



**MALAWI LAW COMMISSION**

**REPORT ON THE PROCEEDINGS OF THE  
SECOND NATIONAL CONSTITUTION  
CONFERENCE**

**17<sup>th</sup> TO 19<sup>th</sup> APRIL, 2007**

---

## TABLE OF CONTENTS

	<i>Page</i>
Preface .. .. .	5
1. BACKGROUND .. .. .	6
2. PRELIMINARY AND HUMAN RIGHTS ISSUES .. .. .	7
2.1 National Language .. .. .	7
2.2 Death Penalty .. .. .	7
2.3 Human Rights – Children, Youth and Education .. .. .	8
2.4 Age of Marriage and Marriages by Repute and Permanent Cohabitation .. .. .	9
2.5 Equality .. .. .	10
2.6 48 Hour Rule .. .. .	10
2.7 Political Rights .. .. .	11
2.8 Citizenship through marriage .. .. .	12
2.9 Gender and the Constitution .. .. .	12
2.10 Disability and the Constitution .. .. .	13
3. ELECTIONS .. .. .	16
3.1 MANAGEMENT OF ELECTIONS .. .. .	16
3.1.1 The Electoral Commission .. .. .	16
(a) Headship of the Electoral Commission .. .. .	16
(b) Composition/Size of the Electoral Commission .. .. .	16
(c) Independence of the Electoral Commission .. .. .	17
(d) Electoral Disputes Resolution .. .. .	17
3.2 GENERAL ELECTIONS .. .. .	18
3.2.1 Tripartite Elections .. .. .	18
3.2.2 Age of voting .. .. .	18
3.2.3 System of Electing President .. .. .	18
3.2.4 System of Electing Members of Parliament .. .. .	19
4. LEGISLATURE .. .. .	20
4.1 Tenure of Members of Parliament .. .. .	20
4.2 Qualifications of Members of Parliament .. .. .	20
4.3 Members of Parliament doubling as Ministers .. .. .	20

4.4	Office of Speaker	..	..	..	..	..	20
4.5	Recall Provision	..	..	..	..	..	21
4.6	Crossing the Floor	..	..	..	..	..	21
4.7	Senate	..	..	..	..	..	22
5.	EXECUTIVE	..	..	..	..	..	23
5.1	President, Vice President and the Second Vice President	..	..	..	..	..	23
5.1.1	Eligibility Criteria	..	..	..	..	..	23
5.2	Office of Second Vice President	..	..	..	..	..	24
5.3	Term Limits	..	..	..	..	..	24
5.4	Rotation of Presidency	..	..	..	..	..	25
5.5	Size of Cabinet	..	..	..	..	..	25
5.6	Office of Attorney General	..	..	..	..	..	25
5.7	Office of Inspector General	..	..	..	..	..	26
6.	JUDICIARY	..	..	..	..	..	28
6.1	The Chief Justice	..	..	..	..	..	28
6.2	Head of the High Court	..	..	..	..	..	28
6.3	Minimum and maximum age for Judges	..	..	..	..	..	29
6.4	Removal of Judges	..	..	..	..	..	29
6.5	Judicial Service Commission	..	..	..	..	..	29
6.6	The Status of Industrial Relations Court	..	..	..	..	..	30
6.7	Constitutional Court	..	..	..	..	..	30
7.	CONSTITUTIONAL BODIES	..	..	..	..	..	32
7.1	Office of Ombudsman	..	..	..	..	..	32
7.2	Human Rights Commission	..	..	..	..	..	33
7.3	National Local Government Finance Committee	..	..	..	..	..	33
8.	OTHER INSTITUTIONS	..	..	..	..	..	35
8.1	Defence and Security Committee of the National Assembly	..	..	..	..	..	35
8.2	The Anti Corruption Bureau	..	..	..	..	..	35
8.3	Immigration Department	..	..	..	..	..	35
8.4	Reserve Bank of Malawi	..	..	..	..	..	36
8.5	Civil Service Commission	..	..	..	..	..	36
8.6	Institution of Chieftaincy	..	..	..	..	..	37
9.	MISCELLANEOUS	..	..	..	..	..	38
9.1	Disclosure of Assets	..	..	..	..	..	38

10. APPENDICES

- A. Welcome Statement by Law Commissioner,  
Anthony Kamanga, SC
- B. Statement by the Chairperson of the special Law Commission on  
the Review of the Constitution, Professor Zimani Kadzamira
- C. Address to the Opening Ceremony by Minister of Justice and  
Constitutional Affairs, Hon. Bazuka Mhango, MP
- D. Opening Address by the Hon Chief Justice, Leonard Unyolo, SC
- E. Closing Speech by the Hon. Chief Justice, Leonard Unyolo, SC
- F. List of Commissioners
- G. List of Moderators
- H. List of Delegates
- I. List of Programme Officers

## **PREFACE**

This is a Report of the special Law Commission (the “Commission”) on the Review of the Constitution on the proceedings of the Second National Constitution Conference. The style of the Report presents the gist of the submissions received by the Malawi Law Commission and considered by the special Law Commission, the tentative positions taken by the special Law Commission on each and every submission received by the Malawi Law Commission and presented to the Conference, and the comments and suggestions made by delegates to the Conference on the tentative positions taken by the special Law Commission.

The holding of the Second National Constitution Conference marked the highlight of the last phase of the Constitution review process as announced to the nation and as indicated in the programme design of the Constitution review process adopted by the Malawi Law Commission in 2004. This Report shall, therefore, assist the special Law Commission to finalize its Law Commission Report on the Review of the Constitution in readiness for submission to the Minister responsible for Justice and to Parliament as is required by the Constitution and the Law Commission Act.

Attached to the Report as appendices are: all the speeches made at the Conference, a list of Commissioners on the Special Law Commission on the Review of the Constitution, a list of moderators who facilitated the various sessions at the Conference, a list of all delegates to the Conference and a list of Programme Officers from the Law Commission who provide technical support to the special Law Commission.

The Report has been developed by Mrs. Janet Laura Banda, Chief Law Reform Officer and Mr. Peter Chiniko, Deputy Chief Law Reform Officer.

## **1. BACKGROUND**

The Second National Constitution Conference (the “Conference”) was held at Sunbird Capital Hotel, Lilongwe, from the 17<sup>th</sup> to the 19<sup>th</sup> of April, 2007. The purpose of the Conference was to provide a forum for members of the general public to scrutinize the findings and tentative recommendations as contained in the draft Report of the special Law Commission on the Review of the Constitution released on 2<sup>nd</sup> April, 2007. The Conference was held in fulfillment of the Terms of Reference of the special Law Commission and the work methodology adopted by the Commission.

The Conference was officially opened by His Lordship, Chief Justice Honourable Leonard Unyolo, SC. The Conference programme was broadly divided into two parts. The first part comprised the Opening Ceremony. The Ceremony was attended by a broad spectrum of the Malawi society which included Cabinet Ministers, members of Parliament, members of the diplomatic corps, the clergy, members of political parties, traditional leaders, civil society, representatives of vulnerable groups, senior government officials, judicial officers, the private sector, members of the general public and various interest groups.

The second part of the Conference comprised of workshops where findings and tentative recommendations were presented to delegates and comments were solicited through plenary sessions. This part commenced with an overview of the Draft Report of the special Law Commission presented by the Chairperson, Professor Zimani Kadzamira which highlighted the structure of the Draft Report and the broad issues considered by the special Law Commission. This was followed by a statistical analysis of submissions received by the special Commission on four specific issues, namely, national language, death penalty, recall provision and Senate. These four issues were among the few issues on which the special Law Commission solicited further views of stakeholders in order to build broad consensus.

## **2. PRELIMINARY AND HUMAN RIGHTS ISSUES**

### **2.1 National Language**

The first issue to be presented by the special Law Commission to the Conference was on national language. Delegates were informed that the Commission received numerous submissions urging that the Constitution should recognize Chichewa as the national language of Malawi since it is already treated as such. The Commission in presenting its findings intimated that all facts clearly indicate that Chichewa is widely used and is a *de facto* national language in Malawi. Statistics presented from submissions also indicated a bias towards granting Chichewa constitutional recognition. The Commission, however, considered this to be an extremely emotive issue and took the position that the status quo be maintained principally to prevent tensions in the country since such a development may result in some tribes feeling inferior.

*The position taken by the Commission precipitated heated debate. The majority of the delegates conceded that each country needs a national language for ease of communication and unification and considered that Chichewa has served the nation well in that regard. The majority of delegates considered that other languages may serve as regional languages. Delegates, therefore, were generally dissatisfied with the position taken by the Commission and urged the Commission to reconsider its position.*

### **2.2 Death Penalty**

The presentation of the special Law Commission on this issue emanated from a background of submissions urging for the abolition of the death penalty in Malawi. The argument was that this penalty does not serve a purpose and it constitutes cruel and degrading punishment. The Commission consulted further on this issue through radio and TV programmes, research and poll boxes throughout the country as distributed by NICE offices. Analysis of the responses to all these initiatives indicates that the people of Malawi are in favour of retaining the death penalty. The Commission, therefore, took the position that the death penalty should be retained in line with the wishes of the majority of the people. The Commission, however, further took the position that imposition of this extreme penalty should be restricted to murder cases only.

*Delegates indicated support for retention of the death penalty. Delegates however did not agree with the position taken by the Commission that the penalty should only be reserved for murder cases and suggested that the death penalty should also be extended to offences such as defilement, aggravated assaults and robberies to take into account the gravity of the offences and frequency of the occurrence of the offences. The Commission was thus urged to reconsider its position on this matter.*

### 2.3 Human Rights – Children, Youth and Education

The presentation under this topic focused on a number of issues. These included the submissions, findings and tentative recommendations on “raising the age of the child under section 23”, “introduction of the principle of the best interest of the child” and “the issue of involvement of children in conflicts”. The presentation also touched on the submission on whether the youth constitute a critical minority that needs special protection as such. There was also a discussion on the right to education where the debate was whether primary education should be made compulsory and how much education constitutes adequate primary (basic) education.

