, the staff in the ICU got tired. The President's physician was asked if they could stop the CPR but he refused and insisted that it goes on. As the CPR continued, it was noted after an hour that they had broken some ribs on the President in the process. Dr. Carlos Valera, a specialist surgeon, placed chest drains on the left and right side of the President's body. This had a negative effect on what would have been the intended effectiveness of the resuscitation. The CPR however continued on the instructions of Dr. Namarika.

In his testimony, the Hospital Director, Dr. Noordeen Alide, explained that he received news about the late President's illness and admission at Kamuzu Central Hospital from Mr. Albert Khuwi, a Pharmacist at KCH. He therefore rushed to the hospital and arrived there just after 11:30 am and went straight to the ICU. Having seen the frantic efforts to resuscitate the President, he made an impression of the situation. In his words, he was of the view that the President was dead. He also inquired from Dr. Varela, the Head of Surgical Department, who confirmed to him that people should just accept that the President was dead. Dr. Alide informed the Commission that he proceeded to the room beside the ICU with a view to advise the Chief Secretary, Mr. Bright Msaka, SC, who was already there, of the position.

Dr. Alide informed the Commission that before he could talk to the Chief Secretary, the President's brother, Hon. Peter Mutharika, who was also in the room, stood up. Dr. Alide introduced himself and then advised Hon. Peter Mutharika that the situation was hopeless and that they should start planning for the next stage. He further advised Hon. Mutharika and Mr. Msaka, that they will hear officially from Dr. Namarika. After taking leave of them, Dr. Alide advised Dr. Namarika to proceed to inform the family on the

matter. It is in the evidence of Dr. Alide that Dr. Namarika reluctantly proceeded to inform Hon. Peter Mutharika. It is on record that Hon. Mutharika responded by saying that they should still continue with the resuscitation efforts since the CPR procedure could be continued for up to three hours according to some medical literature that he had come across.

Dr. Alide told the Commission that he further observed that there was no senior official from the Ministry of Health present at the hospital at the time. He therefore called the Principal Secretary for Health Dr. Charles Mwansambo, who was at that time in Zomba, and advised him about the situation. He informed the Commission that after a while, the other Principal Secretary for Health at the time, Mr. Willie Samute, came to the hospital and then later the Minister of Health, Hon. Dr. Jean Kalirani, also came. Dr. Alide briefed Hon. Dr. Kalirani and Mr. Samute about the hopelessness of the situation. He advised that there was need to call Dr. Wesley Sangala, the most senior anaesthetist specialist, to come and assess the situation and give the way forward because the anaesthetists who were in the ICU were all at the level of clinical officers. Dr. Alide was given the go ahead by the Minister and Mr. Samute to contact Dr. Sangala.

It was the evidence of Dr. Wesley Sangala that he received a call from Dr. Alide, the Hospital Director, advising him of the development. Upon hearing the news, Dr. Sangala immediately rushed to the hospital. When he arrived in the ICU he found that the monitors were flicking because of the compression during the CPR, and noted that two chest drains were inserted on both sides of the President's body. He touched the President and his body was cold. He immediately ordered that CPR be stopped, and then he checked on the ECG. He noted that there was nothing on the ECG monitor. In his view, the President was dead. This was around 1:50 pm.

After Dr. Sangala reached that conclusion, it is in evidence that a team of four doctors at the hospital, namely, Dr. Sangala, Dr. Alide, Dr. Varela and Dr. Namarika proceeded to Dr. Alide's office where senior Government and other officials had relocated to from the room beside the ICU. There were three senior Government officials in the office. These were Hon. Peter Mutharika, Hon. Goodall Gondwe and the Chief Secretary, Mr. Bright Msaka, SC.

It was the evidence of Dr. Sangala, Dr. Varela and Dr. Alide that the team told the three officials that the President had passed away. The doctors told the Commission that this communication was in words or language that could not have been understood in any other way than to convey the message that the President had died. Dr. Sangala told the Commission that he and the other doctors noted that after this communication, the room was dead silent.

The Commission was told that it was at this point that the late President's brother, Hon. Peter Mutharika, began talking about the issue of the postmortem examination of the President. Dr. Sangala vividly recalled that Hon. Peter Mutharika actually mentioned the word "autopsy" in the discussions. The issue was discussed in the office and the Hospital Director made calls to Dr. Steve Kamiza, a pathologist in Blantyre, who did not pick his call. He then called Dr. Charles Dzamalala, another pathologist in Blantyre, who picked his call but quickly told Dr. Alide that he would call back. He did not call back.

Back in the ICU, it was agreed on instructions from Dr. Sangala that the body of the President be moved to the side room. This was done. In the side room, the body was covered in linen and a ventilator remained connected to give the semblance that they were still doing something to the President as patient. It was then decided that family members be called in to view the body of the President.

It is in the testimony before the Commission that the first to proceed and view the body was the First Lady, Madam Callista Mutharika. She went into the side room, stood for a few seconds and came out. Then came the President's daughter, Mrs. Duwa Mutharika-Mubaira, who was accompanied by a certain lady, probably a security officer. She went in and stood at the door of the side room and started crying. She was then led out. The third person to come was Hon. Peter Mutharika. He came in and then left the room. The last person to come into the room was Father Taylor, a Catholic priest.

Father Taylor told the Commission that he was visiting the hospital that Thursday. In the afternoon, he heard that the President had been taken ill and was admitted in the ICU. He proceeded to the ICU where he met the First Lady. He asked her if he could be allowed to go and see the President. He was told to wait for a few minutes. He was then allowed to go in and see him in the side room. He touched the body and observed that it was cold. He then said his prayer which was responded to in Catholic tradition by Mrs. Stella Warren who was attending to the body and is a Catholic. To Father Taylor, he gave the last anointing prayer.

In her evidence Mrs. Stella Warren told the Commission that in the ICU, there is a form on which the ICU staff record all readings that patients generate. She took the form and started writing the name of the President and recorded all the readings on the machine and indicating that there was no response. She was however restrained by the In Charge of ICU, Mr. Clement Kadyaudzu, who told her to write that everything was fine as per instructions from Dr. Namarika.

Dr. Hetherwick Ntaba submitted in evidence that he proceeded to the hospital when he heard that the President had been taken ill. Upon reaching hospital, he went straight to the ICU where he found the Minister of Health, Hon. Dr. Jean Kalirani. He found her escorting the First Lady, Madam Callista Mutharika, to the side room in the ICU where the President was. When the First Lady and Hon. Dr. Kalirani came out of the side room, he noted that the First Lady was very distressed and was in tears. Dr. Ntaba told the Commission that he and Dr. Kalirani left the ICU together and headed for the Hospital Director's office. On the way, Hon. Dr. Kalirani briefed him that the President's state was hopeless. She further told him that it was doubtful if the resuscitation efforts going on would bear any results.

When the two went into the Hospital Director's office, they found Hon. Peter Mutharika, Hon. Goodall Gondwe and the Chief Secretary, Mr. Bright Msaka, SC. Hon. Dr. Kalirani briefed the group that the resuscitation efforts were still underway but there were doubts if they were going to achieve any results. She further noted to the group that even in the event that the resuscitation efforts succeeded, the President would not be the same person as he will be reduced to a vegetable. As they were discussing, Dr. Namarika came into the office and reported that the air ambulance team, which had earlier been

contacted by the Chief Secretary, was asking about the condition of the President with a view of finding out whether the patient would be in a stable condition to make the trip. He went on to say that since the President has failed to respond to the resuscitation efforts for some time, the air ambulance team would not come if he told them that the President was ‘no more’. It is in Dr. Ntaba’s evidence that the Chief Secretary told Dr. Namarika to advise the air ambulance crew that they were still trying to resuscitate the President because it was still very important that the air ambulance crew should come.

It was in the evidence of Mr. Willie Samute that he received a call from his fellow Principal Secretary, Dr. Charles Mwansambo, about the President’s illness and admission at Kamuzu Central Hospital. Upon hearing the news he rushed to the hospital. At the hospital he first met with the Hospital Director, Dr. Alide, and the Director of Clinical Services at the Ministry of Health headquarters, Dr. Chithope Mwale. They proceeded to the Hospital Director’s office where they were joined by the Hospital Matron. He was given a quick brief about the situation. He was advised that the situation was very critical.

Mr. Samute told the Commission that as he, Dr. Alide, Dr. Chithope and the Matron were there in the office, the Minister of Health, Hon. Dr. Jean Kalirani, appeared. She was briefed about the situation. She then proceeded to the ICU. Mr. Samute submitted that after some 30 minutes the Minister came back from the ICU and told him that the doctors were still trying but the situation was hopeless. She even went further and stated that if it was an ordinary person *“we would have said kuti talephera [that we have failed] but this is HE”*. She then further asked everybody to leave the hospital because their presence was attracting attention.

Mr. Samute was then requested to handle the high profile people who were lingering in the corridor at the ICU. He led these high profile people, who included the Chief Secretary, to the Hospital Director’s office. They were joined at the office by Hon. Goodall Gondwe, Hon. Peter Mutharika and later by others.

It was further Mr. Samute’s evidence that before the high profile people left the hospital, they had a caucus in the Hospital Director’s office. Mr. Samute confirmed that at some point, the doctors, including Dr. Sangala, went to meet the high profile people in the Director’s office. He stated that as Dr. Sangala was going to see the Ministers and the Chief Secretary in the Director’s office, he told him that *“sizili bwino”* [**things are not well**].

It was Mr. Samute’s evidence that his first impression, after Dr. Alide had briefed him as he was arriving at the hospital, was that it was very clear that the President had died. He stated that in our Malawian culture he got the sense that it was very clear that the President had died. He explained to the Commission that he left the hospital around 3 pm and went home. He returned to the hospital later in the day and remained there until the ambulance had left for Kamuzu International Airport in the evening.

According to the evidence of Hon. Dr. Jean Kalirani, she had an appointment for audience with the President on that day. Her appointment was at 11:30 am, after the President’s appointment with Hon. Agnes Penemulungu. While at State House waiting



for her turn, she noted a delay in being ushered into the room for audience with the President, but had not been informed about the incident of the President's collapse. She was later advised that the appointment was cancelled.

Hon. Dr. Kalirani informed the Commission that she was later duly informed as Minister of Health that the President had been taken ill and was admitted at Kamuzu Central Hospital. She went to the hospital where she found the President's situation to be indeed critical. In her few words to the Commission she explained that she was not aware that the President had died. She only knew about the death of the President when it was officially announced on MBC radio on 7th April, 2012.

It is worth noting, however, that it was Mr. Samute's evidence that on the evening of 5th of April, he and Dr. Mwansambo went to Hon. Dr. Jean Kalirani's house to meet her over the day's events in her capacity as Minister of Health. At the house, they reviewed what had happened on the day and discussed the state of the President. It was very clear in their discussions that the President had died. Mr. Samute told the Commission that what was discussed at the meeting was simply to do with death logistics such as confirmation of death, whether it was done or not, and the date of death. At the meeting, Hon. Dr. Kalirani asked the Principal Secretaries to ask our Malawian Pathologist, Prof. George Liomba, to travel to South Africa for duties in relation to the President's postmortem examination.

The Commission heard evidence that Dr. Liomba was also the preferred choice of a pathologist by the President's close family members.

#### ***2.2.8 Arrival of Air Ambulance Doctors and Preparations for Departure***

The Commission has it in testimony that around 7 pm, the doctor and nurse from South Africa who came with the air ambulance arrived at Kamuzu Central Hospital and went to the ICU. They were collected from the airport in a State House vehicle. They entered the side room where the President's body was kept. Dr. Namarika gave the two handovers as the nurse was busy connecting their own machines to test the 'patient'. The two were talking in their language, probably Afrikaans. In the course of monitoring the machines, the visiting nurse told the doctor "*asystole*", meaning no life. The doctor then immediately asked Dr. Namarika whether the family members knew about the death of the President to which he replied that the family was aware. The doctor then asked Dr. Namarika whether the public knew about it to which Dr. Namarika answered that the public did not know. Then the doctor further asked Dr. Namarika as to why the body of the President was still connected to the ventilator. Was it pretence that there was still life? Dr. Namarika replied confirming that it was the case.

At this point, the air ambulance nurse began disconnecting their machines and the ventilator. The air ambulance doctor asked about the chest drains and an explanation was given about the broken ribs. They further asked about the distended abdomen and an explanation was given that they had earlier on inserted a naso-gastric tube (NGT) but nothing was coming out. The air ambulance doctor gave directions to have the same procedure tried again. Mrs. Stella Warren and Mr. Clement Kadyaudzu repeated the procedure but still with no results. The doctor then advised them to stop.

At this point, according to the testimony of Mrs. Stella Warren, the body of the President began to bleed from nose and mouth. The South African medical personnel got worried since they did not want their linen to be stained in blood. Accordingly, Mrs. Stella Warren got some gauze and packed it in both nostrils. This did not work. More gauze was used to cover the nostrils, and a diaper was used to cover the mouth and then she tied it with linen. As they were working on the body turning it upside down, the bleeding started again and Mrs. Stella Warren made sure that she cleaned and dressed the body accordingly in readiness for evacuation to South Africa. It is in evidence that at this stage the body was being handled as a dead body. The body was then moved from the side room onto the trolley ready for departure to Kamuzu International Airport.

### ***2.2.9 Departure for the Airport***

The news about the illness of the President had fairly spread. A lot of people including media reporters had gathered at the hospital. The State House ambulance that was intended to carry the body of the President was parked at the basement exit, facing the mortuary. There were people all over the place.

In a bid to maintain security when taking the body to the airport, the security detail headed by the Guard Commander devised a plan. They called for an ordinary ambulance from State House and gave instructions that it should proceed and park at the Ethel Mutharika Maternity Wing. This instruction was executed and a white Toyota Land Cruiser ambulance, registration number MG955AB, came to the hospital and was parked at the entrance of Ethel Mutharika Maternity Wing. The body of the President was wheeled on the trolley to the exit of the Ethel Mutharika Maternity Wing. It was hoisted into the ambulance and they started off for the airport. In the ambulance, there were the two air ambulance medical personnel from South Africa, Dr. Namarika, and two other medical personnel from KCH, namely, Mr. Bonny Lungu, an orthopedic technician, and Mrs. Stella Warren, an anesthetist.

As the ambulance was about to arrive at the airport, the air ambulance doctor disclosed to the medical team in the ambulance that they were not taking the body to South Africa. He explained that they had initially thought that they were taking a patient, which was not the case at the time.

### ***2.2.10 Events at Kamuzu International Airport***

The Commission received evidence that as the ambulance was on its way to the airport, the Guard Commander issued instructions to the Airport Commandant, Mr. Steven Mkandawire, advising him and all his staff to vacate the apron where the air ambulance had parked. He advised him that only staff from State House should be present. A further call was also made to the Officer-in-Charge, Airport Police, Mr. Davis Mulepa, with a similar message. All airport members of staff, including Airport Police and the Officer-in-Charge, Immigration, Mr. Hudson Mankhwala, and all his staff, vacated the apron area and retreated to their offices.

The ambulance carrying the body of the President arrived at the airport around 9 pm. There were some Cabinet Ministers and Government officials at the airport. The

ambulance proceeded into the airport through the technical gate, and not through the VIP section, and drove straight to the apron where the air ambulance was parked. The body was taken into the air ambulance. The First Lady, Madam Callista Mutharika, Dr. Namarika and the President's daughter, Mrs. Duwa Mutharika - Mubaira went into the air ambulance as well, ready to take off.

Some few minutes after boarding, the captain of the air ambulance alighted and headed towards the main terminal building of the airport. It was learnt that the pilots were refusing to fly because they did not have clearance to fly a dead person. They explained that they could not fly under those circumstances until they were given clearance. They demanded that the body be taken back into the motor vehicle ambulance on the ground. The air ambulance medical personnel also demanded their linen back. The medical personnel from KCH had to plead with them as there was no other linen around, meaning that the body would remain uncovered without that linen. At this point, the First Lady, Dr. Namarika and Mrs. Duwa Mutharika - Mubaira alighted from the air ambulance and returned to the VIP Lounge where they remained waiting.

Discussions between Malawi and South Africa then ensued. According to the testimony by Mr. Bintony Kutsaira, the Director of National Intelligence Service, the intelligence authorities in South Africa called their counterparts in Malawi and made reference to the earlier request to fly the Malawi President to South Africa. They indicated that they had news that the President had died and demanded to know why there was need to fly the body to South Africa. Mr. Kutsaira told the Commission that following that discussion he talked to the Chief Secretary, Mr. Bright Msaka, SC, to have clarification on why the body was being taken to South Africa. Mr. Msaka gave the clarification to Mr. Kutsaira. The matter was then clarified to the intelligence authorities in South African. They were advised that there was need to take the body to South Africa for postmortem and embalming, and to allow for time for preparation for burial. Mr. Kutsaira informed the Commission that according to his information, clearance to fly the body to South Africa was later given by President Jacob Zuma through the South African Ministry of Foreign Affairs. Mr. Kutsaira told the Commission that few days later, he got the approval of the President, after she had assumed office, and travelled to South Africa specifically to brief his counterpart regarding the developments in Malawi during that time.

After the flight was cleared to land in South Africa, another complication arose. The pilots refused to fly stating that their flying time hours had expired. This caused further delay. It was heard in evidence that as the medical personnel were trying to take the body down from the air ambulance, Hon. Peter Mutharika asked them to wait. The Commission was told that Hon. Peter Mutharika, as Malawi's Minister of Foreign Affairs, made calls to his counterpart in South Africa to intervene on the matter. The Zimbabwe Ambassador to Malawi, who was also the Dean of Diplomatic Corps, and the South African High Commissioner to Malawi were also called to the airport to try and intervene in the stalemate. These two diplomats came to the airport and proceeded to where the air ambulance was. As these discussions were going on at the airport, the Principal Secretary for Health, Dr. Charles Mwansambo, made a call to Kamuzu Central Hospital asking them to prepare a bed in the ICU for the President since it was not clear whether the air ambulance was going to depart.

Dr. Hetherwick Ntaba testified to the Commission that when this stalemate was going on he raised with his colleagues there the risk of the matter getting out of hand in trying to create a media blackout on the state of health of the President and suggested to the Chief Secretary that it would be better instead to take the body to State House as that would provide better security in managing the situation. Dr. Ntaba told the Commission that this proposal was presented to Hon. Peter Mutharika and Hon. Goodall Gondwe who agreed to the proposal. Thus, there was therefore also the consideration of taking the body to State House.

After lengthy discussions the pilots reluctantly agreed to fly. The First Lady, Dr. Namarika and Mrs. Duwa Mutharika - Mubaira had to rush to board the air ambulance this second time. It is in evidence that the air ambulance finally took off around 12 midnight. There was evidence from some airport staff that the pilots took off in an abrupt manner leaving the people wondering if a patient would survive such take off.

#### ***2.2.11 Hospital Records Regarding the Late President at the Kamuzu Central Hospital***

The Commission was furnished with a copy of the late President's hospital record at Kamuzu Central Hospital.

Firstly, the Commission noted that the ICU record did not have the name of the patient. It is impossible without any name to ascribe the report to be the hospital record for the late President. Secondly, the record showed conflicting dates of admission. While the first page showed 4th April 2012, the second page showed 5th April 2012. We are all aware that the President was taken ill and admitted at KCH on the 5th and not the 4th as indicated on the first page of the record. Thirdly, a discussion with the medical personnel from the ICU disclosed that the second page of the document shows certain figures as heart rates and blood pressure readings. These readings were disputed by the hospital staff who indicated that they were misleading because they were taken during CPR. In actual fact the President was not breathing at all. The readings were CPR generated.

It was further noted that the Doctor's notes and the Nurse's notes were not complete. All in all, the record has been disowned by the ICU Nurse In Charge, Mrs. Atupele Mwalwanda Gumbo, who was in charge in the ICU during that time. It was also disowned by Mrs. Stella Warren who was active during the entire admission of the late President. The record also shocked the Principal Secretary for Health, Dr. Charles Mwansambo.

The Commission further noted that the recording of readings and the treatment of the patient, meant to have been the late President, ended at 3 pm. This shows that the President was not alive beyond this point because the record would have continued to show some reading after 3 pm if he was alive beyond that time.

## 2.2.12 *State House Press Release On the President's Illness.*

On the evening of 5th April 2012, State House issued a Press Release regarding the condition of the President. The press release was aired in the evening news bulletin on the Malawi Broadcasting Corporation radio and television at 8 o'clock. Among other things, the press release indicated that the President had been taken ill and had been flown to South Africa for specialist treatment. It further indicated that all Malawians were going to be informed about the President's condition. At the time that this press release was being aired, the President had long died. The question before the Commission was who authored the statement?

The State House Press Officer, Mr. Albert Mungomo, told the Commission that State House press statements normally originated from three sources. There would be press statements issued by the Democratic Progressive Party, and he would edit and release them, or they would originate from the Office of the President and Cabinet, and he would also edit and release them or in some cases the statements would directly originate from his office. In this case he clarified to the Commission that the statement came from the OPC through the Chief Secretary, Mr. Bright Msaka, SC. He told the Commission that he only made one or two changes to the press release to suit the media taste. Mr. Bright Msaka, SC, however, vehemently denied having authored or dictated the press release<sup>24</sup>.

## 2.3 **EVENTS IN SOUTH AFRICA**

### 2.3.1 *Hiring of Air Ambulance*

The Commission heard that on 5th April 2012, Mr. Edward Sawerengera, Director General of State Residences, called the High Commissioner of Malawi to the Republic of South Africa, Her Excellency Mrs. Agrina Mussa. She missed the call. When she called him back, Mr. Sawerengera advised her that he had already spoken to her deputy, Mr. Alexious Godiya, and that she should check with him. The phone call that Mr. Sawerengera had made to Mr. Godiya was to request the Malawi Mission in South Africa to arrange for an air ambulance to airlift the President from Malawi because he had been taken ill. Mrs. Mussa told the Commission that this information was also confirmed by the Chief Secretary whom she had spoken to earlier.

