



CIVIL SOCIETY EDUCATION COALITION

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25th January, 2021.

Hon. Minister of Education,
Ministry of Education
P/Bag 328,
Lilongwe 3.

Through: The Secretary for Education

Madam, Mrs. Chikondano Mussa

Dear Honourable Minister,

THE CIVIL SOCIETY EDUCATION COALITION CALL FOR GAZETTING OF THE COMMENCEMENT DATE FOLLOWING THE DELINKING OF UNIMA

The Civil Society Education Coalition (CSEC), which represents the voice of 80 local and international NGOs, community-based organisations and research institutions active in promoting the right to quality education in the country, is writing your office to call for the expedited process of gazetting the commencement date for the 2019 Acts of Parliament aimed at repealing the University of Malawi Act, 1998 (Cap 30.02 of the Laws of Malawi) and establishment of University of Malawi, Malawi University of Business and Applied Sciences (MUBAS) and

Kamuzu University of Health Sciences (KUHeS). From our records by end of February 2020, all concerned colleges had made thorough preparations to necessitate the fixing of the commencement date by the office of the Minister of Education. In addition, the Ministry of Finance recognised the new Universities in the Budget documents for 2019/20 and 2020/21. In same breadth, the current President's first State of the Nation address of 4th September, 2020 was firm in achieving the delinking of the UNIMA concluded during the first year in office.

Honourable, Minister, this call has been triggered by the recent decision of University of Malawi Council which through an extraordinary meeting held virtually on 20th January 2021, resolved to set aside the process of delinking the constituent colleges of University of Malawi. It is on record that decision was based on an opinion that expressly held that neither the Senate nor the Council had powers to recommend delinking of UNIMA within the existing law. Unfortunately, the opinion was mute on whether the Council had powers to suspend the enforcement of law whose powers lie in Parliament within the spirit of separation of powers as espoused under sections 7, 8 and 9 of the Constitution of Malawi. Even if the said opinion was founded, the Council's decision showed a semblance of arbitrariness and unreasonableness on account that it should have been up to government to decide how to resolve the matter, and some guidance could have been provided to the Council, bearing in mind that Parliament which is above the Council had enacted laws on the matter. The Council, instead, has opted for a functional review to guide itself on the way forward in addressing the areas which require improvements, and to embrace aspirations towards enhancing the efficiency of the University, disregarding the Acts of Parliament which the President had already assented to.

The functional review suggested by Council was one of the options which constituent colleges and the previous Council that adopted the resolution to delink considered and debated in 2017 before the decision to delink and to seek Parliamentary ratification through appropriate law in 2019. Since the functional review option was suggested by two of the current independent councillors (Prof Jack Wirima and Mr George Partridge) in the previous UNIMA Council of 2017 as shown in the 100th UNIMA Council minutes as well as the University Central Office at a consultative meeting with the Reforms Committee in 2017, and that it was not supported by the majority of stakeholders, we wish to point out that the insistence of a functional review when the same was already

extensively discussed and resolved would appear to lack merit. In policy making, the reason for consulting stakeholders is to ensure that there is consensus and ownership of policy proposals as well as to avoid self-interests which are at odds with the majority of the stakeholders. Due to the many challenges of the UNIMA, most of the literature (including studies done by the Malawi Institute for Management (MIM, 1997) and the World Bank, 2016) on effective and efficient management of the university have pointed towards crafting autonomy and setting up new universities. In addition, the merits and demerits of delinking were debated by stakeholders during UNIMA Council meetings, senate meetings and OPC reform meetings held between April and July 2017 prior to the debate over the delinking Bills in Parliament where MPs gave their seal of approval. The Delinking Taskforce report released in October 2018 summed up the consultations as follows:

“Essentially, all the stakeholders consulted unanimously agreed that the constituent colleges should be de-linked from UNIMA and three fully fledged universities should be established.”