In presenting its recommendations regarding the above issues, the Commission took the position that it is indeed important to raise the age of the child from sixteen to eighteen under section 23 since children are still vulnerable below the age of eighteen. The Commission also took the position that “the best interest of the child” should rank paramount in all matters affecting a child and that children should not under any circumstances be involved in armed conflicts.

On the issue of the rights of the youth as a special constituency, the Commission took the position that the age of youth is transitory and is affected by rights that, accrue to both adults and children. The Commission, consequently, was not persuaded that there is need for a special provision to protect the youth in the Bill of Rights.

On the submission to make primary education compulsory and dictate the length of period for primary education especially for private schools, the tentative recommendations of the special Law Commission were as follows: Section 13 of the Constitution which embraces principles of national policies is merely directory in nature and largely depends on availability of resources. The Commission therefore took the view that this a matter that can only be achieved progressively as we develop as a nation. The Commission further considered that dictating the adequate length of period of primary education would not serve any useful purpose. The Commission was aware that issues of curricula and syllabus are administrative and dealt with on registration of any private primary school in Malawi.

*Delegates generally supported the recommendations regarding the protection of children and even the raising of the age of the child to eighteen under section 23. The delegates emphasized that children should not be involved in any manner in any armed conflict whether internal or external.*

*Delegates also observed that education is a crucial right but conceded, in support of the position taken by the special Commission, that it can only be made compulsory in light of availability of adequate resources.*

*On the rights of the youth, delegates, especially those representing the youth were not satisfied with the position taken by the Commission regarding the youth as a*

*special constituency. The Commission was urged to reconsider its position on this matter and carry out further research from other jurisdictions to compare how these other jurisdictions have dealt with the matter of the rights of the youth.*

#### **2.4 Age of Marriage and Marriages by Repute and Permanent Cohabitation**

The presentation of the Commission regarding the age of marriage emanated from a background of submissions which generally indicated dissatisfaction with the wording of section 22 which merely discourages marriages of persons under fifteen and merely requires parental consent for persons between the ages of fifteen and eighteen. The Commission recognized the need to protect children and took the position that the age of sixteen would be a more appropriate age for marriage and as such all marriages for persons under that age should be prohibited.

On marriages by repute and permanent cohabitation, the presentation of the Commission emanated from a background of a submission that the Constitution should not recognize these marriages as they are immoral and alien to our culture. The Commission, however, took the position that these marriages should be retained since they seek to protect the weaker party in such relationships.

*Delegates generally considered that the age of sixteen proposed by the Commission as an appropriate age for marriage would not be different from the current provision which sets the age of marriage at fifteen and hence may not afford adequate protection for children. Delegates further pointed out the inconsistencies in the recommendations made by the Commission regarding the general protection of children in light of the recommendation to amend section 23 of the Constitution to raise the age of a child from sixteen to eighteen. Delegates thus urged the Commission to consider eighteen as the appropriate age of marriage.*

*Another view that came out strongly was that cultural practices are driving children, especially girls into early marriages and that perhaps, the cause rather than the effect of early marriages should be questioned. Consent to marriage was also viewed as likely to be abused by parents who would deprive children of the much needed education.*

*On the issue of marriages by repute or permanent cohabitation, two views were offered. The majority view was against the retention of these marriages which described the marriages as an alien import, non-Malawian and resembling adultery more than the sacred institution of marriage. The other view which was in the minority advanced by gender activists agreed with the Commission that these marriages should be retained.*

*Conference delegates also urged the Commission to tighten the provision on marriages to ensure that it does not accommodate same sex marriages.*

*There was also a suggestion that the Constitution should recognize religious marriages since Malawi is a God-fearing and prayerful nation.*

## **2.5 Equality**

The presentation of the Commission under section 20 of the Constitution was in response to a number of submissions in respect of that provision. The first was to qualify the word “discrimination” so as to give room to positive discrimination in appropriate cases. The second was to delete the word “nationality” from the section to allow discrimination on the basis of nationality. The third was to add HIV and AIDS as a ground on which discrimination is prohibited.

In respect of the first submission, the Commission took the view that it was not necessary to qualify the word “discrimination” since subsection (2) of the same provision allows for positive discrimination in appropriate cases. The Commission however agreed with the submission to delete the word nationality from the section as Malawi appears to be the only country providing this protection to foreigners. On the proposal to include HIV and AIDS as a prohibited ground for discrimination, the Commission took the position that subsection (1) of section 20 as it is worded adequately prohibits discrimination on the basis of HIV and AIDS due to the incorporation of the ground of “other status”.

*Delegates were in support of the position taken by the Commission regarding the first issue. In terms of the second issue, the majority of the delegates were in favour of the position taken by the Commission. However, it was proposed that the Report should be beefed up in terms of the reasoning for deleting the word nationality and that such reasoning should not only look at nationality as an anomaly in the Constitution but rather should focus on how the exclusion would be in the best interest of Malawi and Malawians.*

*On HIV and AIDS, delegates disagreed with the recommendation of the Commission and strongly urged that HIV and AIDS should be recognized as a ground on which discrimination is prohibited due to the peculiar nature of the epidemic.*

## **2.6. 48 Hour Rule**

The presentation of the Commission on this matter emanated from a background of a submission suggesting that the maximum period of 48 hours of Police detention before bringing a suspect to court was inadequate to allow ample time for investigations. The Commission took the position that the period of 48 hours is adequate as it should not be viewed as a period for investigations. The Commission was also satisfied that the provision gives adequate leeway to authorities to seek extension of this time from courts where appropriate.

*Delegates were generally in support of the position taken by the Commission regarding this provision. Delegates, however, expressed concern with how the Police abuse this provision by arresting people on days that it would not be*

*possible to strictly adhere to the rule knowing that 48 hours will expire outside court hours in order to detain suspects for longer periods. Delegates encouraged courts to hear matters on weekends in order to ensure that suspects are not detained longer than necessary.*

## **2.7 Political Rights**

The presentation of the Commission on political party funding came from a background of three submissions. First, that political parties should not continue to benefit from public funding because there are no accountability mechanisms in place. Second, that if political parties were to continue benefiting from public funds, then there is a need to revisit the criteria for determining which parties should so benefit. Third, it was urged that the criteria for determining the levels of funding to political parties should be spelt out.

In terms of the first issue, the Commission took the view that public funding of political parties should continue in Malawi in order to sustain multiparty democracy. The Commission also took the position that all parties represented in Parliament should benefit from public funding regardless of size to ensure that small parties are nurtured.

The Commission further took the position that the formula for levels of funding should be spelt out in a statute, preferably, the Political Parties (Registration and Regulation) Act. Furthermore, the strength of a political party in Parliament should be an important factor in implementing the suggested formula.

*Delegates strongly supported the position that political parties represented in Parliament should continue to benefit from public funding. Delegates were further in support of the proposed criteria for determining which political parties should benefit from political party funding since it was considered that such an approach would ensure that small parties are not oppressed. Delegates were also agreeable to the recommendation that the formula for political party funding should be spelt out in a statute.*

*Delegates, however, stressed the importance of putting in place effective mechanisms to ensure that political parties account for the public funds received.*

*A minority view advanced by some delegates questioned the sustainability of public funding of political parties in light of the proliferation of political parties in Malawi. Lack of accountability exhibited by political parties was also highlighted as a factor that may affect sustainability of public funding of political parties in Malawi.*

*There was also a proposal to require parties to disclose supplementary sources of funding including international sources of funding in the interest of transparency and accountability.*

## 2.8 Citizenship through Marriage

The presentation of the Commission on this matter emanated from a background of a submission that marriage in itself should not constitute a ground for acquisition of Malawian citizenship. The Commission agreed with the submission and took the position that marriage in itself should not warrant the acquisition of Malawian citizenship but rather that it should be merely one of the factors to be considered by immigration authorities when dealing with applications for citizenship. The Commission thus favoured the position under section 16 of the Citizenship Act as opposed to the position under section 47 of the Constitution which was seen as a weakening of immigration laws in Malawi.

*Delegates were in support of the position taken by the Commission on this issue and considered that it may go a long way in dealing with the problem of undesirable characters flooding Malawi and hiding behind sham marriages.*

## 2.9 Gender and the Constitution

During the Conference, the women's lobby group made a presentation identifying gaps in the Constitution that make it impossible for the Constitution to spearhead the achievement of gender equality in society. Among the examples cited were-

- (a) section 24 (1) (a) (iv) which empowers women to acquire and retain citizenship and nationality. It has been submitted that this provision is not satisfactory in that it does not go further to empower women to pass on citizenship. It has therefore been suggested that the Constitution should expressly provide guidance on issues of equality even in matters of citizenship. *The women's lobby group therefore strongly urged the Commission to amend subsection (1) (a) (iv) to allow women to pass on citizenship.*
- (b) section 24 (1) (b) (i) which emphasizes fair distribution of property that is held jointly with a husband as opposed to property that is held in common within a marriage. It has been submitted that this provision does not recognize a marriage as a joint enterprise of interdependence and hence in the process puts one spouse in a position of inferiority regarding claim over matrimonial property. The disadvantaged spouse is usually the woman. *The women's lobby group therefore urged the Commission to amend subsection (1) (b) (i) to promote "equal distribution of property that is commonly held with a husband".*
- (c) Section 13 (9) which requires the State to achieve and promote gender equality by, among other things, passing policies and legislation to ensure full participation of women in all spheres of life. It has been submitted that the absence of mechanisms expressly guaranteeing women equal participation in areas of decision making and politics denies women a measurable "fair" level of participation. *The women's lobby group therefore urged that the Constitution should be amended in section 24 to safeguard the interests of women by providing for a quota system within the range of 30% to 50% as advised by the SADC Heads of State.*

## 2.10 Disability and the Constitution

The Commission also received oral and a written submission at the Conference from the Federation of Disability Organisations in Malawi (FEDOMA) with regard to disability and the Constitution. The broad thrust of the submission was that the Constitution does not have specific provisions that deal with the special needs of the people with disabilities in a number of areas. Some of the areas that were highlighted are noted below—

- (a) It was submitted that the disabled should deliberately be consulted and included in the decision making process in areas of policy and future legislation both at national and local government levels in such areas as representation, accessibility of information and communication.