The High Commissioner and her deputy made enquiries about air ambulance services in South Africa. It is in evidence that the Chief Secretary told the High Commissioner to contact Net Care Rescue International in South Africa. When they made the contact, Net Care confirmed that an air ambulance was available. They further indicated that they were ready to proceed once they get a letter of guarantee from the High Commission. Arrangements were made by the High Commission and a letter of guarantee to meet the expenses was written and sent to Net Care Rescue International, and the air ambulance was secured<sup>25</sup>. That letter dated 5th April 2012 bore the President's name as "Daniel Phiri". The name Daniel Phiri was also the name for the President on the Airport exist documents for his evacuation to South Africa. The first

<sup>24</sup>. See transcript of the State House press release as broadcast on MBC Radio 1, at 8 p.m. on 5th April 2012, attached as Annex 8.

<sup>25</sup>. Two letters are attached as Annex 15 and Annex 16.

letter was later replaced with a second letter dated 6th April 2012 bearing the correct name of the President.

The High Commissioner then sent Mr. Godiya to Milpark Hospital in Johannesburg to appreciate the arrangements that the hospital had made in readiness of the arrival of the President. The Commission was informed that the Malawi Mission in South Africa identified Milpark Hospital because it had Presidential or VVIP wards.

Sometime in the evening, Mr. Godiya received a call from Mr. Charles Thupi, Deputy Director General of State Residences, advising him that the air ambulance was not going to fly out of Malawi that night because they were waiting for the condition of the President to stabilize. However, Dr. Thupi later called Mr. Godiya and advised him that the air ambulance had departed Lilongwe. The same information was given to Mr. Godiya by the High Commissioner, Mrs. Mussa. Mrs. Mussa then asked Mr. Godiya to proceed to Lanseria International Airport to facilitate the arrival of the President. The port of entry was however later changed, and Mr. Godiya was later told to proceed to Waterkloof Air Force Base in Pretoria.

### ***2.3.2 Arrival of the Air Ambulance in South Africa.***

The air ambulance landed at the airbase around 2:30 am in the morning of 6th April 2012<sup>26</sup>. The VVIP patient, as was supposed to be the case, was welcomed by the South African Chief Director responsible for Consular Services at the Department of International Relations and Cooperation (DIRCO), Mr. D. Naidoo, the Commander of the South Africa National Defence Force, General S.Z. Shoke and the Malawi High Commissioner to South Africa, Mrs. Agrina Mussa.

In her testimony, Mrs. Mussa submitted that as was the case elsewhere, when a President travels to another country, the Ambassador of the President's country is responsible for receiving the President at the airport. Thus, when the air ambulance landed Mrs. Mussa went to the aircraft. She was accompanied by Mr. Naidoo. After the First lady and the late President's daughter had disembarked, Mrs. Mussa went inside the ambulance. She told the Commission that she was shocked at what she saw. She noted that the President had a tube in his mouth and had been laid and strapped on a stretcher. She did not see any life support tubes or oxygen masks on the President. She did not see any motion on him. She broke down to the extent that she had to be helped out of the aircraft by two military officers.

The body of the President was brought out of the air ambulance and taken into a waiting ambulance straight to One Military Hospital in Pretoria. At the hospital, the President's body was taken to the casualty section for only about 15 minutes. According to the testimony of Dr. Dan Namarika official confirmation of the death of the President took place at this hospital. The body was then taken away from One Military Hospital to the Forensic Pathology Services Mortuary, located at Steve Biko Academic Hospital in Pretoria.

### ***2.3.3 South African Government Assistance.***

The Commission heard that after the body was placed in the mortuary, the Commander of the South Africa National Defence Force, General S.Z. Shoke called

<sup>26</sup>. See Notice of death and cause of death of President Bingu wa Mutharika issued at One Military Hospital, Pretoria, South Africa, attached as Annex 17.

for a meeting. The purpose of the meeting was to inform the parties of the South African Government's commitment during that period. The meeting was informed that the South African Government was going to meet the following:

- (a) Accommodation for the First Lady and the President's daughter, Mrs. Duwa Mutharika - Mubaira, at Johnny Makhathini Government Guest House in Waterkloof Heights.
- (b) Payment for the air ambulance that had carried the body of the late President from Malawi to South Africa.
- (c) Cost for postmortem (autopsy) to be done by senior pathologists.
- (d) Cost of embalming by AVBOB embalming services.
- (e) Transport in form of two aircraft, one a military aircraft for the repatriation of the body of the late President and another aircraft (a jet) for the return of the family and the entourage to Malawi.
- (f) The cost of the casket.

#### ***2.3.4 Preparations for Postmortem and Embalming***

On Sunday, 8th April 2012, the Principal Secretary for Health, Dr. Charles Mwanambo, called Prof. George Liomba, a specialist pathologist based in Blantyre and asked him if he could proceed to South Africa to witness the postmortem and embalming of the late President. He was advised that he was due to leave the country the following day, Monday, and return on Wednesday. Prof. Liomba agreed and proceeded to South Africa as scheduled.

Prof. Liomba told the Commission that upon arrival in South Africa, his bags went missing at the O.R. Tambo International Airport in Johannesburg. He therefore took some time at the airport. He finally left the airport for Pretoria in the company of Dr. Bosco from South Africa and Dr. Namarika. The two had come to meet Prof. Liomba at the airport. They arrived in Pretoria around 10 pm and Prof. Liomba was taken straight to the mortuary where the body was lying. While there, they had a meeting with the medical personnel in which they discussed some pertinent issues.

During the meeting Prof. Liomba and Dr. Namarika were advised that they were not going to be allowed to participate in the conduct of the postmortem examination because, being foreign doctors, they first needed to have temporary registration, which was going to take time to arrange. It was then resolved that they were going to be temporarily registered only for the purposes of witnessing the postmortem. It was also agreed at the meeting that the body was going to be examined from the neck down and that, depending on the findings, the skull may be opened.

The Commission was informed that at the meeting Dr. Namarika gave the medical history of the late President. Dr. Namarika briefed the meeting that despite being overweight and having cholesterol, the late President was generally a person of good

health at the time of his death. Prof. Liomba told the Commission that Dr. Namarika also informed the meeting that the late President was on several regular medications. Prof. Liomba told the Commission that Dr. Namarika further informed the meeting that in 2009 the President suffered a minor heart attack and was treated for that condition during his travels to Egypt or Hong Kong. Dr. Namarika gave the same information in his testimony to the Commission about the minor heart attack that the President is said to have suffered in 2009.

The meeting was also briefed that after the death, there were still attempts to try and revive the late President for three hours because family members kept insisting that they should continue trying. After this briefing, they wanted to discuss the logistics of conducting the postmortem examination. The meeting however noted that the pathologist in charge in South Africa was not going to be available the following day, 9th April, as he was appearing in court.

On the following day, Dr. Namarika and Prof. Liomba proceeded to brief the First Lady about the arrangements.

### **2.3.5 *The Postmortem***

Prof. Liomba told the Commission that postmortem was done on Wednesday, 11th April 2012. Prof. Liomba and Dr. Namarika attended the procedure. Prior to opening Commission that they noted that the body, the team noted that the late President had central obesity. Prof. Liomba told the body had started decomposing as evidenced by the smell and a few flies hovering around. It was noted that both sides of the chest had turned greenish in colour, which were early signs of decomposition. Two tubes had been attached on both sides of his chest to take care of emphysema that had resulted from pierced lungs.

The Commission was informed that when the body was opened, it was noted that the intestines were large. The blood was black and the heart was also noted to be bigger than normal. The weight of the heart was also not normal as the heart weighed 500 grammes. The arteries that supplied blood to the heart did not have any recent clots. There was also no evidence of clots in the aorta. There was blood on the left hand side of the chest and also in the abdomen. The organs in the abdomen had all normal signs. The team observed that there was evidence of decomposition of the body.

The team further noted that several ribs were broken especially on the left hand side of the body. The sternum was also fractured. The kidneys and the bladder were also opened and there was no evidence of cancer anywhere. In particular they observed no signs of prostate cancer.

After examining the body and the organs, the team had a mini conference to discuss their preliminary findings. This discussion involved the South African senior pathologist, Dr. Namarika and Prof. Liomba. The team concluded that the blood in the chest and the abdomen was as a result of efforts to resuscitate the late President. They also concluded that due to the late President's history of heart attack, he had suffered cardiac arrest due to irregularities in the beating of the heart. The team therefore made



a preliminary finding that the cause of the death of the President was *cardiac arrhythmia* (irregular beating of the heart) leading to cardiac arrest<sup>27</sup>. The team further discussed whether it was necessary to open the skull. It was agreed that there was no point in opening the skull. However, other specimens from the heart, the lungs and the kidneys were taken for further examination and for toxicology.

The First Lady and the family members who were in South Africa were briefed accordingly about the findings.

### 2.3.6 *Embalming of the Body*

Embalming took place in the afternoon of Wednesday, 11th April 2012. The Commission was informed that it was the wish of the family to embalm the body for a period of 100 years. The embalmers however advised that it was not possible to proceed along those lines and advised that they can only do embalming for 40 to 45 years. This was agreed to and the embalming took place on that day.

After the process, the South African pathologists requested that the body be left in open air for four days to allow the embalming fluid settle down in the body. It was however eventually agreed to leave the body in open air for three days after a concern was expressed that people in Malawi were waiting. It was also agreed that the body was going to be taken to Malawi on Saturday, 14th April 2012.

On Friday, 13th April 2012, dress rehearsals were held at Waterkloof Airbase in preparation for the repatriation of the body to Malawi the following day. In the evening, Dr. Namarika proceeded to the mortuary to check the body. On the same day the body was moved to One Military Hospital where it was laid for the night.

The following day, 14th April 2012, a religious ceremony was held at the hospital. After the ceremony the body was carried to the airbase where full military honours were accorded to the late President's body by the South African National Defense Force. As per the earlier commitment, the South African Government provided the military plane and a jet.

On the issue of embalming, Prof. Liomba told the Commission that in his view the process had been properly done. He however noted that the body was being embalmed several days after death and explained that when you embalm a body which is in good condition, it remains in good condition. He however told the Commission that when you embalm a body which is already decomposing, what you do is to stop further decomposition. He further explained that the face of the late President was very dark not because of the embalming but due to part of the blood that circulates since the body stayed for a long time on an open place before being embalmed. As a matter of fact, the body stayed in the open without refrigeration for about 18 hours after death.

### 2.3.7 *Prayers*

On the religious side, Mr. Godiya organized special prayers for the late President which were held at the guest house hosting the First Lady everyday from Tuesday, 10th to Thursday 12th April. A holy Eucharistic celebration was held on Friday, 13th April,

at One Military Hospital. The funeral mass was presided over by His Grace Archbishop William Slattery of the Archdiocese of Pretoria. He was assisted by some Malawian priests working in different parts of South Africa who came to Pretoria for the purpose. He was also assisted by a Chaplain from the South Africa National Defence Force.

## **2.4 ARRIVAL OF THE BODY IN MALAWI AND BURIAL**

### **2.4.1 *Arrival of the Body***

The body of the late President arrived in Malawi through Kamuzu International Airport on Saturday, 14th April 2012, aboard a South African National Defence Force (SANDF) military aircraft. The casket was accompanied by SANDF officers. The other aircraft, a jet, carried the First Lady and the late President's children and relatives. The children included those who had later joined the others in South Africa. They were accompanied by the Malawi High Commissioner to South Africa, Mrs. Agrina Mussa, the Minister of Health, Hon. Dr. Jean Kalirani, and senior Government officials from the South African Department of International Relations and Cooperation.

At Kamuzu International Airport, the body was received by the President of the Republic of Malawi, Her Excellency Mrs. Joyce Banda, Cabinet Ministers, senior Government officials and other dignitaries. The casket carrying the late President was taken down from the military plane by members of the South African National Defence Force. Members of the Malawi Defence Force received the casket from their counterparts and full military honours were held at the airport. The body was then taken to State House, Lilongwe.

### **2.4.2 *Condition of the Body Prior to Viewing at State House***

In preparation for the arrival of the body in Malawi, two medical personnel involved in embalming services, Ms. Maggie Ndlovu of College of Medicine and Mr. Lufeyo Mphimbi of Kamuzu Central Hospital, were called to prepare the body for viewing at State House. When the body arrived at State House all people were asked to leave the room in order to allow the medical personnel to prepare the body for viewing.

The two medical personnel informed the Commission that when they opened the casket, they noted that the body was not wrapped to international standard procedure, that is, it was not sealed in a metal lining. Instead, it was placed in the casket in plastic sheeting. They told the Commission that they noted that the casket was glittery but was not really strong as they discovered that some parts were falling apart.

The two medical personnel told the Commission that they noted that the clothing and the pillow in the casket were wet. Embalming fluid was coming out through the mouth and the nose and part of the fluid was drying. They also noted that the hands were swollen. The skin behind the ears was slippery. Behind the neck, the body showed signs of decomposition. Overall, it was their assessment that the body could have been in a better condition.

The two medical personnel informed the Commission that apart from noticing non compliance with acceptable standards of packaging, the body was not accompanied

with documentation. They informed the Commission that it is a standard international requirement that the body of a dead person is to be accompanied with proper documentation when being transferred to another country. In this case, the medical personnel were not given any documentation.

The two medical personnel had to make quick decisions. They considered whether to remove the wet clothing from the body, but decided against doing so because they did not want to cause further damage to the body. They called for a carpenter who came and fixed the parts of the casket that were falling apart. They got an apron and wrapped the body and turned the pillow to hide the blood stain. They further had to re-embalm the mouth and combed the hair. They applied powder to the face because it had gone overly dark.

It was after those preparations that the VIPs led by the President, Her Excellency Mrs. Joyce Banda, and members of the family proceeded to view the body. They were joined by other dignitaries on that first day of viewing at State House.

In view of what they had observed, the medical personnel explained that it was possible to re-embalm the body. However, they explained that this was normally done by way of incisions and that they would only do it where they knew the cause of death. They told the Commission that they had no idea of the cause of death since there was no accompanying documentation.

#### ***2.4.3 Viewing by the General Public***

The following day, Sunday 15th April 2012, the two medical personnel proceeded much earlier to State House. Upon arrival at State House, they noted that a few flies were flying around the casket. It was then decided that a glass cover be placed on the casket. Accordingly a glass cover was procured from Mamiyo Funeral Parlour and placed on the casket. On Sunday, 15th April 2012, the body remained lying in state at State House. Dignitaries and others continued to view the body.

On Monday, 16th April 2012, the body was moved to Parliament Building for viewing by the general public which was also led by the State President. After Parliament Building viewing by the general public continued in Mzuzu on 17th April, in Blantyre on 19th and 20th and finally at Ndata Farm in Thyolo, the burial place, on 21st and 22nd April 2012.

#### ***2.4.4 Date of Death on the Cross Accompanying the Body***

From the day of arrival of the body from South Africa the public noted that the date of death of the President displayed on the cross accompanying the body kept changing. On the day that the body arrived from South Africa, the cross had an inscription that the late President died on 7th April 2012. The following day during public viewing the original date was crossed out and a new date, 5th April 2012, was inscribed. Later the date of 6th April 2012 was inscribed on the cross and that remained the date up to the time of burial.

#### 2.4.5 *Burial of the Late President*

The body of the late President was buried on 23rd April 2012 at *Mpumulo wa Bata* Mausoleum at his Ndata Farm Residence in Thyolo District. The burial was led by the President of the Republic of Malawi, Her Excellency Mrs. Joyce Banda, and was attended by Government officials and a cross-section of the people of Malawi. Burial was also attended by foreign Heads of State and Government and other foreign dignitaries who included the Presidents of Kenya, Mozambique, Namibia, Tanzania and Zimbabwe; the Vice Presidents of South Africa and Zambia; the Prime Minister of Zimbabwe, the Chairman of the African Union Commission; the Secretary General of the Common Market of Eastern and Southern Africa (COMESA) and the Executive Secretary of Southern Africa Development Community (SADC).

## CHAPTER 3

### EVIDENCE TAKEN REGARDING ISSUES OF TRANSITION OF STATE POWER

#### 3.1 EVENTS ON 5th APRIL, 2012

##### 3.1.1 *Discussions at Kamuzu Central Hospital*

The illness of the President, his admission at Kamuzu Central Hospital (KCH) and his eventual death, created panic among Cabinet Ministers, Government officials and Democratic Progressive Party (DPP) functionaries. Discussions regarding the issue of succession started right at the hospital in the afternoon of 5th April 2012.

It is in evidence that Hon. Peter Mutharika, Hon. Goodall Gondwe and the Chief Secretary, Mr. Bright Msaka, SC, discussed this matter as they were sitting in the Hospital Director's office at KCH. They wondered what was going to happen in the country, in terms of succession, bearing in mind that the Vice President, Rt. Hon. Mrs. Joyce Banda, had left the ruling party and had formed her own opposition political party. It was in evidence that during the discussions, the Chief Secretary brought up the issue of the referral case. The three also considered the issue of national security and wondered how it was going to be handled. At the end, the meeting agreed that it was important that a meeting be called on the matter with the security officers. It was further agreed that Cabinet be called the following day to be briefed and to be consulted about the situation.

The Chief Secretary told the Commission that, while at the hospital, Hon. Peter Mutharika called him aside. Hon. Mutharika mentioned to the Chief Secretary that this was a serious situation and asked him if it would not be a good idea for the Army (Malawi Defence Force) to take over Government. The Chief Secretary told the Commission that he advised Hon. Mutharika that it was not a good idea. However, in his own testimony to the Commission Hon. Peter Mutharika denied having ever at any point discussed such a thing with the Chief Secretary.

The Chief Secretary told the Commission that having heard the suggestion of an Army take over from Hon. Peter Mutharika, he became uncomfortable. He proceeded to meet the Malawi Defence Force Commander, General Henry Odillo, who was still at the hospital at that time. The Chief Secretary asked General Odillo whether the Army understood its role in times of such events. He also asked the General if he understood what the Constitution said in the event of the death of the President.

The Chief Secretary told the Commission that it was very clear from the response of General Odillo that the military in Malawi correctly understood not only its role in the situation, but also the constitutional provisions in the event of death of the President. He told the Commission that the response by General Odillo gave him some comfort in the way his office would handle the development.

### ***3.1.2 Meeting Between the Chief Secretary and the Attorney General***

It is in evidence that the same afternoon, 5th April 2012, the Chief Secretary called the Attorney General, Justice Maxon Mbendera, SC, for the two of them to meet at the Chief Secretary's house. The Attorney General proceeded to the Chief Secretary's house around 3 pm. At the house, the Chief Secretary informed the Attorney General that the President had been taken ill and he was not giving him a chance. He stressed that the situation was grim. The Chief Secretary then asked the Attorney General to provide a legal opinion on what would be the way forward<sup>28</sup>.

The Attorney General told the Commission that when he was leaving the house of the Chief Secretary at that point, he got the impression that the President was incapacitated by the illness but had not died. The Attorney General proceeded to his office where he, together with his staff, considered the issue of incapacitation of the President. At around 6pm on the same day, the Attorney General verbally advised the Chief Secretary that in the event of the President's incapacitation, the Vice President, Rt. Hon. Mrs. Joyce Banda, will have to take over as Acting President in accordance with section 87 of the Constitution of the Republic of Malawi.

### ***3.1.3 Call from the Chief Secretary to the Chief Justice***

The Chief Secretary told the Commission that on the same day, 5th April 2012, in the evening he called the Chief Justice, His Lordship Justice Lovemore Munlo, SC, and asked where he was. The Chief Justice told the Chief Secretary that he had just crossed the border into Tanzania for a holiday. The Chief Secretary explained the situation back home and asked him to return immediately because there was need for him to be around. The Commission established that in that call the Chief Secretary did not disclose to the Chief Justice that the President had died.

### ***3.1.4 Meeting at Hon. Peter Mutharika's House***

As had been resolved at the meeting among the three senior Government officials held in the office of the Hospital Director at Kamuzu Central Hospital, a meeting was convened at the residence of Hon. Peter Mutharika in Area 43. The Malawi Defence Force Commander, General Henry Odillo, and the Inspector General of Police, Mr. Peter Mukhito, were invited to the meeting. The meeting was thus attended by Hon. Peter Mutharika, Hon. Goodall Gondwe, the Chief Secretary, Mr. Bright Msaka SC, the MDF Commander, General Henry Odillo, and the Inspector General of Police, Mr. Peter Mukhito.

The Chief Secretary told the Commission that at the meeting, Hon. Peter Mutharika asked the MDF Commander and the Inspector General of Police whether they were going to stand with the Government in the crisis. The Chief Secretary told the Commission that before either of the two could respond, he responded to the question on behalf of the two. He informed the Commission that he told the meeting that his view was that, firstly, the two officers had not had time to meet their men and brief them about the situation and, secondly, that he had already advised the two to follow the side that was consistent with the law. According to the Chief Secretary, both the Army

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<sup>28</sup>. See the Attorney General's legal opinion to Chief Secretary attached as Annex 18

Commander and the Inspector General of Police agreed with the position that the Chief Secretary had taken. However, the Chief Secretary's testimony on the position that he indicated to have taken was not corroborated by the testimony of any of the persons who attended the meeting.

When the Chief Secretary was recalled to the Commission to shed more light on this matter, he told the Commission that he did not remember any substantive discussions at the meeting held at Hon. Mutharika's house and did not believe that the Army was asked to take over the country. He stated that nobody talked about the Army taking over Government. He further stated that, at the meeting, Hon. Mutharika was seeking an opinion on what should be done in the circumstances. However, he maintained his assertion during his earlier testimony to the Commission that Hon. Mutharika did approach him at the hospital on 5th April 2012 on what the Chief Secretary thought about the Army taking over.