As a network, we have, through our press statement, issued on 22nd January 2021 (attached), provided the rationale as to why we are compelled to think that the recent resolution of Council was untimely and inconsistent with public expectations considering that the decision to delink went through various processes of consultation and legislation. CSEC disagrees with the proposition by the Council that the Senate does not have the legal authority to recommend delinking of the university. Both sections 10 and 18 of the UNIMA Act grant the Senate the power to make recommendation, and there is no express provision that precludes it from making recommendations. Moreover, the proviso of section 10 (1)(a) of the UNIMA Act expressly places the Council with a duty to consider the recommendations from the Senate. It would therefore appear that the decision by the former Council in considering the recommendation from the Senate was neither inconsistent with the constitutional prescriptions on participatory, accountable, and responsive governance nor a breach of the provisions of the UNIMA Act.

However, by the resolution of the 117th extraordinary meeting held virtually on 20th January 2021, the Council alleges that Parliament acted unlawfully by adopting legislation reconfiguring UNIMA

and its colleges as separate universities. Granted that that was the case, the Council was naïve to think that then it would have the power to reverse the purported unlawful action by Parliament. It is our considered view that even if there was need to reverse the situation, this could not be done without consultation with the interested parties and in particular, Parliament. Hence, to suggest that a mere Council decision should discontinue a process duly ratified by Parliament, is simplistic, and misleading to both your office, to the Presidency, the National Assembly and the public, and that would set a very bad precedence.

Given that Parliament has powers to repeal, amend and enact new laws, the three Acts as gazetted on 3rd 0]8May 2019 are valid law, and hence the decision by the Council to set aside the delinking process is inconsequential. Where the Council has any misgivings about the law, they ought to have sought an order of the court or seek counsel from the Office of the Attorney General on the legal implications of the new laws. Otherwise, in the absence of a court order or indeed contrary guidance from government, the Council has no choice, but to implement the law. That be as it may, we wish to point out that the nation expects your office, Honourable Minister, to proceed gazetting the commencement date in line with section 74 of the Constitution of Malawi.

Honourable Minister, we have recently been encouraged by public policy pronouncements by the leadership of the Tonse Alliance government on the need to expand access to higher education by among others moving with speed on the establishment of the new universities under the delinking. For instance, during his State of the Nation Address made to parliament on 4th September 2020, His Excellency, Dr. Lazarus McCarthy Chakwera, said:

“In the area of tertiary education, my administration is assessing funding proposals for the construction of Inkosi Mbelwa University for the study of animal science, as well as the establishment of Kamuzu University of Health Sciences and Malawi University of Business and Applied Sciences. Meanwhile my administration will increase enrolment in universities from 36,000 in the 2019/20 academic year to nearly 48,000 in the 2020/21 academic year”.

On his part, Vice President, Dr. Saulos Klaus Chilima, whose office led the reform process including that of University of Malawi, stated at a meeting which your Honourable Minister attended on 8th September 2020, that the delinking process led to the creation of three universities: Chancellor College to be the new UNIMA, College of Medicine and Kamuzu College to merge into Kamuzu University of Health Sciences (KUHeS) while the Polytechnic to be Malawi University of Business and Applied Sciences (MUBAS). After the meeting, the Vice President noted through his facebook post which was widely circulated that he had been updated that there had been a number of strides towards conclusion of the delinking exercise, citing that parliament adopted legislation to create the three colleges, and that the Bills had been assented to by the President. However, what remained was for the Ministry of Education to issue a commencement notice to put in effect the creation of the three colleges. In moving forward, Right Honourable Chilima, therefore, emphasized as follows:

“A decision was made to delink the colleges. Progress has been made including a Bill which was already assented to; therefore, it is time for implementation. I have said it now and then that once we make decisions as a country we must implement and move on”.

During the November 2020 Annual Joint Sector Review, which you, Honourable Minister, presided over in Lilongwe, your office presented a report through the Secretary for Education to stakeholders which included the following as one of the achievements for 2019/2020:

“The formation of the Universities is under way following the delinking of the University of Malawi constituent colleges to three new Universities. Currently, Chancellor College is now University of Malawi, Polytechnic is now Malawi University of Business and Applied Sciences, and College of Medicine and Kamuzu College of Nursing have merged to form Kamuzu University of Health Sciences”.