*It was proposed that the Constitution should provide for affirmative action in respect of representation of minority groups and in particular, persons with disabilities as a special group at all levels where decisions are made. This may be done by prescribing special quotas for representation in the National Assembly and Local Assemblies and that they should be elected by fellow disabled persons. It was also proposed that there should be a specific section in the Constitution providing for matters pertaining to persons with disabilities, just like it is with women and children.*

*A final proposal was that under section 52 of the Constitution which deals with qualifications of Members of Parliament, Braille sign language and other forms of communication used by the disabled should be recognised in addition to English.*

- (b) It was submitted that during voting, disabled persons are prone to become vulnerable to hooliganism and violence during elections.

*It was recommended that considerations should be given to the needs of the disabled when placing polling booth.*

- (c) There were two submissions with regard to the right to life. Firstly, due to modern technology, foetuses that are detected to be likely to be born disabled may be aborted. Secondly, in times of riots, the disabled may be killed as they may not run away from the danger.

*It was proposed that the Constitution should protect life at whatever stage the disability may become manifest and that the Constitution should provide for compensation to be paid in respect of innocent disabled persons who are killed in riots.*

- (d) It was submitted that the right to personal liberty, which is to some extent safeguarded by section 42 of the Constitution, is normally infringed upon in respect of the disabled who are arrested in suspicion of having

committed an offence and who cannot explain their innocence to the arresting officers by reason of their disability such as muteness.

*It was proposed that there should be retained, in the prisons, courts and police holding cells, social workers who may mediate for such disabled persons to avoid their being held for long periods.*

- (e) It was submitted that although section 27 of the Constitution prohibits slavery, servitude and forced labour, disabled people are exploited and subjected to unfair labour practices.

*It was proposed that section 27 of the Constitution should outlaw exploitation of the disabled and that it should be a criminal offence for anyone who forces a disabled person to work for them.*

- (f) It was submitted that some disabled persons do not enjoy the right of access to information under section 37 of the Constitution because the information is not in a form that may allow them access, for example, braille.

*It was proposed that sign language, braille and other accessories necessary for information and communication of the disabled person be enshrined in the Constitution.*

- (g) It was submitted that most buildings, which are multi-storeyed and have no lifts as well as public transport vehicles do not allow freedom of movement as provided under section 39 of the Constitution, of disabled persons who use crutches and wheelchairs as they do not have requisite facilities.

*It was proposed that facilities must be provided in such buildings and vehicles of public transport to allow persons with disabilities to use them freely, thereby enjoying freedom of movement.*

- (h) It was submitted that special education should be explicitly defined and provided for both in the Constitution and the Education Act and that a disabled child should have public education in the least restrictive environment.

*It was proposed that the right to education for children with disabilities be incorporated in the Constitution.*

- (i) It was submitted that the disabled are not able to access public health services as in some cases, information relating to these services is not in a form that they may access.

*It was proposed that the Constitution should take into account the needs of persons with disabilities so that they have access to health services and public amenities.*

- (j) It was submitted that there is no deliberate policy to create equal employment opportunities for persons with disabilities.

*It was proposed that the Constitution should recognize the right of people with disabilities to employment and any discrimination in regard to disability must be outlawed.*

*Further, the Constitution should provide that a quota of all employment opportunities should be reserved to be filled by the disabled.*

*Alternatively, companies should be levied 10% of their profits to go to a disability fund which may be used to create jobs for the disabled.*

### **3. ELECTIONS**

#### **3.1 MANAGEMENT OF ELECTIONS**

##### **3.1.1. The Electoral Commission**

###### ***(a) Headship of the Electoral Commission***

The presentation of the Commission in this regard emanated from a background of submission which expressed dissatisfaction with the current arrangements regarding the headship of the Electoral Commission and suggested that the position of the head of the institution should be open to all deserving Malawians. It was further suggested that judges should not be eligible for the post since they lack managerial skills. It was also submitted that the appointment of judges to the Electoral Commission compromises the independence of the institution.

The Commission agreed with the submissions and took the position that the headship of the Electoral Commission should be opened up to other professions. The Commission further took the position that judges should not be eligible for the post unless retired.

*Delegates agreed with the suggestion that the post of Chairperson of the Electoral Commission should be opened up to other professions. Delegates however did not agree with the suggestion that serving judges should be expressly excluded. Delegates strongly argued that judges come with a package of certain attributes required of this office such as integrity, independence and legal knowledge to ably deal with disputes. The Commission was thus asked to reconsider its position on this matter.*

###### ***(b) Composition / Size of the Electoral Commission***

The presentation of the Commission on this issue emanated from a background of two submissions. First, it was submitted that membership of the Commission should comprise of experts rather than political parties to enhance independence and competence. Second, it was submitted that the Constitution should stipulate the size of the Electoral Commission in terms of membership.

In its presentation regarding the first issue, the Commission agreed with the submission and took the position that membership of the Commission should comprise experts rather than representatives of political parties to enable the Commission execute its functions in a competent and impartial manner. The Commission further took the position that an independent body should nominate members for appointment by the President rather than political parties. On the

second issue, the Commission took the position that membership should comprise a maximum of seven people and minimum of five people.

*The position taken by the Commission on the issue of composition precipitated heated debate. Some delegates felt that political party representation cannot be dispensed with on the Electoral Commission because this ensures post election stability. It was further advised that members nominated by political parties are not necessarily party members but rather persons considered neutral and impartial by the nominating parties. The idea of a separate nominating body was thus categorically rejected.*

*Other delegates were in support of the position taken by the Commission to exclude representatives of political parties to avoid partisan interests. It was further suggested that in identifying experts other interests should also be considered such as representation of civil society, faith community, gender balance and professional bodies. The Commission was, however, urged to review its position regarding the inclusion of the University of Malawi in the nominating body.*

*The other issue that was raised by delegates related to the continuity of the operations of the Commission in the event that the post of Chairperson becomes vacant. Delegates suggested the creation of the office of the Vice Chairperson to ensure that there is no leadership vacuum at all times.*

**(c) Independence of Electoral Commission**

The presentation of the Commission in this regard emanated from a submission urging the insertion of the word “independent” at the beginning of the words Electoral Commission to ensure that it is an independent institution.

The Commission agreed with the submission and took the position that the word independent should be adopted in the name of the Commission

*Delegates disagreed with the position taken by the Commission and were of the view that introducing the word “Independent” in the name of the Commission is meaningless as the independence must be in the operations of the Commission. Delegates also considered that what the Electoral Commission needs is financial independence.*

**(d) Electoral Disputes Resolution**

The presentation of the Commission on this matter indicated that there is need to set up tribunals at constituency level to deal with electoral disputes to ensure speedy disposal.

*Delegates considered that the setting up of constituency tribunals to deal with electoral disputes may be problematic as there is no guarantee that decisions*

*would be consistent. Delegates, therefore, did not agree with the position taken by the Commission.*

*Delegates also suggested that the period of lodging complaints should be increased to 72 hours from the 48 hrs.*

*Delegates further observed that the Commission has not addressed the issues of accountability and vote rigging.*

## **3.2 GENERAL ELECTIONS**

### **3.2.1 Tripartite Elections**

The presentation of the Commission on this matter emanated from a background of a submission urging that the Constitution should be amended to provide for tripartite elections to minimize expenditure usually spent on separate parliamentary and presidential elections and local government elections. The Commission agreed with this submission and took the position that as a way forward Local Government Elections should be held as soon as possible to comply with the Constitution and that the term of councilors be curtailed to pave way for tripartite elections in 2009.

*Delegates generally supported the position taken by the Commission favouring tripartite elections but disagreed with the suggestion that Local Government elections should be held as soon as possible and then hold tripartite elections in 2009. Delegates considered that this proposal may be problematic as the relevant law is yet to be amended.*

### **3.2.2 Age of voting**

The presentation made by the Commission on this matter emanated from the background of a submission that highlighted the inconsistency between section 77 of the Constitution and section 15 of the Parliamentary and Presidential Elections Act regarding eligibility to vote for persons who are eighteen on the polling day but were not eighteen on registration day. The Commission took the position that the position under section 77 of the Constitution reflects better practice since the electorate is determined at the time of registration and this facilitates better planning and guards against the creation of loopholes in the electoral system.

*Delegates disagreed with the position taken by the Commission and considered it unfair to bar a person who is eighteen on the polling day to vote on account of the fact that he was not eighteen on registration day.*

### **3.2.3. System of Electing a President**

The presentation made by the Commission on this matter came from a background of a submission urging for the adoption of a requirement that a

president should be elected by absolute majority of the votes cast in an election to ensure legitimacy to rule. The Commission took the position that legitimacy to rule is a pre-requisite for democracy and agreed with the submission that a President should be elected on the basis of absolute majority of the votes cast in an election. The Commission further took the position that if this standard is not achieved in the first ballot, then a second ballot should be conducted where the first and second candidates should compete.

*The majority of the Delegates were in support of the position taken by the Commission on this matter. There was, however, a minority view which insisted on maintaining the status quo considering the expense associated with the second ballot where no candidate meets the standard in the first.*

#### **3.2.4 System of electing Members of Parliament**

The presentation of the Commission emanated from a background of a submission urging for the change of the system of electing Members of Parliament from first past the post to proportional representation. The Commission took the position that it is not necessary to change the system since most of the concerns advanced in favour of changing the system may be addressed through other means. The concerns included inclusion of participation of vulnerable groups. The Commission took the position that this can be addressed through statute by requiring political parties to adopt a quota system within their structures. The Commission also took the position that the expense of by elections cannot take precedence over the importance of ensuring that members of Parliament are accountable to their constituents as opposed to their political parties a situation which would be difficult if the system of proportional representation were to be adopted.