According to the MDF Commander, General Henry Odillo, the meeting at the house of Hon. Peter Mutharika, was chaired by Hon. Goodall Gondwe. About the discussions at the meeting, General Odillo's testimony to the Commission was in the following words:

*“So the first individual who opened up the discussion was Hon. Gondwe. I think to me he gave me the impression that he was the leading speaker in the meeting. He made a few remarks and he indicated that since we all know what has happened the country might be on fire. So we have to see how we handle the situation. Now he approached me with some suggestions that the military should make an announcement and after making an announcement possibly take over the situation of the country until such a time that the political party organized themselves and then later on take over the leadership or power. The moment that statement was made I was extremely very uncomfortable. It was sensed that I was not literally supporting that idea because at that stage my first remark was that, well, we have a situation here I think as a government it's critical that you got to make decisions. That was my first statement, you got to make a decision, I think this is a critical moment; you got to make a decision. And then I was asked by the Professor and said, well, what decision do you expect because we are all here, we are supposed to be making the decisions. I said no this is a wrong forum. And at that stage the Chief Secretary intervened and said well I think maybe we need to give more time to the General to think over this situation. Because unfortunately at that point I felt, as I said, uncomfortable because I think there is no provision at all in the Constitution which provides the military taking over power or getting involved in politics. So that is how it started. We left the meeting room. I and the Inspector General we left at the same time.”*

The meeting ended on that note. General Odillo told the Commission that after the meeting he proceeded to summon senior officers from the MDF for a meeting the following day to brief them on the situation. The following day the meeting took place

at the MDF Headquarters at which General Odillo briefed his senior officials about the situation in the country following the President's illness and on the need for the military to abide by the Constitution. He informed the Commission that he did not disclose to the officers about the suggestion of the Army taking over because in his opinion he felt that he needed not make the situation worse. In their testimony to the Commission two senior MDF officers, Brigadier General Ignacio Maulana and Major General John Msonthi, confirmed to the Commission that General Odillo did not inform them about the suggestion for the Army to take over Government.

The Commander further told the Commission that the following day, in the evening, he received five phone calls which he identified as coming from Hon. Peter Mutharika's phone, which he ignored. Shortly after the last call, he received a call from the Chief Secretary asking him whether he had received some calls on his phone which he did not answer and if he knew who was calling him and why was he was not picking up the calls. General Odillo told the Commission that he told the Chief Secretary that he knew that the phone calls were coming from Hon. Mutharika and he said that he felt he had nothing to say to him. When Hon. Mutharika testified before the Commission the question of the phone calls to General Odillo was put to him and he vehemently denied having ever called General Odillo on the evening of 6th April.

Upon recall on the matter of Army take-over, the MDF Commander maintained that at the meeting held at Hon. Peter Mutharika's house, Hon. Goodall Gondwe, who presided over the meeting, did mention that there was going to be bloodshed in the country and wondered what the Army could do. According to General Odillo, Hon. Goodall Gondwe went further and said that the military should proceed and make an announcement and that it should control the political situation in the country. General Odillo further told the Commission that the decisions that he was referring to in his earlier testimony were supposed to be political decisions and he saw that there was need to be quick enough because any delays in announcing the death of the President would be opening space for problems.

On the issue of the meeting at Hon. Peter Mutharika's house, Hon. Goodall Gondwe told the Commission that he could recall that he got a call around 4.15pm reminding him about the meeting at Hon. Peter Mutharika's house. He confirmed the attendance of the five of them at the meeting, that is, Hon. Peter Mutharika, the Chief Secretary, the MDF Commander, the Inspector General and himself. According to Hon. Goodall Gondwe, the Chief Secretary did most of the talking. He briefed them about what had happened and told the meeting that they should be prepared and be ready to deal with the situation. Hon. Gondwe explained that the MDF Commander was very eloquent during the discussions and that his view was that the MDF was going to handle the security situation. To Hon. Gondwe, the head of the Army looked fine in the discussions. He maintained that the discussion at the meeting centered around the security issues relating to the ability of the security organs to maintain law and order in the country if things got out of hand.

Upon recall on the meeting, Hon. Gondwe confirmed that during the discussions at the hospital earlier in the afternoon, it was observed that there was a possibility of disorder in the country. Hon. Gondwe told the Commission that at the meeting the



security people were briefed about the situation and it was mentioned to them that during that time there was a possibility of public disorder bearing in mind that the issue of succession, likely to be taken to the judges, may take a bit long to be decided by the courts. He noted that in that event there may be a vacuum. Hon. Goodall vehemently denied that there was any mention of the Army making an announcement and taking over Government of the country.

According to the former Inspector General of Police, Mr. Peter Mukhito, when the Commission called him in the first instance, he stated that he got a call from the MDF Commander, General Odillo, asking for directions to Hon. Peter Mutharika's house. The Commander drove to Police Headquarters in Area 30, where he linked up with the Inspector General and they proceeded together to the house but in separate vehicles. According to the Inspector General in his testimony at his first appearance before the Commission, the discussion at Hon. Mutharika's house was about the readiness of the two security branches to handle the security situation. He was not very clear on the issue of the Army take over the first time that he appeared before the Commission.

In response to a question by the Commission on whether the issue of the MDF takeover was discussed at the meeting at Honourable Peter Mutharika's residence, Mr. Mukhito confirmed to the Commission that indeed the issue was mentioned that when things get chaotic the Army should be ready to at least come in. He confirmed that it was at this point that General Odillo said that the Army could not come in because it was a political problem and it needed to be sorted out politically.

The Commission having looked and reviewed the strength of the Commander's evidence, recalled the Inspector General specifically for him to elaborate on his earlier statement about the Army coming in should there be chaos. In his testimony on recall he said as follows:

*“Normally we do call the Army to assist. I recall that I said those words. Perhaps the context in which I said those words was largely on the part of security mainly on the internal security that where the Police has failed normally we invite the Army to come in to assist not necessarily taking over of the Government, no, but I was talking about the internal security that where the Police has failed, and examples like the incidences that occurred on 20th July (2011), in both Lilongwe and Mzuzu where we were incapacitated as Police Service, we really invited the Army to come in and really they did. So the coming in of the Army which I actually alluded to was in terms of security and nothing else.”*

When the Commission asked the former Inspector General whether during that meeting the Commander of the Malawi Defence Force was asked if the Army was ready to run the affairs of State, he responded as follows:

*“Now going back to the meeting which actually took place at the residence of the Honourable Professor in fact I remember that there was a proposal that in fact they want to take the matter to the court. But now I think it was between Honourable Gondwe and Honourable Professor there was that mention to say if we take this matter to court*

*obviously there was going to be a reaction and now when that reaction comes, are you as the Army ready to take over. That was really mentioned and it came from I think in between the two Honourable Professor and Honourable Gondwe. Yes that was mentioned.”.*

Then the Commission asked the former Inspector General what General Odillo’s response was. He said:

*“The General’s response was that what we have here is a political problem and as a political problem it has to be resolved politically and not involve us as security agencies. That was the statement he made. And when we came out, the Chief Secretary and the rest remained behind and this when we discussed as we were boarding our vehicles (we took the position) that this was a political problem and that was our stand as the two security organizations.”.*

Hon. Mutharika did indicate when he appeared before the Commission the first time that there were several meetings at his house. A lot of people came to the house, and people were having meetings here and there within the premises of the house. He told the Commission that he did not remember having attended the meeting which discussed the suggestion of Army take-over. He said it may have been because he was busy on the phone. Hundreds of calls were coming through his phone from people within and abroad inquiring about the issue of the President.

When he appeared before the Commission the second time, following his own request to come and clarify some matters, Hon. Mutharika told the Commission that the reason that he had decided to come to the Commission again was that the last time that he had appeared before the Commission, he was asked about the meeting involving himself, Hon. Goodall Gondwe, the Chief Secretary, the MDF Commander and the Inspector General of Police that took place at his house. He explained that on the day that they had the meeting he had just heard the news of the President’s death and was sleeping when the team came to his house. He told the Commission that he had truthfully forgotten about the meeting when he came before the Commission the first time.

Hon. Peter Mutharika further told the Commission that when Hon. Gondwe came back from the United States, he asked him whether he remembered about the meeting. He explained that Hon. Gondwe advised him that he remembered about that meeting. Hon. Gondwe told him that it was the Chief Secretary who had arranged the meeting and reminded him what was discussed at the meeting. In his own words, Hon. Mutharika explained to the Commission about the meeting as follows:

*“He [Hon. Goodall Gondwe] reminded me about the meeting, that the main point about the meeting was that we were concerned especially considering what happened before, demonstrations, disorders. What would happen in the country that is in the event that there is disorder? Is the Army and the Police able to contain it? You remember how on July 24th, was it 20th, the Police had difficulties containing the riots that time. We said are you ready in fact this time*

*if there are riots? And they said they were. And I think that was the essence of the meeting. Now when after I told Gondwe I called my former colleague Mr. Kayira here [Secretary to the Commission] and said can you pass the information to the Chairman, so he said no actually I needed to come in person to explain that. That's why I came here to make sure because I think the question you raised was that Hon. Gondwe and I had been asking, I think the Army, to take over the Government or something. I just don't think that's true because that was the same time we were waiting for the referral. I think the referral had already been sent to court. So that was the essence of the meeting and I thought it was important that I clarify that and I think Gondwe's testimony, I think, obviously it is confidential, his testimony is consistent with what I am saying that we were simply interested to know in the event of disorder could they in fact contain it and they said they could. So that's essentially what it was. That's why I came here."*

The Commission clearly established that the testimony of Hon. Mutharika on his recall in respect of the matter was based on what Hon. Goodall Gondwe told him or reminded him.

### **3.1.5 *Calling of Meeting of Cabinet Ministers***

On the evening of 5th April 2012, the Office of the President and Cabinet (OPC) issued an invitation to all Cabinet Ministers and Deputy Ministers to a meeting the following morning at the Office of the President and Cabinet from 9 o'clock. The invitation was made by phone call by Mr. Clement Chinthu Phiri, Clerk to Cabinet in OPC, on instructions from the Chief Secretary, Mr. Bright Msaka, SC.

### **3.1.6 *Ministers Converge at Hon. Goodall Gondwe's House***

It is the evidence of the former Minister of Justice and Constitutional Affairs, Hon. Ephraim Mganda Chiume, that on 5th April 2012 he left Lilongwe for the North. When the news of the illness of the President broke out he was at Mponela. He called Hon. Dr. Jean Kalirani who indeed confirmed to him the illness of the President. She advised him to return to Lilongwe. He immediately returned to Lilongwe. He further called Hon. Goodall Gondwe who confirmed that the President had indeed been taken ill. This was around 2pm. When he arrived in Lilongwe, he went straight to Hon. Goodall Gondwe's house where he found him and Hon. Ken Lipenga. He asked about the condition of the President and Hon. Gondwe told him that the President was dead. A discussion ensued amongst them on the development. Hon. Goodall Gondwe asked Hon. Chiume his thoughts on what would happen in the situation. Hon. Chiume told the Commission that he advised Hon. Gondwe that the Constitution was very clear that the Vice President would take over.

As they were discussing the matter at the house, they were joined by few other Ministers, including Hon. Dr. Kalirani. The DPP Secretary General, Mr. Wakuda Kamanga, also joined the group. They were informed that the President was to be flown

to South Africa. Hon. Chiume told the Commission that they all knew within themselves that the President had died but they agreed to keep it to themselves in order to manage the situation.

## 3.2 EVENTS ON 6th OF APRIL 2012

### 3.2.1 *Meeting Between Ministers Gondwe and Chiume with the Attorney General*

Early in the morning of 6th April 2012 around 6:30, the Minister of Justice and Constitutional Affairs, Hon. Ephraim Mganda Chiume, drove to the house of Hon. Goodall Gondwe. From there he drove to the house of the Attorney General Justice Maxon Mbendera, SC. According to Justice Mbendera, Hon. Chiume informed him in Tumbuka, that “*Ba President bali kufwa mayilo*”. [the President passed away yesterday]. The Attorney General was told that a meeting had been arranged that morning at Hon. Goodall Gondwe’s house to discuss legal options to make sure that the Vice President did not assume the office of President. As they were discussing, Hon. Chiume received a phone call from Hon. Gondwe, and they immediately left for his house.

At the house of Hon. Goodall Gondwe, the issue of succession was raised again. According to the testimony of Justice Mbendera, which was corroborated by Hon. Gondwe and Hon. Chiume, he advised the two Ministers that the Vice President, Rt. Hon. Mrs. Joyce Banda, was the rightful person to succeed the President. At the meeting, they went through the Constitution to try and find a way of stopping Mrs. Joyce Banda from ascending to the office of President. They discussed finding a way to seek interpretation of the court on the matter bearing in mind that Mrs. Joyce Banda was not a functional Vice President as she was outside Government having formed her own party, the Peoples Party (PP) which stood in opposition to the ruling party, the Democratic Progressive Party (DPP). In pursuing this legal route, it was considered that a court injunction against the Vice President’s ascendancy to the office of President would be obtained pending the determination of the matter. Hon. Chiume explained that the plan was to proceed on that route and invoke section 85 of the Constitution as soon as the injunction was obtained. This was going to allow Cabinet Members to proceed under section 85 of the Constitution to choose an Acting President and an Acting Vice President from among themselves.

Hon. Goodall Gondwe confirmed in his testimony that on the morning of 6th April 2012 Hon. Chiume and the Attorney General, Justice Mbendera, came to his house. The purpose of their coming was for the Attorney General to brief Hon. Gondwe about his view on the matter of succession. Hon. Gondwe explained that the Attorney General did advise that the Constitution was quite clear that the Vice President had to take over. The Attorney General further advised the meeting that what was being planned would be illegal. He further suggested the case against the Vice President was weak. According to Hon. Gondwe, he agreed with the Attorney General on his interpretation. He advised him that there was going to be a meeting of Cabinet Ministers that morning at 9 o’clock and it would be advisable if the Attorney General attended and briefed Cabinet Ministers on the matter.

Hon Gondwe told the Commission that as the three were discussing the matter, His Lordship the Chief Justice, Lovemore Munlo, SC, came to the house. The Chief Justice explained to the three that he was on his way to Tanzania and had to return when he was advised of the development by the Chief Secretary, Mr. Bright Msaka, SC, through a phone call.

On his part, the Chief Justice informed the Commission that he was on his way to Tanzania on 5th April 2012 for a holiday. After he had crossed the border into Tanzania he heard rumours about the death of the President. He contacted the Chief Secretary who could not confirm about the death but only advised him that the President was to be flown to South Africa as he was critically ill. He decided to come back home and arrived in Lilongwe in the early hours of the 6th April 2012. He told the Commission that he proceeded to Hon. Goodall Gondwe's house in the morning to try and find out what had actually happened. He told the Commission that he decided to proceed to Hon. Gondwe's house because he was a senior Minister in the set up. At the house, he found the Minister of Justice, Hon. Chiume, and the Attorney General, Justice Mbendera, having a discussion with Hon. Gondwe. Upon seeing him the discussion stopped and Hon. Gondwe excused himself from the other two to speak to the Chief Justice. He told the Commission that Hon. Gondwe confirmed to the Chief Justice that the President had indeed died. The Chief Justice asked about the arrangements and was told that Cabinet was going to meet that morning and that the decision that will be made at the meeting will be made public<sup>29</sup>.

It was the evidence of the Chief Justice that upon leaving Hon. Gondwe's house, he passed through his friend's house, Mr. Welford Sabola, and then proceeded to Hon. Peter Mutharika's house to offer condolences to him on his brother's death.

Upon further questioning by the Commission, the Chief Justice explained that he did not have any discussion with Hon. Chiume or the Attorney General except that the Attorney General advised him not to proceed to Blantyre. He told the Commission that he the Attorney General did not tell him anything more than that.

The Attorney General confirmed that when he saw the Chief Justice at Hon. Gondwe's house he took the opportunity, as legal advisor to the Government, which included the Judiciary, to ask him to remain in Lilongwe because that is where everything was going to be happening and that he would have a role to play. The Attorney General told the Commission that he mentioned to the Chief Justice about the issue of an impending constitutional application to be filed before court.

### ***3.2.2 Morning Meeting of Cabinet Ministers***

The meeting of Cabinet Ministers took place at the Office of the President and Cabinet in the conference room from 9 am. The meeting was well attended. All Ministers except Hon. George Chaponda and Hon. Reen Kachere were present. The Chief Secretary, Mr. Msaka, SC, and his Deputy, Mr. Necton Mhura, the Clerk to Cabinet, Mr. Clement Chinthu Phiri, and all members that serve Cabinet were present

<sup>29</sup>. See the notarised statement of evidence submitted to the Commission by His Lordship Chief Justice Lovemore Munlo, dated 6th September 2012, attached 19. Also see a statement issued by His Lordship's legal counsel dated 20th, May 2012 attached as Annex 20.

at the meeting. The Attorney General also attended the meeting on invitation. To ensure an orderly meeting, the Chief Secretary proposed that the most senior member of the ruling party do preside over the meeting which was agreed to. Consequently, Hon. Goodall Gondwe, First Vice President of the Democratic Progressive Party, presided over the meeting.

Before the commencement of the meeting, the Chief Secretary addressed the Ministers. He read a statement that he had prepared in advance in which he clearly stated that the gathering was not a Cabinet meeting since it was not chaired by the President or the Vice President neither had it been convened by either of them. He explained that it was a meeting by members of Cabinet consulting among themselves on the situation at hand. In his statement he advised the Ministers that there was need for them to be swift and decisive and to remain within the constitutional framework. He advised them to put the country first in their discussions and that they should put any other consideration aside. He further advised the meeting that the Constitution was clear on the issue of succession. He then also advised them that if members of Cabinet had some doubts, then they were free to seek court interpretation on the matter<sup>30</sup>.

After the brief address by the Chief Secretary, Hon. Goodall Gondwe opened the discussion. He explained that the President had been taken critically ill the previous day and had been flown to South Africa for further treatment. He further explained that even in the event that the President was successfully resuscitated he would not be able to perform his duties. At the meeting the issue of the death of the President was not mentioned at all. The Ministers were advised that the President was incapacitated and that there was need to chart the way forward on the issue of succession.

The meeting discussed the political situation prevailing that time. It discussed the possibility of the Vice President, Rt. Hon. Mrs. Joyce Banda, ascending to the office of President. The meeting recalled that a referral case had been brought up before the Constitutional Court by the President. The case challenged the legitimacy of Rt. Hon. Mrs. Joyce Banda serving as the Vice President bearing in mind that she had left the ruling party, the Democratic Progressive Party, and had formed her own party, the Peoples' Party. The meeting noted that the case was yet to be concluded.

The Commission established that the discussion at the meeting was one sided, against the Vice President ascending to the Presidency. At the end of the meeting it was resolved that the ascendancy of the Vice President to the office of President was to be contested in court. Accordingly, a smaller group of Cabinet Ministers was chosen to further discuss and plan for the implementation of the resolution. The full meeting of Cabinet Ministers was then adjourned to later in the afternoon to get the progress report.

The Ministers who were chosen and attended the side meeting were Hon. Goodall Gondwe, Hon. Ephraim Mganda Chiume, Hon. Sidik Mia, Hon. Dr. Jean Kalirani, Hon. Henry Mussa and Hon. Yunus Mussa. The Attorney General also attended that meeting.

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<sup>30</sup>. See the statement made by the Chief Secretary, Bright Msaka, SC. to Cabinet Ministers on 6th April 2012, attached as Annex 21

It is in evidence before the Commission that during the meeting of this small group, the Attorney General advised that the Constitution was very clear on the matter that the Vice President was to assume the office of President in the circumstances at hand. The meeting asked the Attorney General whether section 85 of the Constitution, on simultaneous vacancies in the offices of the President and the Vice President was applicable in the matter. The Attorney General explained that the section was not applicable because there was no vacancy in the office of the Vice President. The Ministers indicated to the Attorney General that they needed more time to make the announcement about the death of the President. The meeting then decided that the Minister of Justice and the Attorney General should proceed and get a court injunction against the swearing in of the Vice President as President, and also that the Attorney General should at the same time seek court interpretation on the question in the referral case already in court. In his testimony, Hon. Goodall Gondwe claimed that at these meetings, the Attorney General did not properly advise Cabinet Ministers on the matter especially with regard to the view that the referral case was weak and unlikely to succeed.

As a matter of fact, the Attorney General, Justice Maxon Mbendera, SC, in his testimony to the Commission, told the Commission that on the basis of the dissenting judgment in the similar Presidential referral case against the then Vice President, Rt. Hon. Dr. Cassim Chilumpha, during the 2004-2009 presidential term, he thought that the referral case against Rt. Hon. Mrs. Joyce Banda that was pending in court stood a chance of success if the Attorney General's Office could advance and buttress the reasoning in the dissenting judgment in the *Chilumpha Case*, which was by Justice Rezine Mzikamanda, the presiding judge in the case, although the case was dismissed by the majority decision of the other two judges of the three member constitutional court panel. In the end, however he appears to have turned round and he took a determined stand against taking the matter to court, even offering to resign, as the Commission has reported elsewhere in this Report.

It is in evidence that the Minister of Justice and the Attorney General left the meeting and went to their office to start the process of implementing the resolution. The Commission heard in evidence that all senior professional staff of the Ministry of Justice, except the Solicitor General and Secretary for Justice, Mr. Anthony Kamanga, SC, were called for discussions and consultations on the matter and were asked to work as a team. The Minister of Justice and Constitutional Affairs informed the Commission that he is the one who gave instructions to the Attorney General not to involve the Solicitor General because the system did not trust him and did not have confidence in him. In their testimony both Hon. Chiume and Justice Mbendera told the Commission that in their discussion at the Ministry they questioned themselves whose interests they were serving in pursuing the legal route to challenge the Vice Presidency's ascendancy to the Presidency against a clear constitutional provision.

The meetings at the Ministry of Justice mainly involved the Minister, the Attorney General, the Director of Public Prosecutions, Mrs. Rosemary Kanyuka, and the Senior Deputy Chief State Advocate, Dr. Zolomphi Nkowani. The Commission heard that at some point, Mr. Allan Ntata, who at that time was Legal Counsel to the President,

showed up at the Ministry and had discussions with the Attorney General and Dr. Nkowanani on the matter. In her testimony, however, Mrs. Kanyuka denied having taken any part in the discussions. According to her testimony she was only brought in as a senior member of staff at the Ministry although the matter did not directly involve her duties as Director of Public Prosecutions. However, it was clear from the testimony of the Attorney General that she took part in the discussions.

The Commission established that at the end of the discussions at the Ministry, it was agreed that two applications be made to the court. The first was to seek an order of injunction to stop the Vice President from being sworn in as President and for an order to allow Cabinet Ministers, under section 85 of the Constitution, to elect an Acting President and an Acting Vice President. The second application was to revive the determination of the referral case. The office of the Attorney General accordingly prepared the applications. The applications were supported by affidavits which were signed by two Ministers, Hon. Dr. Jean Kalirani and Hon. Henry Mussa. This was after Hon. Chiume and Hon. Gondwe refused to sign the affidavits. The Commission received evidence that it was in fact Mrs. Kanyuka who made contacts to secure the availability of the two Ministers to sign the affidavits<sup>31</sup>.