Furthermore, this achievement by your ministry on the delinking is also articulated in the newly developed National Education Investment Plan (NESIP) 2020-2030 as it states that “ *The constituent colleges of the University of Malawi have been delinked into three new universities (University of Malawi, Malawi University of Business and Applied Sciences and Kamuzu*

University of Health Sciences) to further increase access to higher education and improve governance and management of the public universities.”

We have deliberately recalled the above pronouncements and achievements to acknowledge the government’s unparalleled resolve to the delinking of UNIMA, and subsequently, the establishment of the three earmarked universities as legislated by Parliament. As we do this, we wish to put on record that the delinking of colleges from UNIMA is not a new phenomenon. Bunda College, for example, was disposed of and transferred to Lilongwe University of Agriculture and Natural Resources following a policy and legislative process similar to the current one. Since this restructuring, LUANAR has expanded enrolment exponentially as compared to how it was under UNIMA, and that there is more creativity in terms of establishing new degree programmes and financial suitability. You, yourself, Honourable Minister, visited LUANAR recently, and appreciated the innovations at the University. For instance, in 2019/20 LUANAR overall enrolment was 10,080 representing 69% of the total enrolment of 14,563 in the four UNIMA colleges. This could not have been the case if LUANAR was still housed in UNIMA as Bunda College, meaning that government will achieve expanded enrolment if the delinking is fast-tracked. In fact, you encouraged all other universities to emulate what LUANAR was doing through innovation, research, dedication and service.

Honourable Minister, the UNIMA saga also exposes undue lapses in the manner the responsible Ministers have exercised, and continue to exercise the discretion to set the commencement date as certain legislations would prescribe. While such a discretion is important for purposes of planning and where the law creates an institution, we believe that such discretion is not unlimited. We have in mind how the Education Act, 2013 has had the commencement date not set to date. The Access to Information Act too, despite being assented to in February 2017, its appointment date was only effected on 30th September, 2020. In this context, we subscribe to the view held by ardent Malawian legal scholars that failure by the Minister to bring the Acts into force within a reasonable time would be construed as a breach of the separation of powers, and an undermine of the legislative autonomy and authority of Parliament.

Going forward, CSEC, as a committed partner working with government in promoting access to quality education including higher education, would like to call on your office to move speedily as per the recommendation of the Vice President to set the commencement date as Parliament directed. At the same time, as a policy holder for education, CSEC wishes to seek your office to intervene in ensuring that the resolution by UNIMA Council to set aside the delinking process is rescinded immediately for want of upholding the separation of power and the rule of law. CSEC gave UNIMA Council 7 days to rescind this decision, starting from 22nd January 2021. We make these recommendations cognizant that the public expectation is that the Tonse Alliance Government will show consistency in matters of public policy. Moreover, we expect that there should be policy continuity from one political regime to the next in the best interest of the nation. And where the same is improbable, the next regime is entitled to depart, but there should be sufficient and convincing reasons for taking a different path. This recognizes the foundational basis of power, and section 12 (1) of the Constitution of Malawi is categorical in stating that all legal and political authority of the State is derived from the people of Malawi and shall be exercised solely to serve and protect their interests. The said provision also places the State in a fiduciary relationship in as far as the exercise of power is concerned.

It is with appreciation that we are raising our observations and making recommendations to government through your office in anticipation that they will be taken very seriously and ensure the right decisions are done towards expanding higher education access. We remain indebted to government through the Ministry of Education for the sound partnership we have had over two decades.

Yours Sincerely,



Benedicto Kondowe
EXECUTIVE DIRECTOR

FOR AND ON BEHALF OF THE CSEC BOARD

CC:

- *The Chancellor of University of Malawi*
- *The Speaker of the National Assembly*
- *The Leader of Opposition in Parliament*
- *The Minister of EPD and Public Sector Reforms*
- *The Chief Secretary to Government, OPC.*
- *The Office of the Ombudsman*
- *The Office Responsible for Reforms at OPC*
- *The Chairperson of UNIMA Council*
- *The Chairperson, National Council for Higher Education*
- *Principals of Delinked UNIMA Colleges (Chancellor College, College of Medicine, Kamuzu College of Nursing, The Polytechnic)*