*Delegates generally agreed with the position taken by the Commission. However, there was a minority view which insisted that proportional representation for election of Members of Parliament should be considered as it would allow more women participation and eliminate regionalism.*

## **4 LEGISLATURE**

### **4.1 Tenure of Members of Parliament**

The submission before the Commission urged for the limitation of tenure of office for Members of Parliament to either two or three five-year terms. The Commission took the position that this was not necessary as the ballot already provides a mechanism for weeding out unwanted Members of Parliament.

*Delegates were in support of the position taken by the Commission on this matter.*

### **4.2 Qualifications of Members of Parliament**

The Commission took the position that there should be imposed a minimum educational requirement of an MSCE for a person to be eligible to contest as a Member of Parliament. This was pursuant to numerous submissions received advocating for this change.

*The position taken by the Commission precipitated heated debate. Some delegates did not see the need for a minimum education qualification as the issue is one of representation. On the other hand, other delegates agreed with the position taken by the Commission and considered that such a development would ensure quality debate in Parliament and better understanding of issues by Members of Parliament.*

### **4.3 Members of Parliament Doubling as Ministers**

The presentation of the Commission on this matter was made in the wake of a submission to change the law so as to prohibit the appointment of Members of Parliament as Ministers. The Commission, however, took the position that it is necessary to continue this practice to allow for the smooth running of Government business as it facilitates a cordial relationship between the two branches of Government.

*Delegates were generally in support of the position taken by the Commission. Some delegates also considered that there is no security of tenure in the office of Minister and to require a Member of Parliament to give up his or her seat once appointed Minister would be grossly unfair.*

### **4.4 Office of Speaker**

The presentation of the Commission on this matter emanated from a background of two submissions. First, it was submitted that an eligibility criteria to this office should be introduced. Second, it was submitted that the office should be strengthened to guarantee independence, impartiality and continuity. On the first issue, the Commission took the position that there is no need to require certain experience or qualification for this office since a Speaker is first and foremost a member of the National Assembly and hence the normal qualifications applicable

to other members should suffice. The Commission was also satisfied that the current arrangements provide for the much needed flexibility.

On the second issue, the Commission concurred with the submission and considered the current arrangements unsatisfactory. The Commission thus took the position that section 53 (3) (b) should expressly provide for continuity of the office of the Speaker in the case of dissolution of Parliament.

*Delegates were in support of the positions taken by the Commission on both issues.*

#### **4.5. Recall Provision**

The presentation of the Commission on this issue emanated from a background of numerous submissions urging for the re-introduction of the recall provision in the Constitution to ensure that Members of Parliament are accountable to their constituents. The Commission took the position that the concept of recall of a Member of Parliament should be re-introduced but that mechanisms should be put in place to ensure that members of Parliament are not unnecessarily victimized.

*The position taken by the Commission precipitated a heated debate. Delegates who disagreed with the position taken by the Commission advanced a number of arguments. First, it was pointed out that there is no job description for a Member of Parliament. This may result in the removal of a Member of Parliament for not performing responsibilities rightly belonging to a councilor. It was also pointed out that the recall provision must be understood in light of the experiences in 1994 when MCP and UDF deliberately targeted each others constituencies. It was hence argued that a recall provision may be abused by constituents through the influence of political parties since Members of Parliament are elected on a first past the post system in which the wasted vote may be a majority vote. Hence candidates who fail to secure a seat in Parliament may easily gang up and mobilize constituents to oust an incumbent. It was further argued that the proposed grounds are too wide to provide any meaningful safe guard.*

*Delegates in support of the position taken by the Commission argued that a recall provision would enhance accountability on the part of Members of Parliament to their constituents and would also discourage Members of parliament from making unrealistic promises to constituents.*

#### **4.6 Crossing the Floor**

The presentation made by the Commission on section 65 emanated from a background of two opposing submissions. The first was that section 65 should be strengthened to prevent wanton violations and that it should be extended to capture independent Members of Parliament. The second was that the section should be repealed on the ground that it violates freedom of association and expression.

The Commission took the position that the concept of crossing the floor should be maintained in the Constitution to nurture multiparty democracy. The Commission also considered that the concept is a proper curtailment of the freedoms stated within the ambit of section 44 of the Constitution. The Commission, however, went further to suggest that this concept would be better implemented if shifted from section 65 to section 63 to create an automatic vacancy in the office of a member who crosses the floor.

*Delegates were in support of maintaining the concept of crossing the floor in the Constitution but strongly expressed disapproval of the suggestion to bury this concept in another provision such as to section 63. It was thus suggested that section 65 should be maintained but that it should be extended to capture independent members of Parliament.*

#### **4.7. Senate**

The presentation made by the Commission on the Senate was influenced by numerous submissions received urging the re-introduction of provisions on the Senate in the Constitution. The Commission took the position that the Senate should be re-introduced in the Constitution but that the original composition should be re-visited to include experts in various fields. The Commission further took the position that the number of traditional leaders should be reduced.

*Delegates were generally in support of the position taken by the Commission to re-introduce provisions on the Senate. However delegates raised a number of issues on the suggested improvements. First, it was suggested that representation of chiefs should be increased. Second, concern was expressed on the large number of presidential appointments (32). Third, it was suggested that Senators should be directly elected by Malawians for legitimacy. It was also pointed out that the procedure suggested by the Commission for electing Senators by Assemblies is unclear.*

## **5. THE EXECUTIVE**

### **5.1. President, Vice President and the Second Vice President**

#### **5.1.1 Eligibility Criteria**

The presentation of the Commission in this regard focused on several submissions. First, it was submitted that a maximum age limit for presidential aspirants should be adopted and the age of seventy years was suggested. It was further suggested that the minimum age requirement of thirty-five years should be lowered to allow the youth to compete for the high office of President or Vice-President. Second, it was suggested that a minimum education qualification should be introduced for aspirants in order to ensure requisite competency to ably perform the functions of the office of President or Vice-President. A minimum of a first degree was suggested. Third, it was submitted that aspirants to these high offices should have no criminal record without any qualification or exemptions.

In relation to the first issue, the Commission did not agree with the submission to put a maximum age limit for aspirants and took the position that this is a political issue and best left to the political process. In relation to the minimum age, the Commission took the view that the age of thirty-five years was appropriate to allow for a substantial level of maturity to meet the challenges presented by the office of President or Vice-President. On the issue of a minimum educational qualification, the Commission agreed with the submission and took the position that a minimum of a first degree from a recognized university would be appropriate. On the issue of criminal records, the Commission took the position that not all criminal records should disqualify aspirants but rather only criminal records to do with offences involving dishonesty and moral turpitude. The Commission further took the position that such criminal record should not become spent at the expiry of seven years so as to allow an aspirant with such record to contest.

*Delegates were divided on these issues. Delegates were generally in support of the position taken by the Commission in relation to the first issue on maximum age limit. There was, however, a general dissatisfaction from the constituency representing the youth regarding the position taken by the Commission respecting the minimum age of thirty-five. The example of President Joseph Kabila as a person who ascended to this high office at a young age was mentioned.*

*With respect to educational qualifications, there was heated debate. Some delegates strongly disagreed with the position taken by the Commission. It was argued that a degree is too high a qualification to introduce for the office of President and Vice President, and that possessing one does not guarantee wisdom and competence in handling matters of state. Honourable Aleke Banda, MP, was cited as an example of a performer who does not possess a degree. It was further argued that the suggestion to impose a degree as a requirement is tantamount to legitimizing discrimination and unnecessary since a President has advisors. It*

*was also feared that such a requirement may affect adversely people from districts such as Mangochi and Machinga and may favour people from the North.*

*Those delegates who were in support of a minimum educational qualification reminded delegates that they should not lose sight of the fact that this submission came from the people and not the Law Commission. It was therefore advised that it would be unfair for a small gathering to decide against the wishes of the people. It was further suggested that delegates should bear in mind that a President is a Chief Executive of a nation, and as such, he should be in a position to understand global issues and appreciate technical advice given by his or her advisors. It was thus argued that for this to be achieved a university degree is a pre-requisite.*

*On the issue of criminal record, delegates generally were in support of the position taken by the Commission. It was however suggested that a definition of moral turpitude should be included in the provision for clarity or, alternatively, offences that fall in this category should be outlined.*

*There was a minority view which considered that the positions taken by the Commission in this regard are targeting an individual, namely, former President Bakili Muluzi.*

## **5.2 Office of Second Vice President**

The presentation of the Commission on this issue emanated from a background of a submission recommending the abolition of the office of the Second Vice President for irrelevancy. The Commission took the position that Malawi as a country geographically, economically and politically does not need this office and hence recommends its abolition.

*Delegates were divided on this issue with the majority supporting the position taken by the Commission. The delegates who disagreed with the position taken by the Commission considered the office important to accommodate minority groupings.*

## **5.3 Term limits**

The presentation of the Commission in this regard emanated from a background of a submission to tighten up section 83 of the Constitution to ensure that former Presidents who have served two terms should not bounce back into power. The Commission took the position that it did not subscribe to the view that, having regard to the wording of section 83 and the mischief of that provision, former Presidents who have served two terms can bounce back into power. The Commission, however, suggested improvements to the provision to clarify the position of a former President who served only one term of five years, and is subsequently elected to the office of President.

*Delegates generally were in support of the position taken by the Commission. The Commission was, however, cautioned that it should ensure that its final recommendations should not be perceived as targeting individuals. There was also a minority view that considered the position taken by the Commission as a strategy to frustrate the apparent aspirations of the former President, Dr. Bakili Muluzi, to stand as a presidential candidate in 2009.*

#### **5.4 Rotation of Presidency**

The presentation of the Commission on this matter emanated from a background of a submission urging the rotation of the presidency to ensure that in the history of Malawi a person from sparsely populated the North would rule at one point in time. The Commission, however, took the position that rotation enhances division rather than unity and hence did not subscribe to this submission.