The Attorney General told the Commission that to his mind, the application to court based on section 85 of the Constitution was unlikely to succeed. He started searching his mind and thought that a political solution would be more appropriate in the circumstances. He thought that perhaps the best way was for the politicians in Government and in the Democratic Progressive Party to seek an intermediary to try and broker a deal with the Vice President. To that end, he called the Chief Secretary on the proposal. The Attorney General informed the Commission that the Chief Secretary advised him that he had already tried to make that suggestion but his efforts had failed.

The Attorney General told the Commission that on the evening of that day, 6th April 2012, he sent a text message to Hon. Peter Mutharika advising him that the matter was being mishandled. He did not get a response. The Attorney General told the Commission that he was sending these messages to try and bring sense in their approach to the matter.

After noting that his efforts at initiating mediation had failed he decided to proceed with the court application. The Attorney General therefore called the Assistant Registrar at the High Court, Lilongwe Registry, His Honour Thomson Ligowe, to alert him that his office would be bringing applications seeking court orders related to the situation at hand. He sought to find out if any judges were available to hear the matter. Three judges were needed to hear the matter as a constitutional case. He was advised that two Judges, namely, Justice Rezine Mzikamanda and Justice Chifundo Kachale were within Lilongwe. The two other Judges, namely, Justice Esmie Chombo and Justice Ivy Kamanga, were away to Blantyre and Salima respectively. It is in evidence that the Assistant Registrar contacted Justice Kamanga since she was said to be closer to Lilongwe.

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<sup>31</sup> Copies of the court process made available by Dr. Nkowanani are attached hereto as follows: Annex 22- Certificate of urgency, Annex 23- Originating summons, Annex 24- Affidavit of Hon Goodall Gondwe, Annex 25- Affidavit of Hon. Dr. Kalirani, Annex 26- Affidavit of Hon. Henry Mussa, Annex 27- Skeleton arguments, Annex 28- Draft Order.



In his testimony to the Commission, the Assistant Registrar, His Honour Thomson Ligowe, confirmed having been contacted by the Attorney General. He also confirmed contacting the Judges on the matter. All the three Judges, namely, Justice Mzikamanda, Justice Kamanga, and Justice Kachale, confirmed to the Commission having been contacted by the Assistant Registrar on the matter.

### 3.2.3 *Actions taken by the Vice President and Press Conferences on the Day*

Around 11 o'clock in the morning a lot of activities were happening simultaneously. The civil society groups had organized a press conference at the Riverside Hotel in Lilongwe where they called for constitutional order in the country. They demanded full compliance with constitutional provisions and indicated that the Vice President was the rightful person to take charge in the event that the President was incapacitated or dead.

The press conference by civil society groups was followed by another press conference held by the former President of the Republic of Malawi, His Excellency Dr. Bakili Muluzi. His press conference was held at his BCA Hill Residence in Blantyre where he read a prepared statement. He too called for constitutional order. He stated that the Constitution was very clear on the issue of succession in the event that the President was incapacitated. He echoed the anxiety amongst Malawians about the lack of information on the state of the President's health while international media was announcing his death. He stressed that the Vice President was the rightful person to take charge of the affairs of State. In his testimony to the Commission Dr. Muluzi explained that he was speaking in his capacity as former President and as Statesman of this country and also as Goodwill Ambassador and stated that he could not just sit back and watch the country degenerate into constitutional disorder.

In the meantime, the Vice President, Rt. Hon. Mrs. Joyce Banda, sent a letter<sup>32</sup> to the Chief Secretary seeking assurance that she was still Vice President and according to the Constitution she was in charge in the circumstance. The Chief Secretary did not respond to the letter. The Chief Secretary however told the Commission that he called the Vice President and advised her to make herself visible. To that end they agreed that she should hold a press conference later in the day. The Chief Secretary told the Commission that he drafted and dictated a statement to one of the Vice President's assistants intended to be the statement to be read by the Vice President during her press conference that afternoon at her official residence in Area 12 in Lilongwe. The draft produced to the Commission by the Chief Secretary read as follows<sup>33</sup>.

**STATEMENT BY THE VICE PRESIDENT OF THE REPUBLIC OF  
MALAWI, RIGHT HONOURABLE JOYCE BANDA**

*Fellow Malawians, Ladies and Gentlemen of the Press,*

*I have invited you members of the press in view of the intense speculation that is going on in the country and the international media about the state of health of the State President, Ngwazi Professor Bingu wa Mutharika, who was flown to South Africa yesterday for treatment.*

*The media's interest in the matter is justified and the people of*

*Malawi have the right to know about the state of health of our President. Government is waiting for a formal report on the state of health of our President, and I shall call you back, members of the media, to brief you on the official position of the President's health when it is known. Meanwhile, I wish to appeal to all Malawians to remain calm.*

*Thank you for your attention and may God bless you.*

The Commission established that before the press conference the Vice President called the Commander of the Malawi Defence Force, General Henry Odillo, seeking assurance about the preservation of constitutional order in the country. General assured Odillo the Vice President that the Malawi Defence Force was firmly behind maintaining the constitutional order and would like to see full implementation of the constitutional provisions. The Vice President further invited General Odillo to her official residence in Area 12 where she was planning to hold a press conference later in the day. The General Odillo advised that as he was engaged at the proposed time, he would assign his two senior Army officers to come to her residence that afternoon. He accordingly assigned Brigadier General Ignatius Maulana and Major General John Msonthi who indeed came to the residence of the Vice President that afternoon.

### **3.2.4 *The Democratic Progressive Party National Governing Council Meeting***

The Commission received evidence that on the same day, 6th of April 2012, the Democratic Progressive Party National Governing Council met at State House in Lilongwe from around 2 pm. The purpose of the meeting was to brief members of the NGC about what had happened and to chart the way forward. The meeting took place in the Banana Room in the State House and was chaired by Hon. Goodall Gondwe, being the First Vice President of the party.

The Commission heard that at the NGC meeting, members were briefed that the President had been taken ill and had been flown to South Africa the previous night for further treatment. The issue of death of the President was not disclosed to the members and was not raised by anyone or discussed in the meeting. However, from the testimony before the Commission most members individually knew that the President had died but collectively there was pretence that he was still alive but critically ill.

During the meeting it was proposed that due to the sickness of the President, who was also the President of the party, there was need for the party to choose an acting president of the party. It was immediately decided that since the party had already decided on Hon. Peter Mutharika to be its torch bearer for the 2014 general election, there was no need to choose another person other than Hon. Peter Mutharika as acting president of the party. On the other hand, Hon. Ken Lipenga told the Commission that he proposed the name of Hon. Goodall Gondwe for the position of acting president because in his view Hon. Mutharika was at that time pre-occupied with the illness of his brother President Mutharika. Hon. Goodall Gondwe was the most senior member in the ranks of the party after the President, as First Vice President. The meeting did not even consider Hon. Lipenga's proposal but unanimously agreed that Hon. Mutharika be the Acting President of the party. After being elected, Hon. Mutharika made an

acceptance speech to the meeting. The Commission also heard evidence from Hon. Vuwa Kaunda that it was in fact Hon. Ken Lipenga who proposed the name of Hon. Peter Mutharika for election as Acting President of the party. The evidence before the Commission however indicates that Hon. Peter Mutharika was elected by acclaim.

### 3.2.5 *Evening Meeting of Cabinet Ministers*

Following the earlier resolution at the morning meeting, members of Cabinet converged again at OPC at 5 pm. The purpose of the reconvened meeting was for Ministers to be briefed on the progress that the Ministry of Justice had made on the court case and also on the deliberations of the DPP NGC meeting. The meeting was initially chaired by Hon. Goodall Gondwe, who at some point left the meeting, and Hon. Kalirani took over as chairperson.

The Commission heard that the Minister of Justice and Constitutional Affairs, Hon. Chiume, called Hon. Gondwe and advised him that the Ministry was still working on the court papers and needed more time. In his testimony, Hon. Chiume told the Commission that the scheme by Ministers was to invoke section 85 of the Constitution and elect Hon. Peter Mutharika as Acting President after the NGC meeting. He called Hon. Gondwe and advised him to tell Ministers that the process of electing an Acting President under section 85 should wait for the filing of the court papers at the court.

Hon. Gondwe informed the Commission that while in discussion at the meeting he received a text message from the Attorney General, Justice Maxon Mbendera, SC, advising him that what the Ministers were doing was wrong and illegal. Hon. Gondwe told the Commission that at that point, he knew that the Minister of Justice and the Attorney General were not going to court anymore, and thought that that was the time to kill off the idea of pursuing the court route.

When Hon. Gondwe went into the meeting and explained the Minister of Justice's position that the election of the Acting President should wait for the filing of court papers, the situation in the meeting became very difficult. The discussion in the meeting became heated and acrimonious. Hon. Goodall Gondwe eventually left the meeting at this point and Hon. Dr. Jean Kalirani took over as the chair of the meeting. Hon. Gondwe informed the Commission that after leaving the meeting he went to meet the American Ambassador. He informed the Commission that in their discussion the American Ambassador advised him that the position was clear on what was to happen in the circumstances, which was that the Vice President, Rt. Hon. Mrs. Joyce Banda, was to assume the office of President.

The Commission heard evidence that the mood in the meeting was intimidatory and some Ministers accused others of being traitors. It was mentioned to the Commission that some Ministers asserted the supremacy of the DPP resolutions and that the party had already resolved the issue and no-one should have contrary views. A proposal to elect Hon. Peter Mutharika as Acting President was made to the meeting. There were disagreements on the matter in that some members wanted to proceed that way while others resisted. Members were asked to vote on the matter. This proposal for a vote was opposed by others who submitted that it was not right for members to be forced to vote. In the end the proposal for a vote did not carry the day.

As already mentioned the Commission heard evidence that the strategy that was in place was that once the court documents were presented to court and the Registrar received and registered them, Cabinet was going to meet and choose an Acting President and an Acting Vice President of the Republic under section 85 of the Constitution. The meeting agreed that they were not going to leave the OPC area until they heard about the outcome of the court application. Late in the evening the Minister of Justice and Constitutional Affairs called his colleagues who were at the meeting and told them that officers at the High Court, Lilongwe, had knocked off and that the application was going to be filed in the morning of 7th April. It was then agreed that they should meet the following day at 9 am at OPC to elect an Acting President and Acting Vice President and once that was done, they were going to announce the death of the President.

The Ministers agreed that they should update the general public on the situation so as to prepare the people of Malawi for the events of the following day through a press statement. It was then resolved that a team of Ministers be appointed to draft a statement that was going to be read to the general public. The Ministers who were entrusted with the task were Hon. Mrs. Patricia Kaliati, Hon. Henry Mussa, Hon. Dr. Jean Kalirani, Hon. Nicholas Dausi and Hon. Kondwani Nankhumwa.

### ***3.2.6 The Midnight Press Statement***

As resolved by the meeting of Cabinet Ministers, five Ministers as named above were assigned to draft a statement to the general public.

The Commission heard evidence that the team of those five Ministers met in the small board room next to the office of the Chief Secretary at the OPC to draft the press statement. They were joined by officials of OPC, namely, the Chief Secretary, Mr. Bright Msaka, SC, and the Deputy Chief Secretary, Mr. Necton Mhura. They were also joined by the President's Legal Counsel, Mr. Allan Ntata, who also acted as Secretary to the meeting. The Commission received evidence that the group discussed and produced the desired statement. After the statement was drafted it was printed out in the office of the Personal Secretary to the Chief Secretary and was then presented to the Ministers in the main conference room. In their plenary meeting, the Ministers approved the statement and instructed the team of Ministers who drafted the statement to proceed and read it out to the general public.

The original arrangement was to call for a press conference at the Government's Central Information Office in Lilongwe. The venue was then changed to Malawi Broadcasting Television studios in Lilongwe. The five Ministers were later joined at MBC Television studios by Hon. Symon Vuwa Kaunda, bringing the total number to six Ministers and the statement was read out close to midnight on 6th April 2012; hence the reference to it in common parlance as the "Midnight Six Statement". It was read out by Hon. Mrs. Patricia Kaliati. The statement is hereby reproduced:

**“PRESS STATEMENT ON STATEMENTS MADE TO THE MEDIA  
ABOUT HONOURABLE JOYCE BANDA’S ELIGIBILITY TO  
SUCCEED THE PRESIDENCY**

*The Malawi Government notes with regret the Statements made by Honourable Joyce Banda and former President Dr. Bakili Muluzi regarding succession to the Presidency.*

*Regarding the Vice Presidency and the Question of Succession to the Presidency, the Government would like to inform the public as follows:*

- 1. The conduct of Honourable Joyce Banda in forming her own opposition party precludes her from being eligible to succeed the Presidency.*
- 2. In this regard, statements relating to the succession made by the former Head of State Dr. Bakili Muluzi and also echoed by Honourable Joyce Banda herself are misleading of the true nature of the situation.*
- 3. As already stated, information regarding the condition of the President will be made available to the public in due course.*
- 4. There has been speculation in certain quarters that Parliament will convene on Tuesday, 10th April 2012. This information is false. The government would like to emphasize that Parliament has absolutely no role in this matter.*

*The Government would like to appeal to all Malawians to remain calm and not to listen to any misleading information coming from anyone except official government sources.*

*END*

**MALAWI GOVERNMENT”**

The gist of the statement, as can be seen, was to assert the position that the Vice President, Rt. Hon. Mrs. Joyce Banda, was not eligible to succeed in the office of President and that the statement she had made earlier in the day at a press conference and that of the former President Dr. Bakili Muluzi were calculated to mislead the general public.

When recalled to testify before the Commission on that aspect, the Chief Secretary, Mr. Bright Msaka, SC, admitted being part of the group that drafted the statement along with the Deputy Chief Secretary, Mr. Necton Mhura. He confirmed before the Commission that the statement was intended to be a Government statement with due authority of the Government although without the involvement of the Vice President<sup>34</sup>.

The preparation of the Midnight Press Statement was done only a few hours after the Vice President held a press conference at which she read out a statement which,

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<sup>34</sup>. The Midnight Press Statement is attached as Annex 11.

according to the testimony of the Chief Secretary, was also prepared by him or had parts in it prepared by him as reproduced at 3.2.3 in this report. Clearly the two statements stand in contradiction to each other.

### **3.2.7 Progress on the Court Case**

Dr. Zolomphi Nkowani, Senior Deputy Chief State Advocate in the Attorney General's Office, told the Commission that he was called by the Attorney General, Justice Maxon Mbendera, SC, on the afternoon of 6th April 2012. The Attorney General told him that the President had died. He asked him what his views were looking at section 83(4) of the Constitution which deals with the issue of vacancy in the office of the President. Dr. Nkowani told the Commission that he advised the Attorney General that the section was clear and that the Vice President had to assume the office as President. The Attorney General agreed with Dr. Nkowani's view but told him that some people wanted an interpretation on whether a leader of an opposition party can assume the office of President under section 83(4) of the Constitution. Dr. Nkowani told the Commission that he insisted to the Attorney General that the Constitution was clear on the matter and any attempt to bring up a court case would be frivolous and vexatious. He then asked the Attorney General where the instructions were coming from and he was advised that Mr. Allan Ntata was going to bring the instructions.

When Mr. Ntata came, Dr. Nkowani asked him on what basis was he bringing up the matter. Mr. Ntata is said to have responded that the basis of the application was that the Vice President had left the ruling party and Government and that the law did not envisage that in those circumstances she would assume the office of President in the event of a vacancy. Dr. Nkowani reminded Mr. Ntata that the President himself had previously left the United Democratic Front (UDF), the party under whose ticket he was elected, and formed his own party, the Democratic Progressive Party (DPP). Dr. Nkowani asked Mr. Ntata why there was no need for clarification on that issue at that time. Mr. Ntata is said to have insisted to Dr. Nkowani that the case was being brought on grounds of public policy and further insisted that the matter be taken to court.

Dr. Nkowani asked Mr. Ntata to bring him material supporting the case. It was heard in evidence that Mr. Ntata promised to come back with the materials but never did. Nonetheless, Dr. Nkowani proceeded to prepare the court papers. The title of the application, to have been commenced by way of Originating Summons, read as follows:

**“In the Matter of Section 83 of the Constitution; and**

**In the Matter of Section 85 of the Constitution; and**

**In the Matter of section 87 of the Constitution; and**

**In the Matter of Order 29 of the Rules of the Supreme Court;**

**and**

**The Courts (High Court) (Procedure on Interpretation or Application of the Constitution) Rules 2008.**

The Applicant was the Attorney General and the Respondent was the Rt. Hon. Mrs. Joyce Banda. Five documents were drafted in all under this head and these were:

- (i) Notice of Originating Motion with a Certificate of Extreme Urgency.
- (ii) Originating Summons.
- (iii) Affidavit in Support.
- (iv) Skeleton Arguments.
- (v) Draft Order

While various draft court documents are attached to this Report, the Commission finds it pertinent to reproduce the text of the Draft Order as it gives insight of the plan. The text was as follows:

- “(i) That an injunction BE and is HEREBY granted restraining the swearing in of Right Honourable Joyce Banda, or anybody else, as President until the matter is determined by the Court.*
- (ii) That the Cabinet BE and is HEREBY authorized to elect from among its members an Acting President and an Acting Vice President for such a period not exceeding the period it takes to determine the substantive matter.*
- (iii) That the Acting President and Acting Vice President take office forthwith.*
- (iv) That the hearing of the substantive matter be expedited and, at the latest, within 5 to 7 days from the date hereof.”.*

At the time that Dr. Nkowanani was drafting the documents, the evening meeting at OPC was still in session. He was advised that the affidavit in support of the application was going to be signed by Hon. Goodall Gondwe. He accordingly proceeded to OPC to have the affidavits signed. Hon. Gondwe asked him what the documents were about. After Dr. Nkowanani explained what the document were about Hon. Gondwe refused to sign them and asked Dr. Nkowanani to give them to the Minister of Justice and Constitutional Affairs, Hon. Ephraim Mganda Chiume, to sign them. Dr. Nkowanani reported accordingly to the Minister of Justice and to the Attorney General. It was the view of the Minister of Justice that there was nothing they could do if there was nobody willing to sign the court affidavits because he too had declined to sign them.

Dr. Nkowanani told the Commission that as he was packing to go home, Mrs. Rosemary Kanyuka, Director of Public Prosecutions, came to his office and advised him that there were two Ministers who were ready to sign the affidavits. These were Hon. Henry Mussa and Hon. Dr. Jean Kalirani. Mrs. Kanyuka further advised Dr. Nkowanani that she had contacted a Commissioner for Oaths, Mr. Eric Salima, to

commission the affidavits, and further that the Assistant Registrar, His Honour Thomson Ligowe, was waiting for the documents. Mrs. Kanyuka further advised Dr. Nkowanani to go to MBC Television studios in Lilongwe where Hon. Mussa and Hon. Dr. Kalirani were.

When Dr. Nkowanani arrived at the MBC Television studios he noted that there was a press conference going on. This is where the Midnight Press Statement was being read out. He waited there for the press conference to end. After the press conference, Dr. Nkowanani gave the documents to Hon. Mussa and Hon. Dr. Kalirani who both signed the affidavits. Hon. Mussa asked for a copy and was given one. It is the evidence of Dr. Nkowanani that after having had the documents signed, he called the Assistant Registrar that it was late and he was going to go to court the following morning. Dr. Nkowanani reported the same to the Minister of Justice and to the Attorney General. He told the Commission that he then switched off his phone and went home.

In his testimony, Hon. Henry Mussa admitted signing the affidavit but expressed ignorance about the contents of the affidavit. He told the Commission that even at the time that he was signing the affidavit, he did ask Dr. Nkowanani what the documents were about and stressed to the Commission that he merely signed the documents but did not know the contents.

### ***3.2.8 Absence of Minutes of Meetings of Ministers on 6th April 2012***

Regarding the two meetings of the Ministers in plenary and the two committee meetings of Ministers held on 6th April 2012, the Commission inquired about the availability of minutes to record the deliberations and resolutions at those meetings. These would normally be taken and prepared by officials of the Office of the President and Cabinet led by the Chief Secretary. The Commission established from officials of OPC that no minutes were taken of all these meetings and that no record was available on these meetings.

## **3.3 EVENTS ON 7th APRIL 2012**

The day 7th April 2012 was one of the busiest days during the period. A lot of things were simultaneously happening on the day. In this Report the Commission has singled out the major issues and detailed them separately. In terms of timing, there were overlaps in that some events were happening at the same time.

### ***3.3.1 The Court Case***

Early in the morning of 7th April 2012, the Attorney General, Justice Maxon Mbendera, SC, called the Minister of Justice and Constitutional Affairs, Hon. Chiume, and repeated his advice that the Constitution was clear on the matter. He informed the Minister that he would resign if he was forced to proceed to court. The Minister agreed with the Attorney General on the legitimacy of the court case. They resolved that the documents were not going to be filed in court that morning or at all.

It was the evidence of the Minister of Justice that having resolved the way forward with the Attorney General, he proceeded to advise Hon. Goodall Gondwe that the matter



was not going to court anymore. Hon. Chiume told the Commission that at that point he took the stand that he, as Minister of Justice and Constitutional Affairs, had the ultimate authority over the matter and was not to be subjected to directions by fellow Ministers. If they wanted to go ahead they had to find other means to pursue the matter in court.

The Attorney General on his part told the Commission that he also sent a text to Hon. Goodall Gondwe that morning advising him that the constitutional provision was very clear on the matter and that he was not going to take the matter to court. On receiving the text, Hon. Gondwe called the Attorney General and told him that he indeed saw that there was futility in the attempt. He informed the Attorney General that he was going to see Hon. Peter Mutharika to tell him that the process they were trying to embark on should stop.

The Attorney General then called Mrs. Rosemary Kanyuka and Dr. Nkowani advising them that the matter was not going to court. Dr. Nkowani confirmed to the Commission having received a message from the Attorney General advising him that he had told Hon. Peter Mutharika that we needed to be governed by constitutional order and further instructed Dr. Nkowani to tell all concerned staff at the Ministry of Justice not to go to the office.