*Delegates generally were in support of the position taken by the Commission. There was, however, a minority view which urged the Commission to acknowledge minority rights as is the global trend, and especially to consider the plight of northerners in this regard.*

*Other delegates considered that a solution lies in ensuring that an environment is created where a Government of National Unity is legally acceptable and suggested that the Constitution should provide for Government of national unity.*

#### **5.5. Size of Cabinet**

The presentation of the Commission in this regard emanated from submissions that the Constitution should stipulate the size of Cabinet or in the alternative that Ministerial portfolios should be subject to approval of Parliament in order to minimize instances of abuse in the interest of political expediency. The Commission disagreed with the submission and took the position that both submissions are impractical and would militate against political expediency.

*Delegates generally disagreed with the position taken by the Commission in view of the practice in Malawi where ministerial posts are used to woo members of the opposition and in the process ends up bloating the size of Cabinet despite the meagre resources of the country. It was further observed that this practice tends to weaken opposition parties and is a threat to the hard won multiparty democracy. The Commission was, therefore, urged to reconsider its position on this matter.*

#### **5.6 Office of Attorney General**

The presentation of the Commission on this matter emanated from a background of several submissions. First, that the office of the Attorney General should strictly be a public office to ensure independence since it is perceived to be biased towards the Executive to the detriment of other branches of government especially Parliament due to current arrangements. Second, that the practice of

appointing a Judge to the office of Attorney General is contrary to the doctrine of separation of powers. Third, that since the Attorney General is the chief advisor to the Government, he or she should be subject to confirmation by Parliament. Finally, that there is need to clarify the relationship between the Attorney General and the Director of Public Prosecutions.

The Commission tentatively took the position that in order to ensure the independence of the Attorney General, the office should be strictly a public office so that it is not perceived to be biased towards the Executive. Second, the Commission took the position that a serving judge should not be appointed to the position of Attorney General without being required to relinquish the position of judge. The Commission further took the position that the appointment of the Attorney General should not be subject to confirmation by Parliament. With respect to the relationship between the Attorney General and the Director of Public Prosecutions, the Commission took the position that the current *status quo* should be maintained.

*Delegates were in support of the position taken by the Commission regarding the status of the office of the Attorney General that it should be made strictly a public office. Delegates, however, expressed the view that it may be necessary for an Act of Parliament to specify situations where the Attorney General may or may not act for all the branches of government in a matter, where the branches are in conflict and that in such situations the other branches such as Parliament should be free to engage legal counsel without seeking consent from the Attorney General who may be representing the Executive.*

*Delegates also disagreed with the position of the Commission to bar a serving judge from being appointed as Attorney General as this is a practice that dates back to the pre-1994 years and the Constitution appears to support such appointments. The Commission was urged to reconsider its position on this matter.*

*On the issue of subjecting an appointee to the confirmation of Parliament, delegates generally were in support of the position taken by the Commission. There was, however, a minority view that felt that such a requirement would ensure transparency and accountability on the part of office holders.*

*No dissenting view was expressed regarding the position taken by the Commission on the issue of the relationship between the Attorney General and the Director of Public Prosecutions..*

## **5.7 Office of Inspector General**

The presentation of the Commission on this office emanated from a background of a submission urging the abolition of the requirement that appointees to the office of Inspector General should to be subject to confirmation by Parliament when that of the Army Commander is not.

The Commission took the position that subjecting the appointment of an Inspector General to Parliamentary confirmation is justifiable as the office deals with matters of civil liberties of individuals on a daily basis unlike that of the Army Commander. The Commission thus favoured retention of the status quo. The Commission further took the position that the Constitution should make it clear that the Inspector General does not assume office before he or she is confirmed.

*Delegates were generally in favour of the positions taken by the Commission on this matter. It was, however, noted that although Malawi has the most stringent procedure for appointment of Inspector General in the SADC region, the holder of this office lacks security of tenure. The Commission was thus urged to look into this matter when finalizing its Report.*

*Delegates also urged that the process of confirmation of an Inspector General once nominated should be expedited to ensure that there are no command vacuum for long periods of time.*

## **6. JUDICIARY**

### **6.1 The Chief Justice**

The presentation of the Commission on this matter focused on a number of issues, namely, the manner of appointing and confirming a Chief Justice, the minimum qualifications set for one to be eligible to be appointed Chief Justice, and the necessity of establishing the office of Deputy Chief Justice and the manner of his or her appointment.

On the appointment of the Chief Justice, the Commission took the position that the current practice of appointing the most senior judge is satisfactory and was in favour of maintaining the status quo. The Commission also took the position that Parliament should continue to confirm the appointment of a Chief Justice as this promotes the system of checks and balances between different organs of government. On the issue of minimum qualifications, the Commission took the position that there is no need for minimum qualifications for the appointment of the Chief Justice since for one to qualify as a judge he or she is already required to have a law degree.

With respect to the establishment of the office of the Deputy Chief Justice, the Commission took the position that this is a necessary post to be created for the smooth running of operations in the Judiciary and facilitate easy succession or performance of the duties of the Chief Justice in cases of temporary absence. The Commission thus suggested holders of the office of Deputy Chief Justice should be appointed in the same manner as all other Judges.

*Delegates were generally in support of the positions taken by the Commission on these issues. Some delegates even considered the debate of the Commission on the issue of eligibility criteria for the post of a Chief Justice unnecessary since the criteria for eligibility as a judge as set out in the Constitution also applies to a Chief Justice.*

### **6.2 Head of the High Court**

In the course of its work while reviewing provisions on the Judiciary, the Commission was informed that the absence of a head of the High Court creates operational problems for this Court. The presentation of the Commission on this matter therefore emanated from the need to address this gap in the High Court. The Commission took the position that an office of the Judge President should be created to head the High Court, and suggested that this office should be created under the Courts Act.

*Delegates were in support of the position taken by the Commission on this matter.*

### **6.3 Minimum and Maximum Age for Judges**

The presentation of the Commission on these two matters emanated from a background of two submissions. The first one urged for the raising of the retirement age for judges from sixty five to seventy years to conform with the practice in the region, and also to remove the disparity between the retirement age of magistrates and that of judges. The second one urged for the incorporation of a minimum age of forty for judges to ensure maturity for office holders. It was submitted that the current criteria is unsatisfactory.

On the issue of raising the retirement age for judges, the Commission took the position that indeed there is a need to raise that age to seventy since most judges are still resourceful at the age of sixty five. With respect to the incorporation of a minimum age for judges, the Commission took the position that the status quo should be maintained because it is in line with practice in the region where the focus is years of experience as an advocate or judicial officer prior to appointment as opposed to age.

*Delegates were in support of the positions taken by the Commission on both issues.*

### **6.4 Removal of Judges**

The presentation of the Commission in this regard emanated from a submission urging for the amendment of section 119 (3) to require compliance with rules of natural justice to prevent abuse of removal process. The Commission took the position that a better approach is to remove the involvement of Parliament in the removal process, and to confer those powers on an independent tribunal to ensure objectivity.

*The position taken by the Commission precipitated a heated debate. Some delegates were for maintaining the status quo, arguing that Parliament has shown impartiality in dealing with the removal of judges previously. Others were for the establishment of a tribunal as proposed by the Commission since the character of Parliamentarians was considered questionable. It was further observed that a majority Government can easily abuse the process and victimize judges perceived to be sympathetic to the opposition.*

### **6.5 Judicial Service Commission**

The presentation of the Commission on this matter focused on three submissions. First, it was submitted that the composition of the Judicial Service Commission is not balanced since the judiciary is over-represented. Second, the role of the Chief Justice as Chairman of the Judicial Service was questioned as it was feared that he or she might exert too much influence on any decisions of the body. Third, it was submitted that there is need to stipulate tenure of office of members of the Judicial Service Commission as is the case with other similar bodies established by the Constitution.

On the issue of composition, the Commission took the position that membership of the Judicial Service Commission should be raised from five to six so as to include a non-lawyer to be designated by the President after consultation with the Chief Justice. On the role of the Chief Justice as Chairperson of the Judicial Service Commission the Commission took the position that the Chief Justice should remain Chairperson of the Judicial Service Commission as the body mainly deals with matters affecting judicial offices. On the third issue of lack of tenure of office for members of the Judicial Service Commission, the Commission took the position that tenure should be four years, as is the case in Uganda.

*On the issue of membership, delegates disagreed with the position taken by the Commission. It was feared that opening up the Judicial Service Commission to non-lawyers may lead to abuse and undue influence being brought to bear on the Judicial Service Commission and ultimately the Judiciary.*

*However, delegates were in support of the position taken by the Commission regarding the involvement of the Chief Justice on the Judicial Service Commission and agreed that he or she should continue to chair the Judicial Service Commission.*

*In terms of tenure of members, delegates were in support of the position taken by the Commission.*

## **6.6 The Status of Industrial Relations Court**

The presentation of the Commission in this regard emanated from a submission urging for elevation of the Industrial Relations Court to the level of High Court or alternatively it was urged that the court should be converted into a tribunal so that appeals from it shall lie direct to the Supreme Court.

The Commission took the position that, as the law stands, it is possible for appeals from this court to lie straight to the Supreme Court under section 104 (2) of the Constitution. The Commission also found that section 103 (3) prohibits the establishment of courts of superior or concurrent jurisdiction with the Supreme Court or the High Court. The Commission thus favoured retention of the status quo.

*Delegates disagreed with the position taken by the Commission and appeared to favour the view that the Industrial Relations Court should be converted into a tribunal, with appeals lying straight to the Supreme Court mainly because the court has attributes of a tribunal given its relaxed procedures and the composition of its membership which comprises Chairperson, representatives of employers and workers.*

*Delegates also suggested, in the alternative, that the Court should be made a Division of the High Court so that there should be no violation of section 104 (2).*

## 6.7 Constitutional Court

The presentation of the Commission emanated from a submission urging for the setting up of a permanent constitutional court in order to improve competence in the handling of constitutional matters and to promote consistency in court judgements.

The Commission took the position that section 103 of the Constitution prohibits the setting up of courts of superior or concurrent jurisdiction to the Supreme Court or High Court and that setting up a constitutional court may flout the Constitution. The Commission also found that whilst South Africa has a special constitutional Court in other countries such as Uganda, Zimbabwe and Namibia, the Supreme Court or High Court or both determine constitutional matters. The Commission therefore favoured the maintenance of the *status quo*.

*Most delegates disagreed with the position taken by the Commission. Delegates were of the general view that a constitutional court should be set up to ensure that constitutional matters are dealt with expeditiously and relevant expertise is developed.*

## 7. CONSTITUTIONAL BODIES

### 7.1 Office of Ombudsman

The issues that the Commission presented to the Conference focused on three submissions. First, that there is inconsistency between the Ombudsman Act and the Constitution in terms of mandate of that office in that the Act confines that mandate to cases of injustice occasioned by public officers, but the Constitution confers on that office a much broader mandate. Second, that there is need to clarify the issue of jurisdiction of this office since, it was alleged, it is not clear from the Constitution as to which matters are to be dealt with by the Ombudsman and which matters are appropriate for the courts. Third, it was submitted that the types of relief that may be awarded by this office should be spelt out, and should include monetary compensation.

On the issue of mandate, the Commission took the position that the acceptable practice is reflected by the Act as it embraces the traditional role of the ombudsman in dealing with matters of maladministration by public bodies or officers. The Commission thus favoured the position under the Act and took the position that the Constitution should be amended in that regard. On the issue of jurisdiction, generally the Commission took the position that indeed there is need to clarify this by amending section 123 (1) to reduce frequent legal challenges.

With respect to remedies, the Commission took the position that the only remedies that the Ombudsman may grant are limited to what is contained in section 126 of the Constitution and section 8 of the Ombudsman Act and do not include award of monetary compensation.

*The delegates disagreed with the position taken by the Commission on the mandate of the institution. The unanimous view of the delegates was that the office of the Ombudsman is perceived to be a very effective office in dealing with matters of maladministration and confining such mandate to cases of maladministration involving public bodies or officers would result in perpetuating injustices in the private sector. The Commission was thus strongly urged to reconsider its position on this matter and embrace the direction given by the Constitution.*

*Delegates also pointed out that in discussing this matter further the Commission should consider that other countries have different Ombudsman for different areas, whilst Malawi only have one Ombudsman. This difference may explain why some countries have a government Ombudsman whose role is the traditional one.*

*With respect to the issue of jurisdiction, delegates agreed with the position taken by the Commission that there is need to clarify this matter so that aggrieved persons are guided as to whether the matter should go to this office or is appropriate for the courts.*

*On the issue of monetary compensation, delegates strongly urged that the office of the Ombudsman should be empowered to award such compensation for the effective functioning of the institution.*

## **7.2 Human Rights Commission**

The presentation of the Commission on this matter focused on three submissions. First, stakeholders indicated dissatisfaction with the involvement of the Law Commissioner and the Ombudsman in the appointment of Human Rights Commissioners, and involvement in the work of the Human Rights Commission, as this was perceived to create the impression that the Human Rights Commission is subordinate to the Law Commission and the Ombudsman. Second, it was submitted that there is need to secure tenure of Human Rights Commissioners. Third, it was submitted that the broad mandate of the Human Rights Commission may create conflict with other institutions.

With respect to the first issue, the Commission took the position that the status quo should be maintained as the involvement of the Law Commissioner and the Ombudsman in the appointment of Human Rights Commissioners, and involvement in the work of the Human Rights Commission, ensures transparency in the appointment process and also enhances expertise in the institution. On the second issue, the Commission agreed with the submission and took the position that the Constitution should be amended to incorporate a tenure of three years for Human Rights Commissioners. In terms of the third issue, the Commission took the position that the nature of the objectives and functions of the Human Rights Commission justifies the broadness of the mandate and hence was in favour of maintaining the status quo.

*Delegates generally were in support of the positions taken by the Commission regarding the Human Rights Commission. Delegates emphasized that the mandate of the Human Rights Commission should not be reduced as no real conflict with other case handling institutions such as the courts and the Ombudsman exists.*

## **7.3 National Local Government Finance Committee**

The presentation of the Commission on this institution emanated from four submissions. First, it was submitted that the word “Committee” in the name of the institution creates the impression that it is a committee of a bigger entity and lacks permanency. Second, it was submitted that the National Local Government Finance Committee should have a separate Chapter in the Constitution. Third, it was submitted that the composition of the Committee does not tally with its functions as a result this affects the effectiveness of the Committee. The final submission urged that the Constitution should stipulate the amount of funds that should be transferred from the central government to local assemblies.

With respect to the first issue, the Commission agreed with the submission and took the position that the word Committee should be replaced with “Commission” in the name of the institution. Regarding the second issue, the Commission took the position that the Committee is appropriately placed under a Chapter on Local Government. On the third issue, the Commission conceded that the composition of the Committee should reflect competencies that should satisfy the mandate of the Committee and took the position that the membership should be revisited and that the appointing authority should be the President. On the final submission, the Commission took the position that the status quo be maintained since issues of budget can not be in the Constitution.

*Delegates were generally in support of the positions taken by the Commission regarding the Local Government Finance Committee. Delegates emphasized that there is no need to stipulate issues of budget in the Constitution as in any case the assemblies can raise funds on their own through taxes and rates.*

## **8 OTHER INSTITUTIONS**

### **8.1 Defence and Security Committee of the National Assembly**

The presentation of the Commission on this Committee emanated from three submissions. First, it was submitted that the specific role of the Committee should be specified by the Constitution. Second, the period of tenure of members of the Committee which is one year was considered grossly inadequate for any meaningful contribution by members. Third, the appropriateness of the oversight or supervisory powers of the Committee over appointments in the Defence Force was questioned.

On specifying the role of the Committee in the Constitution, the Commission took the position that the status quo should be maintained since other Parliamentary Committees do not have their mandates specified in the Constitution. On the length of tenure of members of the Committee, the Commission took the position that the status quo should be maintained since it is consistent with parliamentary practice regarding membership to Committees and also that since the Committee deals with matters of security, a period of one year was justified. Finally, on the third submission, the Commission took the position that this was necessary based on both the history of the country and the trend in emerging democracies where parliamentary oversight over activities of Defence Forces is emphasized.

*The delegates to the Conference generally agreed with the recommendations of the Commission.*

### **8.2 The Anti-Corruption Bureau**

The presentation of the Commission regarding this institution focused on the submission urging for the elevation of this body to a constitutional body to ensure its independence.

The Commission took the view that the Director of Public Prosecutions holds the constitutional power in all criminal matters, and as such, it would not be appropriate to elevate the Anti-Corruption Bureau to constitutional level. The Commission was aware that its position on this matter reflects regional trends.

*Delegates generally felt that the current arrangements have not posed insurmountable challenges and were in support of the position taken by the Commission on this matter.*

### **8.3 Immigration Department**

The presentation of the Commission on this Department emanated from two submissions. First, it was submitted that the Constitution should clarify the status of this Department as to whether it is a security organization or civilian

organization. Second, it was submitted that the Department should have its own Chapter in the Constitution.

With respect to the first issue, the Commission took the position that the status quo be maintained as matters of immigration are as good as matters of internal security and as such this makes the Department a security organization. On the second issue, the Commission took the position that the Department is appropriately placed under the Ministry of Home Affairs and Internal Security as a security organization. The Commission also highlighted similar practice in countries such as Tanzania and Botswana.

*Delegates generally agreed with the recommendations of the Commission but emphasized the need to strengthen the Department to ensure its effective functioning in protecting our borders and controlling the invasion of illegal immigrants in Malawi.*

#### **8.4 Reserve Bank of Malawi**

The presentation of the Commission in this regard emanated from three submissions. First, it was submitted that section 185 of the Constitution should be entrenched so that the Bank may not be abolished at the whim of a government. Second, it was submitted that the Constitution should require the Bank to report to a Committee of the National Assembly. Third, it was submitted that the tenure of the Governor and Deputy Governor should be secured to ensure independence of the Bank.

With respect to the first submission, the Commission took the position that an attempt to entrench section 185 would not protect the Bank from wanton abolition since the Bank is established under statute as opposed to the Constitution. On the second and third submissions, the Commission took the position that these matters should be dealt with under statute and considered the on-going review of the Reserve Bank Act as an opportunity to incorporate these submissions.

*Debate on this by delegates was not focused. Some delegates suggested that the Reserve Bank needs to operate like the Federal Reserve Bank of USA especially with regard to interest rates. The Commission was thus urged to revisit the primary function of the Bank.*

#### **8.5 Civil Service Commission**

The presentation of the Commission in this regard emanated from a submission urging for the establishment of a Public Service Commission to act as an umbrella body for all public institutions. The Commission took the position that taking that direction may not work for Malawi for a number of reasons. First, it would increase red tape in handling public service matters. Second, there are some constitutional bodies such as the Ombudsman, Law Commission, Human Rights Commission and Electoral Commission which need a certain level of autonomy to perform effectively. Third, such a body may not have adequate capacity and

competence to provide effective oversight functions over all public institutions and at the same time monitor other service commissions. The Commission thus favoured the status quo.

*Delegates generally agreed with the recommendations of the Commission.*

## **8.6 Institution of Chieftaincy**

The presentation of the Commission on this matter emanated from a submission urging for the recognition of the institution of chieftaincy in the Constitution as was the position prior to 1994 in recognition of the important role Chiefs play in governance issues. The Commission took the position that the Constitution should recognize the institution of Chieftaincy and indicated that this is the trend in the SADC Region.