Having taken that position, the Attorney General called the Chief Secretary to tell him that he was not proceeding to court with the matter. It is recorded in the evidence of Justice Mbendera SC that, in response, the Chief Secretary agreed with the Attorney General's position. He further informed the Attorney General that he was aware that the Army had taken a firm position to support the constitutional position. It was during this conversation that the Chief Secretary advised the Attorney General that he was going to announce the death of the President at 8 am that morning.

The Attorney General's court case ended at this point.

### **3.3.2 *Meetings at Hon. Peter Mutharika's House***

On that day, 7th April 2012, the center of gathering was the residence of Hon. Peter Mutharika in Area 43 in Lilongwe. A lot of people had gathered at the house. These included Cabinet Ministers, DPP officials, Government officials and others. It is in evidence that most Cabinet Ministers had earlier proceeded to OPC for the 9 o'clock meeting as agreed the previous day. For those who proceeded there, they found that the place was closed. They were however advised by colleagues upon enquiry to meet at Hon. Peter Mutharika's house, mostly through phone calls. Among those who came to Hon. Peter Mutharika's residence were some who came to offer their condolences. Others came to continue consultations on political transition issues.

#### **3.3.2 (a) *A Delegation to the United Nations Representative***

In his testimony to the Commission Dr. Hetherwick Ntaba said that it was on 6th April 2012 when he heard that people were going to get an injunction. He told the Commission that he got worried. He thought that even if the court outcome was to be in favour of DPP, they will not be able to carry the people with them at that time. His

view was that if going to court was just a means of forcing a discussion with the Vice President, then they needed to just go and see her. Accordingly, he called some of his colleagues namely, Hon. Dr. Jean Kalirani, Hon. Nicholas Dausi, Hon. Kondwani Nankhumwa and Mr. Wakuda Kamanga, the party's Secretary General, and sold them the idea of trying to negotiate with the Vice President. The team then called Hon. Peter Mutharika who told them to meet him at his house the following day, 7th April 2012.

In the morning of 7th April 2012 Dr. Ntaba, Hon. Dr. Kalirani and Hon. Nankhumwa, joined by Mr. Kalanzi Mbewe, Regional Governor for DPP for the Centre, went to Hon. Peter Mutharika's residence and briefed him about the proposal. He accepted the idea of having a negotiated deal with the Vice President. The meeting suggested that the team should approach intermediaries, such as the United Nations Resident Representative in Malawi, Mr. Richard Dictus, to ask them to pass the message to the Vice President that they were not going ahead with the injunction case and would want to discuss how the country can move ahead. The four met Mr. Dictus at his house. However, Mr. Dictus did not give the team an immediate response. He advised them that he needed to consult with UN Headquarters in New York before doing anything on the matter. The team then left and went back to Hon. Peter Mutharika's house. Mr. Dictus never came back to them as the Commission noted that events of that day moved very fast ending with the swearing in of the Vice President as President.

### **3.3.2 (b) *Attempt to Give Instructions to a Private Lawyer***

The Commission heard evidence that at the house of Hon. Peter Mutharika, the issue of proceeding to court with the case that the Attorney General had declined to take to court was tabled again. A meeting was convened at the house where it was agreed that they should still proceed and get an injunction against the swearing in of the Vice President pending court interpretation of the Constitution on the matter. The Deputy Chief Secretary, Mr. Necton Mhura was part of this discussion. They resolved that they should retain a private practice lawyer to take up the matter. Accordingly, Hon. Henry Mussa contacted Mr. Tamando Chokocho, a private practice lawyer.

When Mr. Chokocho reported at the house, he was briefed about the matter. He told the Commission that he advised the meeting that it was not possible for him to take instructions on the matter because, among other things, it was too late. He told the Commission that he further advised the meeting that in view of the so called "Injunctions Law" (now repealed), which required three days prior notice to Government to apply to court for an injunction against the Government, he did not see any possibility that the court could quickly rush and issue such injunction ex-parte. The Commission however is aware that this law was not operational at that time due to an order of stay that some citizens obtained from the High Court against it.

Mr. Chokocho told the Commission that he further advised them that he was not really convinced about the issue of the Vice President's resignation since Parliament approved funds for the office of the Vice President including her own emoluments which meant that the office was not vacant. He told the Commission that he finally advised them that they could let the Vice President get sworn in and challenge her eligibility later.

Mr. Chokotho told the Commission that his response did not really go down well with most people at the meeting but he stood firm.

According to the evidence of Hon. Goodall Gondwe, among the people who had gathered at the house of Hon. Peter Mutharika on the morning of 7th April 2012 was the Chief Justice, His Lordship Justice Lovemore Munlo, SC. He noted that he was dressed casually, in a pair of jeans and a shirt. Hon. Gondwe told the Commission that the Chief Justice did not take part in the discussions that were going on in the other room. He sat in a different room, the sitting room.

It was the evidence of Mr. Kalanzi Mbewe, DPP Regional Governor for the Centre, that on the morning of 7th April he and some of his colleagues had a meeting at Hon. Peter Mutharika's house and that he had seen some judges around. He could not however mention the names of the judges.

On their part, all judges who appeared before the Commission denied in their testimonies ever gathering at any place either to hear a case or to swear any person into office except during the official swearing in ceremony at Parliament as the presiding officer, in the case of the Chief Justice, or as part of a procession of that ceremony in the case of the other judges.

The Commission noted that in his evidence to the Commission, the Chief Justice did not mention having visited the house of Hon. Peter Mutharika on 7th April 2012 as claimed by Hon. Gondwe. In his evidence the Deputy Chief Secretary, Mr. Mhura, told the Commission that he did not see the Chief Justice or any judge at the time that he was at Hon. Peter Mutharika's house on that morning of 7th April 2012. This was corroborated by the private lawyer Mr. Chokotho who told the Commission that he did not see any judge, including the Chief Justice, at the residence of Hon. Peter Mutharika that morning when he was there.

The Commission however established that in an interview aired on Zodiak Broadcasting Station on 15th July 2012, in their programme *Tiuzeni Zoona*, which the Commission sourced for the purposes of the Inquiry, Hon. Peter Mutharika confirmed in that interview that the Chief Justice visited Hon. Mutharika's house twice to offer condolences as a family friend. The first time he came to the house there were only a few people, five or so. The second time he went to the house there were a lot of people at the house including Cabinet Ministers, politicians and other people most of whom were sitting outside the house. He explained in the interview that he did not have a meeting with the Chief Justice.

### **3.3.3 *Announcement of Death***

The issue of the delay in announcing the death of the President exercised the Commission. From the evidence gathered, it was clear to all senior officers in Government and senior members of the party, DPP, that the President had died on 5th April 2012. It was also clear from the evidence that at the DPP NGC meeting members whispered amongst one another about the death of the President and about the events that were taking place that time.

It was heard in evidence that on the afternoon of 6th April 2012 the Chief Secretary, Mr. Bright Msaka, SC, called the former First Lady and advised her that it was his intention to formally announce the death of the President. She however responded by advising him that she had no problem with the announcement but that such matters should be referred to Hon. Peter Mutharika. The Chief Secretary told the Commission that he called Hon. Mutharika endlessly but he did not pick his phone. He then sent a text to Hon. Goodall Gondwe who agreed that the announcement be made. According to the Chief Secretary, Hon. Gondwe, advised the Chief Secretary to make the announcement the following day, 7th April 2012 at 9am.

When the Commission asked the Chief Secretary why he did not immediately announce the death of the President he responded that it was not his responsibility and that is why he anticipated that Cabinet Ministers would first be informed of the President's death during the meeting of 6th April 2012 by Hon. Goodall Gondwe, the presiding Minister. The evidence of the Deputy Chief Secretary, Mr. Necton Mhura, was however to the contrary in that he told the Commission that OPC was the office charged with such responsibility. In his testimony, Hon. Peter Mutharika told the Commission that the family had nothing to do with the issue of the official announcement of death. He submitted that the matter was in the hands of OPC. He told the Commission that he did know why OPC decided to announce the death of the President on 7th April, 2012.

On the other hand Hon. Goodall Gondwe told the Commission that on the evening of 6th April 2012 while at the meeting of Ministers at OPC Hon. Peter Mutharika came over and told him that he was having problems with the South African Government. He explained that the South African Government was asking why Malawi was not announcing the death of the President. The South Africans went further and told Hon. Mutharika that if the Government of Malawi was not going to announce the death of President Mutharika, then President Jacob Zuma of South Africa was going to do it. Hon. Goodall Gondwe and Hon. Peter Mutharika agreed that the announcement be made the following morning. This was in sharp contrast to the evidence of Hon. Peter Mutharika.

Hon. Gondwe told the Commission that in the early hours of 7th April 2012, he got a text from the Chief Secretary asking him about the way forward. He then advised the Chief Secretary that the announcement be made in the morning by 9 am. This was in contrast to the evidence of the Chief Secretary who told the Commission that he sent the text in the afternoon of 6th April 2012.

The announcement of the death of the President was indeed made at 8 am on the morning of 7th April 2012 in a statement by OPC signed by the Chief Secretary Mr. Bright Msaka, SC, and aired on MBC Radio and Television and also on private radio stations.

### ***3.3.4 Discussions between the Speaker of Parliament and the Chief Justice***

In his testimony to the Commission, the Speaker of Parliament, Hon. Henry Chimunthu Banda, told the Commission that in view of the confusion that was going

around on 6th April 2012, he called the Chief Justice as head of the Judiciary and invited him to his house. Accordingly, they met at Hon. Chimunthu Banda's house around 5.30pm. At the house, they had a discussion about what had happened and both were concerned about the lack of an official announcement on the matter. Hon. Chimunthu Banda told the Commission that he asked the Chief Justice on the role of the Speaker of Parliament in the event that the President was indeed dead and the Chief Justice's response was that the Speaker of Parliament had no role to play. The Speaker told the Commission that what the Chief Justice said confirmed what was also his own view.

It was Hon. Chimunthu Banda's evidence that before the Chief Justice left his house, Hon. Chimunthu Banda got a call from the Minister of Justice, Hon. Chiume, advising him that he had been tasked by Cabinet to draw up court papers and go to court. Hon. Chiume told Hon. Chimunthu Banda that he was not comfortable with the task assigned to him. Hon. Chimunthu Banda shared this information with the Chief Justice and they parted ways.

On the morning of 7th April 2012, the Speaker finally got confirmation from the Chief Secretary that the President had died and that Cabinet was going to make a decision on the way forward. The Chief Secretary further indicated to Hon. Chimunthu Banda that he was on his way to the Vice President's residence with other officials.

An hour after his conversation with the Chief Secretary, Hon. Chimunthu Banda got a call from the Vice President asking him to join her at a press conference that she had called to take place that morning at her residence in Area 12. He told the Commission that he explained to the Vice President that his view was that he should not go at that point to see her and requested for a time after the press conference. The Vice President accordingly gave him an appointment for 11 am.

Hon. Chimunthu Banda told the Commission that he saw it proper that he should be in the company of the Chief Justice when going to see the Vice President as heads of the two other arms of Government. He contacted the Chief Justice and informed him that he had been given an appointment for 11 am to meet the Vice President and suggested to the Chief Justice that they should go together. He stated that they were going to meet her for two reasons, firstly to offer their condolences to her on the death of the President and secondly to present themselves to her as heads of the other two arms of Government. The Chief Justice agreed to the Speaker's suggestion. This conversation took place around 8 am.

Hon. Chimunthu Banda told the Commission that between 8 am and 20 minutes to 10 am the Speaker called the Chief Justice more than once and the Chief Justice gave no indication that he was not going to meet the Vice President. They even agreed where to meet on the way to the Vice President's residence in Area 12 in Lilongwe.

The Speaker told the Commission that some 5 minutes before 11:00 am, the Chief Justice called him and informed him that there was going to be contestation regarding the eligibility of the Vice President to take over as President. As Chief Justice, he decided not to go and meet the Vice President as earlier agreed because that would have been seen as a thumb of approval and that he would rather take a neutral position. Accordingly, the Speaker proceeded alone to see the Vice President.

In his testimony to the Commission the Chief Justice confirmed having agreed to go and see the Vice President together with Hon. Chimunthu Banda earlier that day. He explained that the purpose of the visit was to go and congratulate her. However, when he reflected on the matter further his instincts guided him that the best order of things would be to offer his congratulations to her after she had been sworn in as President. He explained to the Commission that with the rumours that were circulating around earlier about reservations to her swearing, he was convinced that as head of the Judiciary he had an important and solemn duty to swear in the next President. He therefore told the Commission that on that basis he called the Speaker and advised him that he would not go with him to see the Vice President.

### ***3.3.5 Press Conference by the Vice President***

After the official announcement of the death of the President had been made by OPC the Vice President scheduled a press conference at her official residence in Area 12, Lilongwe. At this point, some Ministers and other politicians began repositioning themselves. It was heard in evidence that some people who were gathered at Hon. Peter Mutharika's house in Area 43, Lilongwe, started leaving the house, going to the Vice President's residence. It was heard in evidence that this did not please some DPP functionaries gathered at Hon. Peter Mutharika's house. Most notably, Hon. Kaliati is reported to have ordered that the gate to the house be closed and that nobody should leave the house. Some Ministers who were not at the house that time made their way to Area 12. These included Hon. Sidik Mia, Hon. Ken Lipenga, Hon. Catherine Gotani Hara, Hon. Ephraim Chiume and Hon. John Bande.

At that point, the Chief Secretary, Mr. Bright Msaka, SC, advised the Attorney General about the impending press conference and the two went to the Vice President's residence in Area 12. The MDF Commander, General Henry Odillo, was also informed about the Vice President's press conference and he proceeded to attend.

General Odillo told the Commission that when he arrived at the Vice President's residence he noted a lapse of security at the residence. He immediately deployed the Military Police at the house and also issued an order to deploy Military Police at the strategic places such as Malawi Broadcasting Corporation (Radio and Television).

While at the Vice President's residence in Area 12 the two top officials namely the Chief Secretary and the MDF Commander tried to call the Inspector General of Police Mr. Mukhito. The Commission heard that he was reluctant about coming to the press conference. General Odillo informed the Commission that Mr. Mukhito remarked that the Vice President was not the Commander-in-Chief hence he did not see the need to go there. According to evidence before the Commission he only agreed to go to the Vice President's residence when the Attorney General asked the Chief Secretary and the Commander to tell the Inspector General that he too, the Attorney General, was there. The Inspector General then appeared after a short time. The Attorney General informed the Commission that, prior to that, the Inspector General had been asking him about the progress of the court case challenging the ascendancy of the Vice President to the office of President which the Attorney General had earlier decided not to proceed with.

On his part, the Inspector General told the Commission that he took a bit of time to arrive at the press conference because his official vehicle had gone for service. He therefore had to arrange alternative transport which was the reason that delayed him.

The press conference took place at the appointed time. Among other things the Vice President announced that there was to be a Cabinet meeting that afternoon from 2 pm.

It is in evidence that when the announcement for a Cabinet meeting was made, there were immediate discussions at the house of Hon. Peter Mutharika as to whether the DPP Ministers should attend or not. It was eventually agreed that they should proceed and attend the Cabinet meeting.

### ***3.3.6 The Cabinet Meeting and the Swearing of the Vice President***

The Chief Secretary told the Commission that on the morning of 7th April 2012, he called the Chief Justice and advised him that the ceremony to swear the Vice President as President was to take place at 2 pm in the afternoon. The Chief Justice however asked the Chief Secretary if he had spoken to Hon. Goodall Gondwe. He further advised him that he would not want to go for the swearing in ceremony because he understood that there was a dispute and he did not want to be seen to be taking sides. The Chief Secretary then queried the Chief Justice if there were any papers that had been filed in court to that effect.

According to the Chief Secretary, they had a lengthy discussion on the matter but the Chief Justice maintained to the Chief Secretary that there was a dispute. It was in the evidence of the Attorney General that while at the house of the Vice President it appeared that communication was sent to the Chief Justice. However, the Chief Justice is said to have answered that the Judiciary did not want to be compromised in the matter in view of the dispute he was aware of.

The Chief Secretary then consulted with the Attorney General and the two suggested to the Vice President to call for a Cabinet meeting. The purpose of the meeting was to discuss arrangements for the funeral of the President and the swearing in of the Vice President as President. The Cabinet meeting was held from 2 pm and was presided over by the Vice President. All members attended the Cabinet meeting except Hon. George Chaponda, who was out of the country, Hon. Reene Kachere, who was reported to be unwell, and Hon. Peter Mutharika in view of the announced death of the President, his elder brother.

At the Cabinet meeting all members of the Cabinet were given a chance to speak. They each and individually pledged their support to the Vice President. They rescinded their earlier decision to contest her ascendancy to the presidency. They all agreed that the Vice President should be sworn in as President on that day. During the Cabinet meeting, a funeral committee was appointed by the Vice President. She appointed Hon. Henry Mussa, Minister of Local Government and Rural Development, to be chairperson of the Committee.

It is in evidence that after the Cabinet meeting the Chief Secretary asked the Attorney General to inform the Chief Justice about the resolutions of the Cabinet meeting on the

swearing in of the Vice President. This was in view of the earlier impediment in the view of the Chief Justice relating to a potential dispute in court. The Attorney General called the Chief Justice and advised him of the Cabinet resolutions.

It was in evidence that earlier in the day, after the press conference by the Vice President, the Attorney General called the Acting Registrar, His Honour Mr. Michael Tembo, and asked him to arrange to bring the Presidential Oath Book which is kept at the Supreme Court in Blantyre. The Acting Registrar was surprised in that usually they do get written notification from the Office of the President and Cabinet on such issues. He nevertheless proceeded and got the Oath Book and the Holy Bible and started off for Lilongwe in the company of the Registrar, Her Honour Mrs. Dorothy NyaKaunda Kamanga. On the way His Honour Tembo received a call from the Chief Justice, His Lordship Lovemore Munlo, SC, asking him to go to his official residence in Blantyre and get his ceremonial dress. The Chief Justice did not at that point have his ceremonial dress with him in Lilongwe because, as earlier indicated, he had just come back from his cancelled trip to Tanzania. The Registrar told the Chief Justice that they had already started off for Lilongwe. That was when arrangements were then made for the Chief Justice to use the judicial ceremonial dress of the Attorney General, Justice Maxon Mbendera, he had as judge, which is what happened.

It was the Chief Justice's evidence that on the day he did not speak with the Chief Secretary at all on the issue of swearing in of the Vice President, let alone having a conversation with him on the issue of the court dispute. He strongly stated to the Commission that the allegations that he had resisted the swearing in of the Vice President were all but lies.

The Chief Justice told the Commission that he only spoke to the Attorney General and advised him that as Chief Justice he had a duty to protect the impartiality of the Judiciary. The Attorney General then informed him that it had been decided to swear the Vice President into the office of President of the Republic of Malawi.

The swearing ceremony took place from 4 pm on 7th April 2012 at Parliament Building. It was presided over by the Chief Justice. The Chief Justice told the Commission that he then congratulated the Vice President after swearing her in as President.



## CHAPTER 4

### EVIDENCE TAKEN REGARDING THE ALLEGED LOOTING AND MISSING GOVERNMENT PROPERTY AT THE STATE HOUSE

The Terms of Reference of the Inquiry mandated the Commission to look at various issues that were connected to the death of the former President as well as issues connected with the transition of State power following his death. The Commission noted among other things that during the period there was a lot of public speculation, some of it reported in newspapers, regarding the issue of looting and unauthorized removal of Government property at State House. The Commission therefore decided to inquire about this state of affairs.

The Guard Commander, Mr. Duncan Mwapasa, testified that when the President was flown to South Africa for medical attention he, as usual, issued instructions to State House police and security that they should secure and guard the State House premises, especially the President's private residence, since both the President and First Lady were not around. He told the Commission that he made sure that security at the State House premises was maintained. He further informed the Commission that as far as he was aware nothing belonging to the Government left the premises by way of looting or theft. He strongly denied that there was looting at State House and submitted to the Commission that he had also just read about the issue in the papers.

The Deputy Guard Commander, Mr. Jimmy Forster Gama, told the Commission that there was a lot of private property belonging to the late President that was kept at State House. He specifically mentioned that there was property belonging to Bineth Trust, the President's Silver Grey Foundation and the Safe Motherhood Initiative ran by the First Lady, Madam Callista Mutharika. He further submitted that there were also a lot of gifts that the President and Madam Callista Mutharika had received during their wedding in April 2010. These were stacked in the storeroom that had been specially created within the administration section of the State House.

Mr. Gama told the Commission that during that period he was assigned as the in charge of security at State House. He told the Commission that in that capacity he made sure that what was taken out of State House was not Government property. He also told the Commission that in the warehouses and storerooms indicated above, there were personal effects, gifts, computers and other items which the late President and Madam Callista Mutharika personally owned. He further stated that the President had his personal gym equipment that he bought using his own funds. Apart from these items and the personal effects of the late President, the rest was Government property.

Mr. Gama told the Commission that at State House there used to be the normal Police Security and the Personal Security that the President had. He recalled that at some point, the Director General of State Residences, Mr. Edward Sawerengera, authorized the President's personal security aides to go and remove some personal belongings of the President which were in the residential quarters of the State House. He indicated that most of these items were packed in suitcases as they were being removed. He told the Commission that he did not know the contents of the suitcases but

assumed that it was mainly clothing and other items belonging to the President and the First Lady. He explained that there were allegations that some of the items in the suitcases were money which belonged to the President. He explained that all these items were being taken from the house by the President's close security aides some of whom were his relations. He explained that this was beyond the Police. He however stressed to the Commission that the property that was being removed was personal property and not Government property.

In his evidence to the Commission on this matter, the Director of State Residences, Mr. Edward Sawerengera, submitted that it is not true that there was looting at State House. He explained that on 6th April 2012 he was asked by the President's relation, who was also his security aide, Mr. Chimwemwe Kajawo, if he could go to the residential section of the State House to take some clothing for the President. Mr. Sawerengera indicated that there was no way that one could simply just walk into the President's private residence and take out property without his (Mr. Sawerengera's) approval or the approval of the Guard Commander. He further stated that the procedure also involved going through the housekeeper, Mrs. Elizabeth Mvinda, before one takes away anything from the house. He submitted to the Commission that the media reports were sensational and did not present the true events on this issue.