*Delegates were in support of the position taken by the Commission but urged that mechanisms be put in place to ensure that chiefs are protected from manipulation by the Government of the day.*

## 9 MISCELLANEOUS

### 9.1 Disclosure of Assets

The Presentation made by the Commission emanated from two submissions. First, it was submitted that the stipulated period of three months within which to declare assets and liabilities by politicians was too long. Second, it was submitted that mechanisms should be put in place to ensure compliance with and enforcement of the provision on declaration of assets and liabilities. Third, it was submitted that the requirement that declarations should be made to the Speaker contributes to lack of compliance as that office does not have the capacity to carry out this function.

On the first issue, the Commission took the position that the President, Vice President, Ministers and Members of Parliament should declare their assets and liabilities before they assume office since the Commission considered that the country's past history has led to politicians being held in reverence and, makes it difficult to require them to declare their assets and liabilities when they have already assumed office. On the issue of mechanisms for compliance and enforcement, the Commission took the position that this problem is there due to lack of an enabling statute coupled with lack of political will. On the issue of the declarations being made to the Speaker, the Commission agreed with the submission regarding the inadequacy of this office for such function and took the position that the procedure for declaration of assets should be left to the statute that is being developed by the Law Commission.

*Delegates generally agreed that the principle of disclosure of assets and liabilities is very important. Delegates however could not agree on the period within which declaration of assets should be required.*

*Delegates also appeared to strongly endorse the view that the declarations should be done on annual basis and urged the Commission to introduce a provision either in the Constitution or under statute to require declarations at the point of exit.*

*Delegates also felt that Senators should be included in the list of people who should declare their assets and liabilities as they will be part of Parliament.*

*Delegates further noted that the position taken by the Commission seeks to differentiate between politicians and public officers in terms of the period within which declarations are to be made. Some delegates considered this differential treatment unjustified and requested the Commission to reconsider its position on this matter.*

**Appendix - A****MALAWI LAW COMMISSION****SECOND NATIONAL CONSTITUTION CONFERENCE  
SUNBIRD CAPITAL HOTEL, LILONGWE  
(17<sup>th</sup> to 19<sup>th</sup> April, 2007)****Welcome Statement by Anthony Kamanga, SC,  
Law Commissioner**

On behalf of the Malawi Law Commission, I feel greatly honoured today to stand before you, Your Lordship, and the Malawi nation, as host of the Second National Constitution Conference.

My Lord, Chief Justice, my role this morning is only to make a few remarks to welcome the delegates and delegates to this Conference. But first allow me, My Lord, to give a brief background to this Conference and also to introduce the members of the special Law Commission and the staff of the Law Commission who have individually and collectively made it possible for this Conference to be held today.

My Lord, Chief Justice, this Conference is a continuation of the Constitution review process which His Excellency the President, Dr Bingu wa Mutharika, launched on 28<sup>th</sup> March, 2006. This Conference is yet another milestone in the constitutional development of our country, Malawi. This Conference demonstrates the determination and commitment of Malawians, as a nation, to complete a process of reviewing the constitutional framework of our democratic governance; and this is, indeed, an historic day for me and for my colleagues at the Law Commission; and I trust every Malawian.

My Lord, Chief Justice, after the First National Constitution Conference, the Law Commission, in consultation with the Judicial Service Commission, and in accordance with section 133 of the Constitution, in June, 2006, empaneled a special Law Commission to review the Constitution, in light of the issues contained in the Consultation Paper and the Issues Paper. The two papers, it will be recalled, contain the various issues pertaining to the review of the Constitution identified during the preliminary consultations with stakeholders, and also, issues raised during the First National Constitution Conference.

The special Law Commission has held eight scheduled meetings (each lasting three days) over the past few months and has now deliberated on most of the issues contained in the Consultation Paper and the Issues Paper.

In addition, the special Law Commission has during the review process received and considered oral submissions from specific stakeholders, including political parties, representatives of children and the youth, and civil society

organizations, with respect to specific issues that require to be addressed as part of the review of the Constitution.

Furthermore, in order to ensure meaningful consultations with all stakeholders, particularly ordinary Malawians of all walks of life, and also, to ensure that recommendations of the special Law Commission for revisions or amendments to the Constitution bear the sentiments and desires of the people of Malawi, the Law Commission has engaged the public in the review process through, among others, the radio, television and targeted district consultations.

During the period between December, 2006 and January, 2007, the Law Commission sponsored a number of programmes on MBC, Zodiak Broadcasting Station and Television Malawi in relation to specific issues which have come up in the Constitution review process.

As part of the consultation process, the Law Commission also, in November - December, 2006, distributed country wide, through the National Initiative for Civic Education (NICE), information and education materials covering various issues that have arisen in the Constitution review process.

My Lord, Chief Justice, the principal objective of all those programmes was to sensitize Malawians on the on-going Constitution review process, and to solicit their views on specific issues. I am pleased to report that the response to these efforts of the Commission has been extremely positive, and the special Law Commission has considered the views and sentiments expressed by the public in formulating its tentative recommendations contained in its draft Report.

My Lord, Chief Justice, the special Law Commission has reached broad consensus on most of the issues that have come up in the course of the Constitution review process, and during this Conference the special Law Commission, as part of the continuing consultation process and in accordance with the terms of reference of the special Law Commission, will present to the Conference, its draft Report, containing the various tentative recommendations regarding the Constitution for further input by the various stakeholders invited to this Conference.

After this Conference, the special Law Commission will meet again to review its tentative recommendations in light of the further input from stakeholders at this Conference; thereafter the special Law Commission will proceed to finalize its Report for presentation to Cabinet and to Parliament.

My Lord, Chief Justice, I wish to take this opportunity to thank His Excellency the President, most sincerely indeed, for the support and the encouragement that I have received, and continue to receive, from His Excellency in relation to the Constitution review process.

Nothing can be more assuring about the commitment of His Excellency the President and His Excellency's Government to the constitutional governance

of this country, and about the importance that His Excellency personally attaches to the country's Constitution, and the Constitution review process which His Excellency the President personally launched on 28<sup>th</sup> March, 2006.

We, at the Law Commission, are most grateful for the clear demonstration of His Excellency the President's support for, and commitment to, the Constitution review process, which the country has embarked upon.

As testimony of its strong support for, and commitment to, the on-going Constitution review process, in the current financial year, His Excellency's Government made a special allocation of a large sum for the funding of this Constitution review programme, so that any donor funding for this programme is meant only to complement Government's own funding; and the Treasury has regularly funded the programmed activities of the special Law Commission.

My Lord, Chief Justice, I also wish to acknowledge the leadership role that the Minister of Justice and Constitutional Affairs, Honourable Bazuka Mhango, MP, has provided to me and to my colleagues in relation to the on-going Constitution review process, and particularly, in the process leading up to the holding of this Conference.

The Honourable Minister gave us, and me personally, the encouragement to proceed with all confidence that the Government was fully supportive of the process; and I have received all the support I needed from him. In critical matters and at critical times the Honourable Minister provided the bridge to His Excellency the President to secure the necessary executive backing for the process. I am most grateful indeed to the Honourable Minister.

My Lord, Chief Justice, please allow me to introduce members of the Special Law Commission on the review of the Constitution.

My Lord, Chief Justice, the Commissioners on the special Law Commission, under the able leadership of Professor Zimani Kadzamira, have worked tirelessly to get us to this stage of the process of the review of the Constitution. I am able to vouch for the individual and collective dedication and commitment of the Commissioners.

I also wish to recognize and to pay special tribute to Professor Zimani Kadzamira, the Chairperson of the special Law Commission, who was always able to skillfully guide the deliberations of the Commission and to keep the deliberations on track. More important, My Lord, Chief Justice, I wish to pay tribute to Professor Zimani Kadzamira for his ability to build consensus among the Commissioners on various contentious issues during the inevitable stormy deliberations of the Commission.

Malawi should be proud it has such dedicated and committed people!

My Lord Chief, Justice, I also wish to recognize and to pay tribute to my fellow members of staff at the Law Commission who have serviced the Special Law Commission, and with whom, together, we have worked and walked to reach this stage.

I wish to single out Mrs Janet Banda, Chief Law Reform Officer, who is the Principal Programme Officer for the Constitution review programme, and has throughout anchored the programme, and also, all the other programme officers who have worked tirelessly, and at odd hours, to compile the draft Report in time for this Conference.

My Lord, Chief Justice, it would be remiss of me if I did not also recognize and pay special tribute to someone who is closely associated with the development of our current Constitution; someone who actively participated in the process of the drafting of our current Constitution - Justice E.M. Singini, SC, my predecessor -

Before he left the Law Commission, in August, 2006, to resume his duties as Judge of the High Court, Justice E.M. Singini, SC, laid the foundation cornerstones for the on-going Constitution review process.

My Lord, Chief Justice, I now wish to extend, on behalf of the special Law Commission and the Law Commission our warmest welcome to the invited guests, all distinguished delegates and delegates, and to thank them all, for their response in coming to the Conference. We, at the Law Commission, are overwhelmed by this level of response and support. Virtually every individual invited is here; and every organization invited has sent a representative or several representatives.

My Lord, Chief Justice, many Malawians responded to our invitation for submissions. Malawians of all walks of life, from all corners of the country, and some from abroad, took pen and paper and wrote to the Law Commission to give their views on the Constitution.

Furthermore, a number of distinguished Malawians have accepted to serve at this Conference in the capacity of moderators or facilitators of sessions into which the proceedings of the Conference have been organized as indicated on the Conference programme.

I wish to extend to all of them our sincere gratitude!

I should also acknowledge, My Lord, Chief Justice, that the community of civil society organizations and NGOs also took the message to the people through the media, both radio and newspapers, and through their field visits to campaign for people's participation in the on-going process of the review of the Constitution. In this regard I wish to acknowledge the positive role played by the National Initiative for Civic Education (NICE) and Civil and Political Space Platform.