Mr. Chimwemwe Kajawo told the Commission that he was the Personal Assistant to the President responsible for special duties. He stated that he was a civil servant and was responsible for the President's security and personal issues. He explained that he was related to the President in that he was the President's nephew, on the President's side. He explained that in his duties, he reported to the Guard Commander, Mr. Mwapasa.

He told the Commission his recount of the President's illness and evacuation to South Africa. He told the Commission that he heard about the President's death through the Director General of State Residences, Mr. Sawerengera, in the afternoon of 6th April, 2012.

On the issue of removing items from the State House, Mr. Kajawo explained that he went to the residential suite twice. On the first occasion, he was advised that the First Lady had asked for some items for the President in South Africa. He therefore accompanied these people to go and collect the things from the President's private suite within State House. He accompanied the team that had been sent to collect the personal items because for one to go to the residence one needed to pass through the VVIP lounge. For one to pass through the VVIP lounge, one had to be accompanied by an authorized person. Among all the staff, he was the only one authorized to go through the VVIP lounge. He explained that the Deputy Director General of State Residences, Dr. Charles Thupi, was one of the people present on this occasion. He recalled that the housekeeper was also there. He explained that on this occasion what were collected clothing and other personal items for the President and the First Lady. It was only one suitcase that was collected. He explained that at the time, it was not yet known that the President had died.

Mr. Kajawo stated that on the second occasion, he had received a phone call from the First Lady in South Africa advising him that as he was going to South Africa, he needed to bring some other items, in his own words 'special things'. So he proceeded to the residence in the company of the Deputy Director General, Dr. Charles Thupi, the housekeeper, Mrs. Elizabeth Mvinda, and two other persons he could not remember. He explained that from the residence he simply collected one suitcase for the First Lady. He further explained that on this second occasion, he was aware that the President had died through information from Mr. Sawerengera. This was on 7th April 2012.

When the Commission asked Mr. Kajawo about the alleged suitcases and boxes coming out of State House, he explained that after the information that the President had died, there was panic among the people at State House. He explained that there were rumours that the incoming President was going to move straightaway into State House. People panicked and started moving the President's and the First Lady's personal belongings and property from the State House. He explained that the housekeepers, and other people he could not remember, were the ones moving the belongings. He explained that he did not know the exact contents of the boxes and suitcases that were being moved by the other people neither their destination.

Mr. Kajawo stressed to the Commission that he only went to the residence twice to collect the two suitcases, one on each occasion, once before he heard of the President's death and once after he had heard of the death. He stated that on the first occasion he personally packed the suitcase because he had the privilege of going into the President's bedroom, and that he knew exactly what clothing to pick because he knew the President's clothing.

It was the evidence of Mr. Ronneck Nkaliyalinga, the Presidential waiter, that he normally had a chance to chat with the President. He explained that on the day that the President fell ill and flown to South Africa, the First Lady locked the rooms and took the keys. He recalled that after two days, some people came to the house and said there was need to take some clothes to South Africa. He told the Commission that the people who came to collect the clothes were the President's Personal Assistant for security, Mr. Kajawo, the housekeeper, Mrs. Mvinda, and a security officer he could not remember his name. He explained that because the room had been locked and the keys taken, a carpenter was called to force the door open. He told the Commission that the carpenter indeed came and opened the doors. He explained that neither he nor the carpenter entered the room. The people who were assigned packed the personal belongings of the President and the First Lady.

Mr. Nkaliyalinga explained that he was one of the people who were removing the personal items. He told the Commission that there were security personnel around and mentioned that Mr. Chimwemwe Kajawo was one of the security detail around. He also noted that there was a Mrs. Mulewa and another security person from the Police. He explained that there was a carpenter, whose name he had forgotten, who came and forced open the doors to the rooms.

He indicated that on this day there were two or three groups of people removing the items from the house. He told the Commission that at the residence, there was a room

that they never knew what was inside. He explained that on this day, Mr. Kajawo, Mr. Emmanuel Phiri, who was also a waiter and the President's nephew, and Mr. Gideon, the President's Personal Assistant responsible for security, and a security officer went and forced this room open. When the room was forced open, the security officer retreated and the three people went into the room. Mr. Nkaliyalinga explained that he suspected that there must have been money in the room.

It was the evidence of Mr. Sonary Kamphango, a carpenter at State House, that he was called on 7th April 2012 to the living quarters of the State House to force open some doors. He recalled that he was taken to the President's side of the house where he forced open three doors. He was in the company of three people whose names he did not know but he knew that they were part of the security detail of the President. He stated that some of them were the President's relatives. He explained that the rooms that were forced open were in the President's bedroom. He explained that he was not able to see what these people were removing from the rooms. He explained that he had to use his carpentry tools to force open the doors by way of breaking the locks. He told the Commission that he did not break the doors. He explained that he also similarly opened one door in the First Lady's wing. He told the Commission these locks were replaced by new ones prior to the occupation of the living quarters by the new President.

He further explained that as some were packing the items on the President's side of the suite, others were doing the same in the First Lady's section. He explained that there were security personnel throughout the time that they were packing the items. He explained that this happened on Saturday, 7th April 2012.

The Deputy Director of State Residences, Dr. Charles Thupi, told the Commission that on 7th April 2012, in the morning, the Guard Commander, Mr. Duncan Mwapasa, and the Director General of State Residences, Mr. Edward Sawerengera, told him that it appeared that the new President was going to be sworn into office on that day. They further told him that the late President's family had told them that it appeared that once the new President is sworn into office, she was coming straight to State House. The late President's family therefore requested that they should remove the personal property of the late President.

Dr. Thupi told the Commission that when he went up to the President's residence, he found that some security personnel were already there and were about to start removing the items. He asked them if the First lady was aware of the arrangement. As they were discussing the matter, the First Lady called Dr. Thupi and told him that she had received a call informing her that security personnel had been advised to remove the President's and her personal effects. She advised Dr. Thupi that, among the items they were to remove, was a wrist watch, which she described as a very expensive watch, that the President had bought her as a wedding gift. She asked Dr. Thupi to ensure that this wrist watch is well secured. Dr. Thupi told the Commission that since he did not know which particular wrist watch it was, he made sure that all her wrist watches were put in one bag which would be well secured. Dr. Thupi clearly indicated that all these were purely personal effects.

The Commission then wanted to find out the exact role that Dr. Thupi played in the removal of the property of the late President and the former First Lady from the private residence. He explained that his role was purely administrative. He told the Commission that he simply wanted to make sure that the property that left the residence was not Government property. He indicated further that at the time that these items were being removed from the residence, there was the late President's relation, whom he had forgotten his name, and there was also Mr. Chimwemwe Kajawo, Mr. Dabble Dissi and the housekeeper, Mrs. Elizabeth Mvinda. Dr. Thupi told the Commission that he was advised that all the property was being taken to the residence of the President's younger brother, Hon. Peter Mutharika in Area 43.

The Commission further asked Dr. Thupi to explain the rumours that were widely circulating to the effect that there were bags of money which were taken away from State House. He explained that according to him, what was taken from the residence was purely personal property such as clothes, jewellery and watches and he could see that the things were indeed very expensive or of very high value. He explained that he however remembered that at some point, Mr. Chimwemwe Kajawo told him that there was a money-safe in the residence and that he had sought approval of the First Lady to remove the safe. He explained that he understood that the safe and other items were taken by the said Mr. Kajawo. He further explained that most of the things that were taken during that period were wedding gifts to the President and the First Lady and items that belonged to Bineth Trust. These were in the warehouse within State House. Dr. Thupi further explained that Mr. Malemia, the State House internal auditor, was present as these things were being taken out and emphasized that no Government property was taken from house.

Mrs. Elizabeth Mvinda, the State House residence housekeeper told the Commission that she was the one in charge of all the services of the residential section of State House. She explained that she was responsible as housekeeper for that section and nobody would get into the section without her permission. She stressed that nobody, whether he or she had a State House badge, could just walk into that section.

Mrs. Mvinda confirmed to the Commission that they did receive a call from the First Lady while she was in South Africa requesting for clothes. She told the Commission that they got access to the room to get the clothes and packed them in a suitcase. She explained that they used a key to open the door to the rooms and there was no need for a carpenter. She further stated that they only packed the things in one suitcase and that the watch that had been referred to by the First Lady was the one that the First Lady received from the President as a wedding gift.

It was the evidence of Mr. Robert Malemia, State House internal auditor, that his duty at State House was, among other things, to take a verification of all the assets in all State Residences. He explained that on Saturday, 7th April 2012, after the announcement was made that there was going to be the swearing in of the new President, there was panic at the State House especially on the part of members of staff who were related to the late President. He told the Commission that on that day, he was in his office and did not know that the President's personal property was being removed from State House. He only found out when he went out of his office. He found people busy

removing property from the premises mainly belonging to Bineth Trust, Ethel Mutharika Foundation and for the Safe Motherhood Initiative and items which the President and the First Lady had received as their wedding gifts. He explained that when he saw this happening, he checked with the Deputy Director General of State Residences, Dr. Charles Thupi. He explained that Dr. Thupi advised him that the Director General, Mr. Sawerengera, had instructed him that all items belonging to the late President be removed from State House premises because soon after the swearing ceremony the new President was coming straight to State House.

Mr. Malemia explained to the Commission that he tried to reason with the late President's relatives advising them that it was not possible that the new President was going to come straight to State House after being sworn in because there was going to be a period of national mourning of the late President. He tried to stop them from removing the items at that point but he did not succeed. He explained to the Commission that having failed to stop the relatives of the President from removing the personal items he started taking record of all the items that were leaving the State House.

Mr. Malemia told the Commission that there was a situation where the President's relatives wanted to remove some television screens from State House thinking that they were the late President's personal property but he stopped them and advised them that those screens were Government property. Having put the recording process in place, he allowed the family members to take the late President's and former First Lady's property from State House. Mr. Malemia explained that some of the property was taken to the late President's house in Area 3, some to Bunda and some to Hon. Peter Mutharika's residence in Area 43. Some clothes were taken to the late President's Ndata Farm House in Thyolo.

Mr. Malemia confirmed that he took record of most of the property that had left State House during that time. He explained that he did not manage to take record of the property that was in the room in which the gifts that the President received at his wedding were kept. He further stated that it was difficult for him to take record of the property that was taken from the residential section of State House because his identity card was only applicable in the administration department and did not go beyond that. He explained however that according to his records, no Government property or item, whether in the residential section or in the administration section, went missing during the period. He indicated that his inventory was in order and that no Government property went missing at State House. He explained that the security at State House would not allow anything like looting to occur there.

Mr. Malemia explained that most of the people who were spreading the stories about looting had heard from a third or fourth person and did not have first hand facts. He closed his testimony by strongly stating that no Government property was looted at State House during the period.

The Commission also heard testimony from the President's Personal Secretary, Mrs. Flora Muhara. She told the Commission that she arranged for the removal from the President's office of a number of personal effects which included documents such as bank statements and motor vehicle registration certificates.

The Commission was told by the Guard Commander, Mr. Duncan Mwapasa, that when speculations about the looting of Government property surfaced, the Director General of State Residences, Mr. Edward Sawerengera, Hon. Peter Mutharika and Mr. Mwapasa himself met to discuss the matter. These discussions were held with due consultation with the First Lady. Mr. Mwapasa told the Commission that the meeting resolved that all personal property in the State House were supposed to be removed with the permission of either the First Lady or the President's brother, Hon. Peter Mutharika.

In response to a question from the Commission, the Guard Commander told the Commission that the late President and his brother, Hon. Peter Mutharika were very close. He explained that they were so close that he, the Guard Commander, recalled that the President's Personal Secretary had previously mentioned that the President did instruct her to give the President's Will to Hon. Peter Mutharika if anything happened to the President. Mr. Mwapasa confirmed that the President did have a Will which was kept in the custody of the President's Personal Secretary, Mrs. Flora Muhara, and was to be handed to the President's brother, Hon. Peter Mutharika, in the event of the President's death.

## CHAPTER 5

### EVIDENCE TAKEN REGARDING UNUSUAL OCCURENCES AND OTHER ISSUES PRIOR TO THE DEATH OF THE PRESIDENT

The Commission noted that prior to the death of the President there had been a number of occurrences and issues that may have exerted pressure on the late President. The Commission sought to examine these occurrences and issues and consider whether they may have had a bearing on the death of the President given that the President died sudden death.

The Commission noted that there had been a lot of speculation regarding the prophecy made by some religious person of the Christian faith from Nigeria called Temitope Balogun Joshua, commonly known as T.B. Joshua, regarding the death of a State President in Africa. This speculation was heightened by T.B. Joshua himself when, during one of his prayer sessions, he flashed a letter which he had received from President Mutharika. In flashing the letter T.B. Joshua did not however display the contents.

It was also well known that some few months prior to his death the President travelled to Nigeria on unannounced visit. While the vist was kept under wraps in Malawi it, however, became clear that the President had indeed travelled to Nigeria. This visit was published on the State House website of the Nigerian Government showing the picture of President Goodluck Jonathan of Nigeria welcoming President Bingu wa Mutharika. Due to the manner in which the President left the country and refutations by the then Minister of Information, Hon. Patricia Kaliati, regarding the absence of the President from Malawi, there were widespread speculations that the President had undertaken the trip to Nigeria to meet T.B. Joshua in connection with the prophecy. The Commission sought to inquire about the interaction between the President and T.B. Joshua.

The Commission noted further that during this period, there was heightened activity by civil society groups working together with the umbrella religious pressure group on governance known as the Public Affairs Committee (PAC) in putting pressure on the President and the Government to change course on governance issues.

Three weeks before the President was taken ill on 5th April, PAC organized what was termed as an all inclusive conference of its membership, civil society organizations, the academia, political parties and other pressure groups on governance. The conference was held for two days from 14th to 15th March 2012 at the Conference Hall of the Limbe Cathedral of the Catholic Church in Blantyre. At the end of the conference participants drew up a petition of the issues to be presented to the President. It was understood that the petition made demands of what the President and the Government were to address and gave an ultimatum that either the President was to resign within 60 days or he was to hold a referendum on the popularity of his administration within 90 days of the presentation of the petition. PAC further warned Government that failure to comply with the ultimatum was going to result in PAC organizing nationwide demonstrations against the President's administration.



On the other hand, the churches and religious communities and groupings were also giving unprecedented pressure to the President through the issuance of pastoral letters critical of the Government on governance issues.

During the period, it was a well known fact that the Malawi Government relations with some of Malawi's neighbouring countries were at an all time low. Further, the Government's relations with some of key bilateral donors to Malawi had soured. Relations with major multilateral financial institutions, such as the World Bank and the International Monetary Fund (IMF), were not good either. The World Bank and the IMF had withdrawn their programmes for the country. These developments severely affected Government operations.

Diplomatic relations with Malawi's former colonial power, the United Kingdom, were severely strained when Malawi deported the British High Commissioner to Malawi, for a leaked diplomatic memo to his Foreign Ministry critical of the President on governance issues, and the British Government responded by expelling Malawi's High Commissioner to the United Kingdom.

During the period the country was also experiencing unprecedented economic crises. There was acute shortage of foreign exchange in the country which severely affected operations of businesses. This impacted very heavily on the importation of goods and services.

During the period there were severe shortages of fuel supply, sometimes for extended periods, resulting in long queues of motor vehicles at filling stations throughout the country. The prices of commodities were soaring and it was clear that Malawians were facing a lot of economic hardships.

The Commission decided not to ignore these occurrences and issues and heard evidence from those who were closely serving the President to consider if these occurrences and issues could have put pressure on the President.

#### **5.1 PROPHECY BY T.B JOSHUA AND INTERACTION BETWEEN THE PRESIDENT AND T.B. JOSHUA**

The Commission took cognizance of the fact that there was a prophecy from T.B. Joshua, prophesying the death of an African President. This prophecy was aired on T.B. Joshua's Emmanuel TV on 5th February 2012 and repeated on 1st April 2012, with an indication that the concerned President was not from the West Africa region, and thus directing the speculation to other regions of Africa including Southern Africa. This raised speculation about which President in our region was going to die. In Malawi there were media reports that following this prophecy Hon. Yunus Mussa, MP, and also Government Minister and a senior member of the ruling party, DPP, conducted a ritual sacrifice by slaughtering goats to remove the spell from the Malawi President.

The Guard Commander, Mr. Duncan Mwapasa, told the Commission that the trip that the President made to Nigeria had nothing to do with T.B. Joshua. He explained that the trip was to do with the issue of fuel supply. He confirmed to the Commission that some time in 2011, the President received a book authored by T.B. Joshua. He told the

Commission that just as with any mail coming to the President in form of a letter for example or in any other form, State House security is always concerned about such kind of items because they can contain harmful substances.

The Commission heard in evidence that the President did receive a book authored by T.B. Joshua. The said book was one of three books that one Ms. Patricia Lungu, who is said to be a representative in Malawi of T.B. Joshua's Synagogue, Church of All Nations, got from T.B. Joshua during one of her outings to T.B. Joshua's place in Nigeria. Ms. Lungu told the Commission that during her visits to Nigeria, she usually gets books and other things that she gives away to people in Malawi. During one of her visits, T.B. Joshua gave her three books described as anointed which T.B. Joshua advised her to give to prominent people in society here in Malawi. Actually these were three copies of the same book.

Ms. Lungu told the Commission that sometime, after she had returned from Nigeria and brought the three books, she was invited to go and say a prayer on the commemoration of the World Nurses Day activities that were taking place at Masintha Ground in Lilongwe on 21st May 2011. While at that event, she met the Principal Secretary for Health, Dr. Charles Mwansambo, who was the guest of honour at the function. She took the opportunity to hand him two of the three books, one of which she gave to him. She then asked Dr. Mwansambo, being a senior Government official, to give the other book to the President. She kept the third book. Both books that were given to Dr. Mwansambo were not wrapped.

Dr. Mwansambo acknowledged to the Commission having met Ms. Lungu at the commemoration of the World Nurses Day event in Lilongwe. He told the Commission that indeed he got two books from Ms. Lungu titled "*Roadmap - Reaching Out To A Troubled World*". One book was for himself and the other book he was requested by Ms. Lungu to give to the President. He told the Commission that after the function, he passed on the book to Rev. Dr. Billy Gama, the President's Advisor on Religious Affairs, with a request to pass it to the President<sup>35</sup>.

Rev. Gama confirmed to the Commission that he indeed received the book as a gift for the President from T.B. Joshua through Dr. Mwansambo around May/June 2011. He confirmed having passed on the book to the President<sup>36</sup>.

Rev. Gama told the Commission that during the mourning period for the late President, he received a call from a reporter of *The Daily Times*, Mr. Dickson Kashoti, asking about T.B. Joshua and his prophecies. The question from Mr. Kashoti was on the letter allegedly written by the late President to T.B. Joshua acknowledging that the President knew that he was the African Head of State whom T.B. Joshua had predicted was going to die. This letter was shown on T.B. Joshua's Emmanuel Television during one of his sermons. The letter was shown by T.B. Joshua himself. He did so by displaying it to the congregation.

Rev. Gama explained to the Commission that he advised Mr. Kashoti that the only letter that the late President wrote to T.B. Joshua was the one that Rev. Gama himself

<sup>35</sup>. A picture of a similar Book is attached as Annex 31.

<sup>36</sup>. Rev. Gama's memo to the President on T.B. Joshua's book, dated 26th May 2011 is attached as Annex 32

drafted and which was signed by the President acknowledging receipt of the book. Rev. Gama told the Commission that he advised Mr. Kashoti that he was not aware of any other letter that the President may have sent to T.B. Joshua. Rev. Gama told the Commission that he recalled that the contents of the letter that he had drafted and which the President signed did not refer to the prophecy by T.B. Joshua. He produced a copy of the letter to the Commission which read as follows:

*“24th February 2012*

*Prophet T. B. Joshua,  
The Synagogue, Church of All Nations,  
1, Segun Irefin Street  
Ikotun Egbe  
LAGOS  
Nigeria*

*Dear Prophet Joshua,*

*I write this letter to sincerely thank you for the special gift of an anointed book that you sent to me. This gesture is highly appreciated.*

*Man of God, you are no doubt aware of the numerous challenges that the world is currently facing, but as a Christian, I do believe that everything is possible with God.*

*My request is that as you continue to pray for various countries and people, please remember the Malawi nation in your prayers.*

*May God Bless you and your ministry.*

*Sincerely,*

*Professor Bingu Wa Mutharika,  
**PRESIDENT OF THE REPUBLIC OF MALAWI”.***

Rev. Billy Gama informed the Commission that the said letter was dated 24th February 2012<sup>37</sup>. Rev. Billy Gama told the Commission that the President’s Secretary, Mrs. Flora Muhara, confirmed to him that the letter was indeed sent to T.B. Joshua with the same contents as outlined. He noted that the letter that T.B. Joshua was showing on television was also dated 24th February 2012. However on television, T.B. Joshua just showed the letterhead of State House and the President’s signature but did not show the contents. Rev. Gama told the Commission that as far as he was concerned, the only letter that was sent to T.B. Joshua from the President was the one dated 24th February 2012 and was merely acknowledging the President’s receipt of the books and nothing else.

Rev. Gama further told the Commission that apart from this book, he also received three books from General Mark Chiziko, retired, Presidential Advisor on Security, which were also books by T.B. Joshua. This position was also confirmed in the testimony of General Chiziko who indicated that he had received the said books from Mrs. Kadzeya,

<sup>37</sup>. A copy of President Bingu wa Mutharika’s letter to T.B. Joshua dated 24th February 2012 is attached as Annex 33.

wife of his fellow retired Army officer, Lt. General Kadzeya, who had collected them during a visit to T.B. Joshua in Nigeria. Rev. Gama told the Commission that he sent the books to the ADC to pass them on to the President.

The President's Personal Secretary, Mrs. Flora Muhara, told the Commission that the President indeed wrote T.B. Joshua acknowledging receipt of the first book that came through Rev. Billy Gama. She emphasized that the letter was simply an acknowledgement of receipt of the book and nothing else.

On the President's reaction to the prophecy, Mrs. Muhara submitted to the Commission that as far as she was aware, at no point did the President express any concern or reaction about T.B. Joshua's prophecy. She stated that ordinarily the President would have mentioned something about the prophecy but to her it seemed the prophecy never bothered the President at all.

Similarly, the ADC, Major Cyprian Kondowe, in his testimony told the Commission that the President was utterly unconcerned by the prophecy although it was obvious that he was aware of it.

Mrs. Muhara told the Commission that the letter that the President wrote was passed on to Ms. Patricia Lungu. She explained that Ms. Lungu was known to be T.B. Joshua's representative in Malawi who coordinated the activities and facilitated travels of people who wanted to go to Nigeria.

About the unannounced trip to Nigeria, Mrs. Muhara told the Commission that she was not aware of what the President went to do there on that trip.

## **5.2 THE POLITICAL AND ECONOMIC SITUATION IN THE COUNTRY**

The Commission took cognizance of the prevailing economic and political situation close to the time of the death of the President.

The Commission received evidence that the situation may have appeared from the outside not to have bothered the President. However, testimony from some witnesses indicated that the situation did concern the President, if not openly, at least internally.

Dr. Hetherwick Ntaba told the Commission that a person in the seat of the President has a lot of pressures and can develop conditions that can break him down. They may be tough on the outside but very vulnerable inside. What were needed were constant medical checks on them to make sure that their health conditions remained fine and stable. Dr. Ntaba explained, just as did most witnesses who testified before the Commission, that the late President was a strong man. He explained that the President was under very heavy pressure and likened the situation to what happened to the late Hon. Rodwell Munyenyeembe who in 2005 collapsed from heart attack while presiding over debates in Parliament and calling for order as the debates turned disorderly. He was admitted at Kamuzu Central Hospital and later flown to South Africa where he died. Dr. Ntaba further told the Commission that Presidents are also human and the hostilities to which they are subjected may have consequences to their lives. He however told the Commission that he himself as a medical doctor and a close aide to the President

never had cause to think that the President would succumb to a heart attack from what he observed of him.

Rev. Billy Gama told the Commission that he recalled that on the fateful day, 5th April 2012, he phoned the President in the morning. The President responded promptly to the telephone call. In the ensuing discussion, Rev. Gama reminded the President that the following day was Good Friday and asked the President where he was planning to go and attend church service. Rev. Gama recalled that the President's response was that he was not going anywhere. Rev. Gama recalled that the President said "*No sindipitako. A church angonditukwana.*" [No, I will not go. Churches keep castigating me.]

Rev. Gama then advised the President that it was the more reason he should go and attend prayers and prove people wrong. He advised the President that sometimes it was good to do the positive when people expect the negative from an individual and recommended that the President do go and attend prayers at one of the Nkhoma Synod CCAP churches. Rev. Gama proposed a church of that Synod because it was just a week or two before when the Nkhoma Synod issued a pastoral statement pointing out some of the challenges that the country was facing and which was also critical of the President on governance. The President maintained that he was not going anywhere.

Rev. Gama then advised the President that he had received a call from Bishop Bvumbwe of the Lutheran Church informing him that the Catholic Church, the Anglican Church and the Lutheran Church had planned to have *Njira ya Mtanda* (the Way of the Cross) jointly the following day, Good Friday, in Area 23, Lilongwe. They wanted to invite the President but they thought the road was not in good condition. The President responded that he was not going anywhere. Rev. Gama then gave up and wished the President happy Easter and the conversation ended there.

It is also worth noting that the Commission was informed that the President had established a Presidential Committee within Government headed by Hon. Goodall Gondwe, which was mandated to enter into dialogue with the Public Affairs Committee (PAC) following the ultimatum that PAC had given to the President and Government.

The Commission received testimony from Mr. Robert Mbirizi Phiri, Executive Director of PAC, that they received a lot pressure from Government on various issues. He recalled that prior to the holding of PAC's so called all inclusive consultative conference in Blantyre, he held two meetings with Hon. Goodall Gondwe and Dr. Hetherwick Ntaba. The other meeting was also attended by Hon. Peter Mutharika. At both meetings, PAC was asked not to proceed with the conference in Blantyre because Government understood that the agenda of the conference was about regime change. He stated that the Government representatives seemed under so much pressure from the President to stop the PAC conference.

Mr. Phiri told the Commission that apart from the Committee, he had also been approached by Rev. Billy Gama asking him to have the PAC conference postponed. He also told the Commission that the Police also asked PAC not to proceed with the conference. The conference was initially planned to be held at Mount Soche Hotel in

Blantyre. But it proceeded with change of venue to the conference hall of the Limbe Cathedral of the Catholic Church after the booking at Mount Soche Hotel was cancelled at the behest of Government functionaries.

Mr. Phiri informed the Commission that the conference passed several resolutions and among the key resolutions was that the President must resign within 60 days or call for a referendum on the popularity of his Government within 90 days after the expiry of the 60 days.

Mr. Phiri told the Commission that after the PAC conference in Blantyre, PAC had three other meetings with the Government which discussed the issue of resignation of the President. Mr. Phiri clarified to the Commission that the sequence of events was that the President should resign within 60 days failing which he would be required to call for a referendum within 90 days or risk nationwide mass demonstrations.

Mr. Robert Phiri explained that the most remarkable day was Tuesday, 3rd April 2012, two days before the President was taken ill. He explained that Dr. Hetherwick Ntaba drove to his house and advised him that there was a meeting at Hon. Goodall Gondwe's house. Mr. Phiri proceeded to Hon. Goodall Gondwe's house and the meeting took place from around 10 pm. Mr. Phiri told the Commission that the main agenda for the meeting was to discuss the 60 days ultimatum to the President. He was advised that the President was very concerned with the call for his resignation and the meeting wanted to know if that ultimatum was still standing. Hon. Gondwe and Dr. Ntaba advised Mr. Phiri that the team was required to report to the President the same night.

Mr. Phiri told the Commission that he confirmed to the team that his instruction from PAC Executive Board was that the call for the resignation of the President was still standing. He informed the Commission that the meeting decided that there should be another meeting where 6 people from PAC and 6 people from the Government side should meet to discuss the matter further. The meeting was scheduled to take place on Friday, 6th April 2012. Mr. Phiri explained that on Thursday, 5th April, he heard that the President had collapsed and had been rushed to hospital.

## CHAPTER 6

### FINDINGS

This Chapter presents the findings of the Commission based on the evidence that the Commission received. Some of the evidence has been reviewed in the preceding Chapters and the Commission has simply made its findings in this Chapter. Some of the evidence has again been reviewed in this Chapter for the sake of putting the findings in context.

The Commission has presented its findings in the order the evidence was received which followed the order of events that occurred during the period. The findings have been divided into the following areas:

- (a) Findings in respect of the date and place of death;
- (b) Findings in respect of the cause of death;
- (c) Findings in respect of the medical attention available to the President at the time immediately preceding his death;
- (d) Findings in respect of the handling of the body of the President after his death;
- (e) Other findings incidental to and connected with the death of the President;
- (f) Findings in respect of political transition; and
- (g) Findings in respect of unusual occurrences and issues.

#### 6.1 DATE AND PLACE OF DEATH OF THE LATE PRESIDENT

From the evidence that the Commission received throughout the Inquiry it is clear to the Commission that the late President of the Republic of Malawi, Ngwazi Prof. Bingu wa Mutharika, was fine at the beginning of the day on Thursday, 5th April 2012. He had his breakfast with the First Lady as usual. While in the office, he attended to some few telephone calls and started meeting some of the people who had appointments with him that morning.

It is clear to the Commission that the late President collapsed in the audience room while having audience with Hon. Mrs. Agnes Penemulungu, Member of Parliament for Lilongwe City South East. From the evidence received the Commission established that the late President collapsed at around 11:10 in the morning.

The Commission further established that after collapsing in the audience room, the President was carried to his office by the Aide de Camp (ADC), Major Cyprian Kondowe, and a Security Officer from the National Intelligence Service (NIS), Mr. Benfrey Kamanga. At that point the President could neither speak nor respond to the ADC and was breathing with difficulties.

The Commission established that while in the President's office, Mr. Kondowe and Mr. Kamanga were joined by the Guard Commander, Mr. Duncan Mwapasa, and the President's physician, Dr. Dan Namarika.

It is also clear to the Commission that the President was carried from his office down the lift to an ambulance in which he was taken to hospital. It was clear from the evidence that at the time that the President was being carried downstairs and into the ambulance, he was still unconscious and was gasping for breath. This condition of the President remained the same as the ambulance was leaving State House.

From the evidence received, the Commission also established that at the time that the President arrived at the Kamuzu Central Hospital, his eyes were closed, he was motionless, could not respond to anything and that there appeared to be no sign of life in him.

It was also the Commission's finding that when the President was connected to the machines in the ICU, there was no response whatsoever and, again, he showed no sign of life.

The Commission established that the President was admitted into the ICU at 11:30 in the morning on the Thursday, 5th April 2012.

From the totality of the evidence received by the Commission on the aspect of date of death and place of death of the late President of the Republic of Malawi, Ngwazi Prof. Bingu Wa Mutharika, it is the Commission's findings that the President died on Thursday, 5th April, 2012, in the ambulance, a Toyota Land Cruiser registration number MG944AB, en route to Kamuzu Central Hospital.

It is further the Commission's finding that the President was brought in dead (BID) at Kamuzu Central Hospital at around 11.25 in the morning.

## **6.2 CAUSE OF DEATH**

It must be mentioned that at the time of winding up its business, the Commission had not been furnished with the postmortem report from the hospital that conducted the postmortem on the President in South Africa. The Commission made all efforts in a bid to get the report of the postmortem examination including toxicology. In these efforts, the Commission made several contacts with the Surgeon General in South Africa. The Commission also sought the assistance of the Ministry of Health in Malawi and also the assistance of the Malawi High Commission in South Africa. The Commission also sought the intervention of the Malawi Head of State at that level. In the end the Commission has been advised by the Malawi High Commission that the postmortem report has not yet been issued by the hospital in South Africa.

Further, in the testimony of the former Malawi High Commissioner to South Africa, Mrs. Agrina Mussa, she informed the Commission that the hospital authorities in South Africa enquired from her as to whom to release the postmortem report when it has been issued. Mrs. Mussa told the Commission that she then asked the former First Lady who told her that the report should be released to the family. Mrs. Mussa advised the hospital authorities accordingly.



The findings made in this Report on this aspect are therefore based on the evidence of witnesses who witnessed the postmortem examination in South Africa and participated in the meeting that took place among doctors after the postmortem examination to make a preliminary determination of the cause of death. These witnesses are Prof. George Liomba, a specialist pathologist, and Dr. Dan Namarika, the personal physician to the late President. The findings are also based on the Notice of Death that was issued by Professor G. Saayman, Chief Specialist of Forensic Pathology Service, Pretoria which records the cause of death. The Commission understood that Notice of Death is not the same as the postmortem report.

The Commission established that despite the fact that the President looked normal and acted normally, he was under very intense pressure in the period immediately before his death.

The Commission established that the events that were taking place in the country prior to his death such as the general political and economic situation, impending demonstrations and calls for him to resign exerted so much pressure on him. The Commission established that the President had a history of having suffered a heart attack in 2009, which was however described as minor. The Commission established from the submissions of two of the country's senior medical specialists, Prof. Jack Wirima and Prof. Johnstone Kumwenda, and from the testimony of Prof. Liomba that a person with such history is prone to suffer repeated irregular heart conditions.

On the issue of cause of death, the Commission has concluded from the evidence before it that the President died of **cardiac arrest** due to **cardiac arrhythmia** (irregular beating of the heart).

### **6.3 MEDICAL ATTENTION AVAILABLE TO THE LATE PRESIDENT IMMEDIATELY PRECEDING HIS DEATH**

The Commission examined the medical facilities that were available to the President generally and also looked at the help that the President got when he collapsed at State House. The Commission noted that under the Presidents (Salaries and Benefits) Act the only stated medical benefit for the President is to have a personal physician. The late President as stated in this Report had a personal physician in the name of Dr. Dan Namarika.

The Commission established that the facilities that were available at State House for the President were purely of first aid nature. This was in the form of the President's medical kit which was always in the possession of the President's personal physician. The Commission further noted that there was an examination bed in the office of the President's personal physician. At the time that the Commission visited the office at the beginning of the Inquiry in July 2012, there was no medical equipment in the office.

The Commission also established that there is a clinic at State House. This clinic mainly caters for the general staff at State House and does not have facilities intended for the medical care of the President.

The Commission therefore makes the following findings:

- (a) On the aspect of medical personnel at the service of the President, the Commission finds that the President had a personal physician as required by the Act in the name of Dr. Dan Namarika. He also had Mrs. Thenjiwe Dissi Mittawa who served as the President's nurse whose qualification, however, was not as nurse but as a Medical Assistant.
- (b) On the aspect of medical equipment available to the President, the Commission finds that the medical kit at the disposal of the personal physician was adequate but the Commission finds that it was inappropriate that the equipment was the personal property of the President and did not belong to the Government.
- (c) On the location of the office of the President's personal physician, the Commission finds that the office was located too far from the President's office for expediency in times of an emergency. The Commission noted that the office was located a floor below the office of the President and that this would hamper easy access by the doctor to the President and vice versa in times of an emergency.
- (d) As regards the help that the late President received at the time he collapsed, it is the finding of the Commission that the medical attention that he received was not adequate. The Commission found that there were several areas which at the time that the President collapsed the President's personal physician did not perform satisfactorily or as would be expected, as follows:
  - (i) The President's physician failed to immediately apply the required procedures such as intubation of the President to secure the airway when he proceeded to attend to the President as he did not have the required equipment on him.
  - (ii) The Commission established that because of the injury to one of his arms the President's physician was physically unable to perform some of the emergency medical procedures, such as CPR, that he would normally have performed. As earlier indicated in this Report, the President's physician had been previously involved in a motor vehicle accident in which he suffered injury to one of his arms and was undergoing physiotherapy on the arm at the time of the President's collapse. He was therefore not able to make use of his injured arm. He could only conduct the emergency procedures with both arms functioning.
  - (iii) While the President was laid in his office, the President's personal physician left the President unattended by any medical personnel and rushed downstairs all the way to his house to collect the medical kit. During this time there is no evidence that the non-medical staffs (all security men) who were attending to the President were performing any medical procedures to try and resuscitate the President.

- (iv) The two medical staff, that is, the personal physician and the personal nurse, failed to apply the intravenous line (IV Line) as they were proceeding in the ambulance to the hospital. While in their testimony they sought to establish that they were doing something on the way to the hospital, it is the Commission's finding that there was nothing effective that was being done in the ambulance en route to the hospital. With his one arm injured, the doctor, in particular, was handicapped.

In view of the above, it is the Commission's finding that the medical attention that was accorded to the President from the time of his collapse to his arrival at the hospital was not adequate. The Commission finds that this lapse of immediate medical attention was a critical flaw in managing the President's medical condition.

On the other hand, it is the Commission's finding that the medical staff at Kamuzu Central Hospital acted to the best of their ability in the attention they gave to the President when he was referred to the hospital. However, those efforts came too late to resuscitate or revive the President.

#### **6.4 HANDLING OF THE BODY OF THE PRESIDENT AFTER HIS DEATH**

The Commission established that the handling of the body of the late President from the time he was clinically pronounced dead at Kamuzu Central Hospital to the time that the body was flown to South Africa contributed to a condition of decomposition by the time it arrived at the mortuary in South Africa at around 5 am on 6th April 2012. This amounted to a period of about eighteen hours without the body of the President being preserved as a dead body.

The Commission finds that the handling of the body of President Bingu wa Mutharika, due to attempts to conceal his death, to have been most unbecoming for the honour and respect of a Head of State in death.

#### **6.5 OTHER FINDINGS INCIDENTAL TO AND CONNECTED WITH THE DEATH OF THE PRESIDENT**

##### ***6.5.1 Government Leadership in Managing the Affairs Relating to the Passing of the President***

The Commission established that in the immediate period of the President's illness and death, the leadership of the Government in managing the affairs of State relating to the condition and demise of the President fell to three individuals. These were Hon. Goodall Gondwe, MP, Hon. Prof. Peter Mutharika, MP, and the Chief Secretary Mr. Bright Msaka, SC. This was in accordance with the practical, but unconstitutional, situation which had evolved within the Executive at the time.

The Commission learnt that with the exclusion of the Vice President, Rt. Hon. Mrs. Joyce Banda, from executive functions by the system, the ranking of seniority in

Government put Hon. Peter Mutharika next after the President and then Hon. Gondwe, third. Thus, Mr. Msaka, as Chief Secretary, was working with this leadership of the Executive Branch of Government. They were all at the hospital at the time and were accorded the fitting respect of sitting in the office of the Hospital Director which then became their operational office.

### ***6.5.2 Information Regarding the Death of the Late President***

It is the Commission's finding that after attempts to resuscitate the President at the hospital failed, the hospital team of medical doctors, namely, Dr. Wesley Sangala, Dr. Carlos Valera, Dr. Noordeen Alide and Dr. Dan Namarika, officially informed the senior Government officials sitting in the Hospital Director's office that the President had died. These officials were Hon. Peter Mutharika, Hon. Goodall Gondwe and the Chief Secretary, Mr. Bright Msaka, SC.

The Commission established that the evidence tendered during the Inquiry overwhelmingly supported the fact that the three knew about the death of the President right at the hospital. However, in their own testimony to the Commission the three denied having been informed about the death at the hospital. From the totality of the evidence tendered during the Inquiry, the Commission finds that the three were informed of the death of the President by the team of the four doctors and therefore knew about the death from as early as 2.30 in the afternoon.

It is also the Commission's finding that Dr. Namarika personally communicated the death of the late President to the President's family right at the hospital. This communication was followed by viewing of the body of the late President by three of his family members, individually and in turn, namely, the First Lady, Madam Callista Mutharika, the President's daughter, Mrs. Duwa Mutharika - Mubaira, and the President's brother Hon. Peter Mutharika. The last to view the body in hospital was a Catholic Priest, Father Taylor, who did so with the permission of the First Lady and gave the last anointing prayer.

The Commission established that it was common knowledge among medical and support staff working in the ICU at that time that the President had died.

The Commission established that apart from the medical and support staff working in the ICU, the following people were among the first to officially know or be officially informed about the death of the late President right at the hospital at or around 2.30 in the afternoon:

- Hon. Peter Mutharika, MP, brother to the late President and Minister of Foreign Affairs.
- Hon. Goodall Gondwe, MP, Minister of Energy, Mines and Natural Resources.
- Mr. Bright Msaka, SC., Chief Secretary.
- Hon. Dr. Jean Kalirani, MP, Minister of Health.

- Madam Callista Mutharika, First Lady.
- Mrs. Duwa Mutharika-Mubaira, the late President's daughter.
- Dr. Hetherwick Ntaba, Presidential Spokesperson.
- General Henry Odillo, Commander of the Malawi Defence Force.
- Mr. Peter Mukhito, Inspector General of Police.
- Mr. Bintony Kutsaira, Director of National Intelligence Service.

The Commission also established that by the evening of Thursday, 5th April 2012, it was commonly known by most Cabinet Ministers and senior Government officials in the Office of the President and Cabinet, Ministry of Health and at State House that the President had died.

### 6.5.3 *Attempts to Conceal the Death of the Late President*

The Commission established that there were several attempts by those in authority to conceal the fact of death of the late President. Among the attempts, the Commission established the following:

- (i) The President's personal physician, Dr. Namarika, was instructed by the Chief Secretary, Mr. Bright Msaka, SC, to advise the air ambulance crew that the late President was being stabilized and that the air ambulance should still come to Malawi to evacuate him as a patient. Dr. Namarika passed on this message to the air ambulance crew with full knowledge that the President had died.
- (ii) The President's personal physician, Dr. Namarika, failed to formally confirm the death of the late President on the hospital file or on any record available within the hospital. The Commission was not satisfied as to why he did not confirm the death of the President here in Malawi bearing in mind that he was part of the team of doctors who conveyed the message of death of the President to the officials sitting in the Hospital Director's office, to the family members and the air ambulance medical personnel when they had arrived at the hospital to evacuate the President. The Commission finds that the President's personal physician, as the leading doctor attending to the President at the hospital, had sufficient time to certify the death of the President in Malawi.

The Commission also found that the hospital record of the President made available to the Commission lacked a number of particulars including the name of the patient. The Commission established that the hospital record fell short of the required standard of a normal hospital record.

- (iii) The Commission established that the President's personal physician opted not to disconnect all the medical equipment to the late President's body in order to give an impression that the President was still alive.

- (iv) The Government through the State House issued a press statement, aired on MBC on 5th April at 8 pm, announcing that the President had been taken ill and was being flown to South Africa for further medical attention. The Commission established that this press statement originated from the Office of the President and Cabinet and was sent to the State House Press Officer for release. The State House Press Officer, Mr. Albert Mungomo, informed the Commission that he released the press statement with only minor corrections. The Commission established that the Chief Secretary Mr. Bright Msaka, SC, was aware of the death of the late President yet his office caused the release of the false press statement indicating that the President was ill when he had in fact long died.
- (v) After leaving hospital on the afternoon of the 5th April 2012, with knowledge of the President's death, the Chief Secretary informed the Attorney General, Justice Maxon Mbendera, SC, that the President was incapacitated. The Chief Secretary asked the Attorney General for a legal opinion on the way forward following the incapacitation which was an incorrect premise for the legal opinion.
- (vi) During the stand-off at Kamuzu International Airport, there were suggestions that the late President be taken back to KCH ICU instead of a mortuary. There were also suggestions to take the body back from the airport to State House. This was despite the fact that at that time, the late President's body had been exposed in the open space for over 10 hours and without its proper treatment as a dead body. The Commission established that all these suggestions were being made to hide the fact that the President had died.
- (vii) At the meeting of Cabinet Ministers held at OPC on the morning of Friday, 6th April 2012, none of the officials of Government or Cabinet Ministers who officially knew about the death of the late President disclosed to the gathering that the President had died. Hon. Goodall Gondwe, Hon. Peter Mutharika, Hon. Jean Kalirani and the Chief Secretary, Mr. Msaka, SC, attended the meeting but none of them disclosed the true position. Hon. Gondwe was the chairman of the meeting. Instead the gathering was advised that the President had fallen sick and had been flown to South Africa for further medical attention. Actually by that time, the President was lying in a mortuary in South Africa. The other Cabinet Ministers who knew about the death, albeit not officially, also did not raise any question or challenge about the true status of the President's condition.
- (viii) The Commission further established that the meeting of the DPP NGC in the afternoon of Friday, 6th April 2012, was also not told the truth by party officials, notably by the Chairman of the meeting Hon. Goodall Gondwe and also by Hon. Peter Mutharika, when he addressed the meeting in accepting his election as Acting President of the party, regarding the true status of the President. The meeting was told that the President had been taken ill and had been referred to South Africa for further medical attention when the President had died, and was known to have died, in Malawi over twenty four hours before that meeting.

- (ix) The Commission finds that the decision not to disclose the fact of death of the President immediately it had occurred was taken by the leadership, as described, of the Executive Branch before they left hospital and all actions of the Government and Government officials followed that decision.
- (x) The Commission established that the President's identity was disguised on the particulars of his flight to South Africa with his name given as Mr. Daniel Phiri, although his passport number was correctly indicated.

#### 6.5.4 *Delay in Announcing the Death*

The Commission established that there was unnecessary delay in the announcement of the death of the President.

The Commission noted that there was failure by the Office of the President and Cabinet to promptly take measures to announce the death of the President. The Chief Secretary told the Commission that as far as he was concerned, his office was not responsible for announcing the death of the President and that it was his expectation that the one to preside over the meeting of Cabinet Ministers would be the person to announce death first to the Ministers after he, as Chief Secretary, had made his prepared introductory remarks to the meeting. In the expectation of the Chief Secretary, this meant that it was Hon. Goodall Gondwe that was to inform the meeting of Ministers about the death of the President as he was the one presiding over the meeting. It is however to be noted that it was indeed the Office of the President and Cabinet which eventually announced the death of the President on Saturday 7th April 2012 by issuing a press release under the authority and signature of the Chief Secretary.

The Commission finds that it is the Office of the President and Cabinet, through the Chief Secretary as keeper of the office, that was properly placed to announce the death of the President.

The Commission established that before announcement of death the Chief Secretary initially sought the permission of the First Lady, who directed him to clear the matter with Hon. Peter Mutharika as brother of the President. The Commission further established that the Chief Secretary then contacted Hon. Goodall Gondwe concerning the announcement of death and Hon. Gondwe agreed that death be announce on 7th April 2012.

The Commission established that the announcement of death on 7th April was among other things, generally influenced by the international media which was reporting about the death and more especially by pressure from the South African Government which is said to have advised that President Jacob Zuma was going to announce the death if the Malawi Government was failing or delaying to do so.

The Commission finds that the delay to announce the death of the President immediately it occurred and within the reasonable time after the doctors had informed the authorities on the day he died, on 5th April 2012, was part of the scheme to prevent the Vice President, Rt. Hon. Joyce Banda, to succeed the office of President in view of

her political exclusion from the Executive and that this scheme was hatched early after a team of doctors at Kamuzu Central Hospital had conveyed the message of the President's death to the Government authorities.

## **6.6 FINDINGS IN RESPECT OF POLITICAL TRANSITION**

### **6.6.1 *Meeting in the Office of the Hospital Director***

The Commission established that there was a meeting involving Government officials who were sitting in the office of the Hospital Director of KCH. The meeting was attended by Hon. Peter Mutharika, Hon. Goodall Gondwe and Mr. Msaka, SC.

The Commission established that at some point while the officials were in the hospital director's office, they were briefed by the President's personal physician who painted a grim picture of the President's condition and assured them of the efforts by the medical personnel to do what was possible but added that, even if resuscitation efforts succeeded, the President was likely to remain incapacitated.

Following that brief, the meeting discussed a number of things on how to handle the political situation. They resolved, among other things, that the referral case against the Vice President, Rt. Hon. Mrs. Joyce Banda, that was already in court be revived and that a challenge be mounted against her being sworn in as President.

The Commission also established that the meeting resolved that the three officials should meet the heads of the Malawi Defence Force and the Police to discuss the situation.

### **6.6.2 *Attempts to Stop the Swearing in of the Vice President and To Swear Peter Mutharika as Acting President***

The Commission established that Cabinet Ministers met at OPC on 6th April 2012 in the morning, where it was agreed that an injunction be obtained from the High Court stopping the swearing in of the Vice President, Rt. Hon. Joyce Banda, as President.

From the evidence received in the Inquiry the Commission established that the Ministry of Justice was instructed to institute the court process challenging the ascendancy of the Vice President to the office of President.

The Commission established that court documents, including the affidavits in support of the application, to stop the swearing in of the Vice President as President were prepared by Dr. Zolomphi Nkowane, Senior Deputy Chief State Advocate, under the supervision of the Attorney General, Justice Maxon Mbendera, SC. Preparation of the court documents was completed by the evening of 6th April, 2012. The affidavits were signed later before midnight by two Ministers, Hon. Henry Mussa, MP, and Hon. Dr. Jean Kalirani, MP, in readiness of the filing of the application in court.

The Commission further established that the plan that was in place was that once the court process was filed, Cabinet Ministers were going to proceed to elect an Acting President and an Acting Vice President to take charge of the country. They would be



invoking section 85 of the Constitution which allows for Cabinet Ministers to do so in the event of simultaneous vacancies in the Offices of the President and Vice President and thus asserting that the Office of the Vice President was vacant. The plan therefore was that Cabinet Ministers were going to have Hon. Peter Mutharika sworn in as Acting President as soon as court process was taken and received by the court.

The Commission finds that the attempt and the decision to stop the swearing in of the Vice President as President, albeit by court process, were by the entire body of Ministers resulting from their discussion during the morning of 6th April 2012. The only Ministers who did not attend the meeting were Hon. Dr. George Chabonda and Hon. Reene Kachere. The decision of the Ministers was a collective one.

### **6.6.3 *Request to the Army to take Over the Government***

The Commission was informed that there was a request made to the Commander of the Malawi Defence Force, General Henry Odillo, for the Malawi Defence Force to take over Government. The Commission heard that in the first instance, while still at the hospital, Hon. Peter Mutharika asked the Chief Secretary, Mr. Bright Msaka, SC, if it would not be a good idea that the Army took over Government. This idea was opposed right away by the Chief Secretary who immediately sought assurance from General Odillo on whether the Army knew its role in times of the event at hand.

The Commission further established that the MDF Commander, General Henry Odillo, and the Inspector General, Mr. Peter Mukhito, were called to a meeting at Hon. Prof. Peter Mutharika's house in Area 43 in Lilongwe. Present during the meeting were Hon. Goodall Gondwe, Hon. Peter Mutharika, Mr. Bright Msaka, SC, General Henry Odillo and Mr. Peter Mukhito. The meeting was held around 5 o'clock in the evening on 5th April 2012.

The Commission was informed that at the meeting, Hon. Goodall Gondwe requested General Odillo if the Malawi Defence Force could take over Government in the event that their plan was not supported by the people and violence ensued. The Malawi Defence Force was being requested in that event to take over the Government until the situation had stabilized after which the Malawi Defence Force would hand over power back to the politicians.

It is the Commission's finding that the request for the Malawi Defence Force to take over State power was made at the meeting but was turned down by General Odillo.

Despite denials by Hon. Gondwe, Hon. Mutharika and the Chief Secretary, Mr. Bright Msaka, SC, the Commission stresses that its finding in this regard is based on what it considered to be forthright testimony of General Odillo to the Commission both in his first appearance before the Commission and during his second appearance on recall. His testimony on this point was unequivocally supported by the testimony of the Inspector General, Mr. Peter Mukhito, when he appeared a second time after he had been recalled precisely on this issue of the take-over by the Malawi Defence Force if at all it had been discussed at the meeting at Hon. Peter Mutharika's residence.

#### **6.6.4 *The Midnight Press Statement***

The Commission established that Cabinet Ministers met in the evening of 6th April 2012 to receive a report from the meeting of the DPP NGC that was held earlier in the afternoon that day after the meeting of Cabinet Ministers in the morning. This second meeting of Ministers was also held to receive progress report on the application for a court injunction to stop the swearing in of the Vice President pending court determination of the issue of her eligibility to succeed in the office of the President and to allow Cabinet to elect an Acting President and an Acting Vice President under section 85 of the Constitution.

The Commission established that at this second meeting attempts were made by some Ministers to have Hon. Peter Mutharika elected as Acting President of the country. The Commission established that the meeting failed to agree on the matter. In the end the meeting resolved that the election of Hon. Mutharika as Acting President should only be done after court documents were filed in court and the order was granted. The meeting noted that proceeding to elect Hon. Mutharika at the meeting as proposed would prejudice the court case.

The Commission established that the meeting resolved that in the interim a press statement should be drafted to prepare the general public about Government's intention to stop the swearing in of the Vice President, Rt. Hon. Mrs. Joyce Banda, as President and to have Hon. Peter Mutharika instead sworn in as Acting President of the country.

The Commission established that five Ministers, namely, Hon. Patricia Kaliati, Minister of Information and Civic Education, Hon. Henry Mussa, Minister of Local Government and Rural Development, Hon. Dr. Jean Kalirani, Minister of Health, Hon. Nicholas Dausi, Deputy Minister in the Office of the President and Cabinet and Hon. Kondwani Nankhumwa Deputy Minister of Foreign Affairs and International Cooperation, were given the responsibility of discussing and drafting the intended statement. The five Ministers were assisted in the drafting of the statement by the Chief Secretary, Mr. Bright Msaka, SC, the Deputy Chief Secretary, Mr. Necton Mhura and the President's Legal Advisor, Mr. Allan Ntata. This is the statement that came to be popularly known as 'the Midnight Six Statement' following its airing by a team of six ministers close to midnight on the MBC Television on 6th April 2012. These six ministers were the five named above plus Hon. Symon Vuwa Kaunda, Minister of Sports, Youth Development and Welfare. As stated earlier in this Report, the statement was read out by Hon. Mrs. Patricia Kaliati on behalf of the group.

Regarding the Midnight Press Statement it is the finding of the Commission that the drafting of the statement was on the instructions of the full meeting of Cabinet Ministers. It was read back to them in plenary after it had been prepared upon which instructions were given to have the statement aired on MBC television and radio.

#### **6.6.5 *Abandonment of the Court Process by the Attorney General***

The Commission established that the idea of going to court was abandoned on the morning of 7th April 2012. The Commission established that the Minister of Justice,

Hon. Ephraim Mganda Chiume, and the Attorney General, Justice Maxon Mbendera, SC, agreed between them not to proceed with the matter. The Attorney General then instructed Dr. Zolomphi Nkowanani not to proceed with the process.

#### **6.6.6 *Attempts to Issue Court Process through Private Lawyer***

The Commission established that after the Attorney General declined to proceed with the court process, a private lawyer, Mr. Tamando Chokotho, was contacted that morning of 7th April 2012 to take over the case on behalf of the DPP in its own interest as a political party. A meeting to issue such instructions took place at Hon. Peter Mutharika's house in Area 43. It was attended by notably, Hon. Peter Mutharika, Hon. Goodall Gondwe and Hon. Henry Mussa. The Commission established that the Deputy Chief Secretary, Mr. Necton Mhura, also attended the meeting.

The Commission established that Mr. Chokotho refused to take up the instructions. It is the Commission's findings that it was at this point that attempts to go to court by Ministers, or some Ministers, and by the party were abandoned.

#### **6.6.7 *The Judiciary and the Transition***

From the totality of the evidence, the Commission established that there were no judges who gathered at Hon. Peter Mutharika's house on the 6th or 7th April 2012 for the purposes of swearing Hon. Peter Mutharika as Acting President of the country. The Commission however established that the Chief Justice went to the house of Hon. Peter Mutharika on Friday, 6th, and Saturday, 7th, April 2012 to offer his condolences to him on the death of the President as a family friend.

#### **6.6.8 *The Malawi Defence Force and the Transition***

The Commission established that as a State institution, the Malawi Defence Force was the first to formally recognize the Vice President, Rt. Hon. Mrs. Joyce Banda, as the legitimate successor to the late President following his death. This followed a telephone call on Friday, 6th April, by the Vice President to the Commander of the Malawi Defence Force, General Henry Odillo, requesting him to attend a press conference that the Vice President had scheduled for that afternoon at her official residence in Area 12. The Commander sent two senior officers, namely, Brigadier General Ignatius Maulana and Major General John Msonthi, on his behalf, to the residence of the Vice President to pay her the due recognition and salute her.

The Commission finds that this development significantly changed the course of events and led all main players to accept the constitutional order that is laid in the Constitution by which the Vice President is to assume the office of President in the event of a vacancy in that office. The Commission commends the Malawi Defence Force, led by the Commander General Henry Odillo, for their conduct in respecting the country's constitutional order and further for refusing the suggestion to take over Government as the Commission has earlier reported.

### **6.6.9 *Ministry of Justice and the Transition***

The Commission has established that the action of the Ministry of Justice and Constitutional Affairs, in slowing down the process of applying to court for an injunction to stop the swearing in of the Vice President, Rt. Hon. Mrs. Joyce Banda, as President and in finally abandoning the process, contributed to avert what could have been a chaotic and volatile political and security situation in the country, given the strong voices that were coming from civil society and various other groups in the country opposing the handling of the situation by the Government. Further, the Commission finds that the attempt to present such an application to court by the Attorney General in the face of clear provisions of the Constitution would have amounted to an abuse of the judicial process by the very officers of State.

### **6.6.10 *Reports of Looting of Government Property During Transition***

The Commission established that reports of looting of Government property at State House during the period were not substantiated or supported by the evidence gathered during the Inquiry. The Commission however established that personal property belonging to the President and to the First Lady was moved out of State House.

## **6.7 FINDINGS IN RESPECT OF UNUSUAL EVENTS PRIOR TO THE DEATH OF THE PRESIDENT**

### **6.7.1 *Prophecy by T.B. Joshua and Books by T.B Joshua received by the President***

The Commission established that the President was not affected at all by T.B. Joshua's prophecy. The Commission established that the President's trip to Nigeria had nothing to do with T.B. Joshua's prophecy but was a Government trip in connection with sourcing fuel supply to Malawi.

On the books, the Commission established that none of the books by T.B. Joshua that found their way to the President had been sent by T.B. Joshua specifically to the President. The Commission further established that the President was not the only person who had received books by T.B. Joshua in Malawi. The Commission further finds that the books did not in any way have a bearing on the President's health or death.

The Commission further established that the President did acknowledge to T.B. Joshua in writing, by letter dated 24th February 2012, that he had received a book. This response was in respect of the first book. The letter merely thanked T.B. Joshua for the book and made no reference to the prophecy.

The Commission further finds that the President wrote to T.B. Joshua under the mistaken belief that the book had been sent to him by T.B. Joshua himself and directly. The President would most probably not have written his letter to T.B. Joshua if he knew that this was not the case. In this respect, the Commission established that the President's aides were pestered to get the President to write the letter of acknowledgement which he did in February 2012, nine months after the book had found its way to the President's Desk in May/June 2011, and which T.B. Joshua took advantage of display it to his congregation, televised to the wider audience on his Emmanuel TV, but without disclosing the exact contents of the letter.

### ***6.7.2 Political Situation in the period before the death of the President***

From the testimony received the Commission finds that the general political environment that prevailed during the period immediately before his death including, demands for his resignation with absolute ultimatums and threats of nationwide demonstrations, did concern the President to some degree.

## CHAPTER 7

### RECOMMENDATIONS

#### 7.1 MEDICAL FACILITIES AND MEDICAL PERSONNEL FOR THE PRESIDENT

Looking at the events that occurred during the illness of the late President, the Commission recommends to Government as follows:

##### 7.1.1 *Establishment of a Presidential Medical Facility*

The Commission recommends that Government needs to construct or establish a presidential medical facility at the headquarters of the Malawi Defence Force in Lilongwe which is the seat of Government where the President regularly resides. Such a facility needs to be properly equipped with top of the range medical equipment dedicated to the treatment of the President in case of illness, as well as in case of death, as is the practice in most other countries. Location of such facility within the military compound will also serve to safeguard the security and privacy of the President, unlike having the President admitted or treated at a public hospital.

##### 7.1.2 *First Aid Facility at State House*

There is need for the Government to establish a well equipped first aid facility within State House, as close to the President's office as possible, to cater for any medical emergency that may befall the President.

##### 7.1.3 *Amendment of the President (Salaries and Benefits) Act*

The provision on medical benefits for the President in the President (Salaries and Benefits) Act (Cap 2:02 of the Laws of Malawi) which provides for only a personal physician should be amended to provide that the President shall be entitled to three medical personnel, that is, a personal physician, a personal anesthetist and a personal nurse, all of whom shall be persons properly qualified and experienced in their capacities.

##### 7.1.4 *State of the Art Ambulance on Presidential Motorcade*

The Commission recommends that there is need for a state of the art Presidential ambulance on the Presidential convoy to replace the ambulance in use at the time of the death of the President which in the view of the Commission did not have the necessary emergency equipment and was not as spacious as to be suitable for the conduct of some medical procedures, such as CPR.

##### 7.1.5 *Training of State House Personnel in First Aid*

The Commission recommends that all close security personnel serving the President should receive continuing training in first aid and CPR procedure.

## **7.2 AVAILABILITY OF ESSENTIAL DRUGS IN THE ICU OF CENTRAL HOSPITALS**

In view of the testimony received by the Commission that when the President was admitted at the ICU at Kamuzu Central Hospital, some essential emergency drugs were not available, the Commission recommends that a routine procedure be developed for ensuring that at all times essential emergency drugs and equipment are available in Intensive Care Units at all central hospitals in the country.

## **7.3 ANNOUNCEMENT OF THE DEATH OF THE PRESIDENT**

The Commission recommends that in the event of death of the President the Office of the President and Cabinet, through the Secretary to the President and Cabinet, should take prompt steps to announce the death of the President so as to facilitate timely assumption of that office by the Vice President in accordance with the Constitution.

The Commission takes the view that the Constitution does not envisage a moment when the country shall be without a Head of State. This is evident from the Constitution itself in two provisions. First under section 81(4), the Constitution provides that the President shall hold office until such time that his or her successor is sworn in office. Secondly, under section 83(4) the Constitution provides for the instant assumption of office of President by the Vice President in the event of a vacancy.

## **7.4 REVIEW OF THE CONSTITUTION**

The Commission understood that the root cause of the political crisis which was the subject of its Inquiry was the fall-out in 2010 between the then President and the Vice President which resulted in the expulsion of the Vice President from the ruling party of the President and the consequent exclusion *de facto* of the Vice President from exercising executive functions within the State machinery, which included her exclusion from Cabinet meetings. This crisis was allowed to fester and deepen for an extended period with the result that Government and ruling party operatives and functionaries followed the same line in treating the Vice President in their operations.

It is common knowledge that following her expulsion from the ruling party in 2010 the Vice President, Rt. Hon. Mrs. Joyce Banda, was ignored, disrespected and despised by the entire Government machinery. As this Inquiry has shown, this state of affairs continued even after the death of the President and up to the night before the day the Vice President was sworn into office as President. It is clear to the Commission that, strange as it may seem, there was no preparedness among Government and ruling party functionaries that a President, or indeed that President Mutharika, could die a sudden death while in office and that Mrs. Joyce Banda as Vice President was the only one eligible, by the Constitution, instantly to step into that office. In this scenario, the crisis that engulfed the country following the death of President Bingu wa Mutharika was a crisis that was ever present waiting to happen.

The Commission has established that during the crisis the Vice President felt isolated and initially had to look to outside Government structure for support for what was correctly her role under the Constitution, which was to assume office of President and take charge of the affairs of State.

The Commission recommends that there is need to address the issue of work relationship between a President and a Vice President in the course of their term of office as the souring of their relationship has serious bearing on the affairs of State. As we have seen in this Inquiry, this situation also had a bearing on the transition. The Commission specifically recommends that the relevant provisions of the Constitution be reviewed to address this issue. The Commission wishes to observe that the occurrence of this issue of fall-out between the President and Vice President has happened during all other terms of Presidential office since the present Constitution was adopted in 1994.

In recommending this limited review of the Constitution, the Commission realises that issues of human character and behaviour cannot be regulated simply by just laying down constitutional provisions on paper. The Commission therefore further recommends that the review could, among other things, consider the instituting of a mechanism for mediation and conciliation in cases of clear and open manifestation of rifts between the holders of the two high offices of State authority. The Commission considers that it is important to seek to heal the rifts timely as they tend to affect the operational structure of the State and to bring disrespect to those two highest offices of the land. The Commission also has in mind that the very existence of a mechanism of mediation and conciliation may in itself have the prospect of averting open rifts between the holders of the two offices.

## **7.5 PUBLIC INSTITUTIONS AND PUBLIC OFFICERS**

In the wake of the crisis which was the subject of this Inquiry, the Commission appeals to all public officers in all public institutions to perform their functions, powers and duties as impartial servants of the general public without regard to political influence or expedience and at all times to act consistent with the law and the Constitution.

Similarly, the Commission recommends that all holders of political office desist from exerting political pressure on public officers that would tend to compromise the due performance of their duties in serving those offices and in serving the people of Malawi.

## **7.6 ORIENTATION FOR SENIOR PUBLIC OFFICIALS TO STRUCTURES OF GOVERNMENT**

The Commission considers that one lesson learnt from the crisis that was subject of this Inquiry is that it is wrong to assume that those holding high offices of State are familiar and knowledgeable about the country's constitutional order which the Constitution enjoins them to respect in serving the people of Malawi.

The Commission recommends that the Government should develop programmes for bringing together senior Government officials to share perspectives in government practices and structures with the aim of exposing them to tenets of the country's constitutional order and to engender open and robust discourse among them about the country's constitutional order. The programmes to be developed should target participation by officials at the level of Ministers, Deputy Ministers, Principal



Secretaries, and heads of Departments and State institutions without exception. The programmes need not be held frequently but should be conducted with some regularity to orient succeeding cohorts of those serving in such high decision making offices. The goal would be to avoid the occurrence of such constitutional crisis, by actions or failings of such public officials, as had happened in the matter of this Inquiry.