The various media organizations, including public broadcasters, private radios and newspapers, have also played their part in raising public awareness about the on-going Constitution review process, as well as this Conference; but I hope I can be allowed to make special mention of our national radio and television, MBC and TVM, respectively, and Zodiak Broadcasting Station, ZBS, for what has been a very comprehensive coverage of the on-going Constitution review process.

I would like to sincerely acknowledge this level of partnership we have had with civil society and with the media.

Finally, but not least, I wish to acknowledge, with appreciation, the financial support for the Constitution review process that the Law Commission has received, and continues to receive, from Malawi's co-operating partners.

My Lord, Chief Justice, donor funding for the entire Constitution review process is being coordinated by UNDP; and under such coordination, I wish to publicly acknowledge the generosity of UNDP itself, the European Union and the Governments of Norway and Sweden, who have supported our Constitution review programme, and also, co-financed this Conference.

I also wish to acknowledge the assistance we have received from the Netherlands Institute for Multi-party Democracy, through the Centre for Multi-party Democracy in Malawi, in relation to the hosting of this Conference. We are truly grateful to them all.

I should hasten to add that the mention of those few donors in relation to the Constitution review programme is not intended, in any way, to downplay the very large support that the Law Commission has received, and continues to receive, from the other donors, as well as from the donors I have mentioned, for various other law reform programmes and for institutional capacity building.

We are equally grateful to them all.

My Lord, Chief Justice, distinguished delegates and delegates, ladies and gentlemen, it is now my honour and privilege to invite Professor Zimani Kadzamira, Chairperson of the special Law Commission, to address the Conference.

Professor Zimani Kadzamira, Sir.

---

**Appendix - B**

**SECOND NATIONAL CONSTITUTION CONFERENCE**

*17<sup>TH</sup> TO 19<sup>TH</sup> APRIL, 2007*

***STATEMENT BY THE CHAIRPERSON OF THE SPECIAL LAW  
COMMISSION ON THE REVIEW OF THE CONSTITUTION***

*Professor Zimani Kadzamira*

---

My Lord Chief Justice, Hon. Minister of Justice, distinguished delegates and delegates, on behalf of the special Law Commission on the Review of the Constitution, I would like to start by thanking Your Lordship Chief Justice for accepting to officially open this Conference. It is indeed an honour for our special Law Commission and I most certainly wish to assure you my Lord that your presence here with us today is not taken for granted. This attests to the level of support and importance that Government attaches to the work of our special Law Commission and generally to the whole programme on the Constitution review.

I would also like to thank the distinguished delegates and delegates in the Conference for sparing valuable time to come and attend the Conference. To us Commissioners, your response to our invitation evidenced by your presence with us today is testimony of the level of interest and support that the review of the Constitution has generated. I and my fellow Commissioners are much heartened to see that stakeholders from all sectors of the Malawian society are here. This level of support is an encouragement to us since it illustrates that as a nation we are moving forward together in the Constitution review process. For us it is also an indication that individually, every Malawian feels responsible for this process and would ensure that the process is carried forward after it [leaves] moves from the Malawi Law Commission to the next stages at Cabinet and Parliament level respectively, and that it produces the intended result.

Let me give a little background to the work of our Commission.

As most of you are aware, our Law Commission was appointed in June last year in accordance with section 133 of the Constitution by the Law Commissioner in consultation with the Judicial Service Commission. We have since been meeting once or twice a month depending on availability of funding. So far we have had nine meetings in total where we deliberated on issues contained in the Issues Paper and Discussion Paper guided by the following broad Terms of Reference–

1. To carry out a review of the Constitution to address-

- (a) matters pertaining to the Constitution raised in the Issues Paper, the Consultation Paper and during the First National Constitution Conference;
  - (b) short-comings within the Constitution which affect the good conduct of the government of the country;
  - (c) any other matters that might arise during the review process pertaining to the Constitution.
2. To assume ownership of the review process and adopt a methodology that guarantees wide consultation and transparency in carrying out its work.
  3. To make preliminary recommendations addressing its findings and present those findings and recommendations to a Second National Constitution Conference.
  4. Finally, to produce a Report containing findings and recommendations, accompanied by draft legislation based on the recommendations, to be submitted to the Minister of Justice for presentation to Cabinet and laying in Parliament.

Pursuant to these Terms of Reference, our special Law Commission developed its own work methodology as indicated in the draft Report. As mentioned earlier, the Issues Paper and the Consultation Paper constituted the working documents of our special Law Commission. During our meetings we, therefore, discussed and analyzed the submissions contained in these two Papers and examined several comparable Constitutions from selected countries within the Region and from other common law jurisdictions. In our deliberations, we were also guided by international law where applicable as is required of the Law Commission under section 135 of the Constitution.

As a special Law Commission, we attached great importance to the issue of wide consultation as advised by His Excellency the President, Dr Bingu wa Mutharika during the First National Constitution Conference and also as suggested by civil society to ensure maximum participation by all stakeholders in the Constitution review process. To that end, our special Law Commission arranged various consultative meetings with stakeholders such as representatives of political parties and representatives of vulnerable groups such as women and children.

In order to broaden the base of consultations, our special Law Commission engaged graduate research assistants to carry out research in targeted districts in all the three regions of Malawi. The purpose of this research was to consult further on specific issues where broad consensus proved elusive for the special Law Commission. Such issues included the issue of national language and the issue of death penalty. The research assistants went to the following districts:

Karonga, Rumphu, Kasungu, Nkhota-kota, Ntcheu, Phalombe, Blantyre, Nsanje and Machinga.

As a special Law Commission we also recognized the power and potential of the electronic media in reaching masses, especially the grassroots masses. We therefore arranged radio and Television programmes. These took the form of jingles, panel discussions and phone-in programmes targeting very specific issues where additional input was required from stakeholders. These programmes were aired on Television Malawi, Malawi Broadcasting Corporation, Zodiac Broadcasting Station and Capital FM radio. The response to these programmes was overwhelming and very supportive of the process. I am informed that the Malawi Law Commission was inundated with letters from the general public expressing their views on the issues raised in these debates and the jingles. Indeed we are very grateful for this level of support from Malawians.

The Constitution requires the Malawi Law Commission in carrying out reforms to any law and indeed the Constitution is required among other things to consider international practice. Our special Law Commission in recognition of this mandate and pursuant to one of our terms of reference, arranged study visits to select countries in the region such as Namibia, South Africa, Zambia and Uganda. In these countries, Commissioners and Programme Officers had occasion to observe first hand the implementation of comparable provisions of the Constitution.

My Lord I am highlighting all these to show the nation how widely we have consulted as special Law Commission and how transparent we have strived to make the Constitution review process. The experience from all these consultations has been very useful and has contributed tremendously to the outcome of our draft Report.

Your Lordship Chief Justice we are all here today to [enable] our special Law Commission to present its draft Report to the nation. As a special Law Commission we realize that this has been a long awaited day for our nation and the enormity of the responsibility and trust reposed in us is only beginning to sink in [our hearts]. On behalf of my fellow Commissioners we are grateful and overwhelmed by the confidence and trust that the nation reposed in us to carry out this task. We recognize that our appointment by the Law Commissioner in liaison with the Judicial Service Commission was not by chance but rather was done with careful thought and influenced by compelling and relevant factors. We want to assure the nation that we have not taken this honour lightly and have worked tirelessly to the best of our capabilities to produce the draft Report before you today

My Lord, our Report shows that we have had to grapple with a number of issues that have arisen during the review process and which our Commission has concretized in the form of tentative recommendations for the nation's consideration. Issues such as relevance of a national language in the Constitution, relevance and necessity of the death penalty, importance and efficacy of having a

Senate, the emotive and ever recurring issue of a recall provision to empower constituents to remove their Member of Parliament and the hot debate as to whether a President should be empowered to appoint and remove his vice. These are just but a few examples that our Commission has tackled.

Your Lordship Chief Justice I have to admit that the assignment given to our Commission was not an easy one. In carrying out our mandate we faced a number of challenges. First, we had to work within our time-frames and stick to our work plan since we were aware that the nation was watching. This in itself proved a challenge since we all have commitments elsewhere and it meant working extra hard each time we met. The further challenge in this regard was to hold our meetings as scheduled in order to keep the time frames as adopted in our work plan. This proved to be difficult sometimes because our time table was affected by funding arrangements, and this sometimes required the re-scheduling of meetings.

Second, we all know my Lord that it is not easy to get a consensus on all issues from twenty five individual minds. This in some cases resulted in protracted debates on one issue. The Commission therefore resorted to depending on broad consensus in arriving at tentative recommendations.

My Lord, in tackling issues, the special Law Commission also had to balance a number of interests in arriving at conclusions. These interests included the needs of our society whether cultural or political, the social-economic situation of Malawi as a nation, international practice and the ever tricky issue of efficacy of the submissions received. My Lord the challenge in this regard arose in determining what interest should surpass the others in deliberating on an issue and why.

Your Lordship Chief Justice, I am glad to say we were able to meet our targets and surmount the challenges we faced due to the commitment and dedication of my fellow Commissioners who worked tirelessly to ensure that we produce a draft Report for the consideration of the nation at this Conference. I should also acknowledge the tremendous support, both technical and administrative, that our special Law Commission received from the Malawi Law Commission in facilitating our work. This support contributed significantly to the success of our work.

Your Lordship Chief Justice I wish to emphasize that the recommendations contained in our Report are only tentative, and I would urge delegates and delegates to treat them as such. This Conference has been convened at this stage to give an opportunity to stakeholders to scrutinize the tentative recommendations and make suggestions for improvements where appropriate. I would like to inform all delegates and delegates to this Conference that our special Law Commission places great value on the contributions that will be made at this Conference. My appeal is therefore that delegates should feel free to air views on specific recommendations.

My Lord, I would wish to go further and implore delegates to be constructive in their input to ensure that the Conference, as a consultation forum, is useful and productive to the work of our special Law Commission. To that end, let me humbly remind distinguished delegates and delegates that they should not lose sight of the fact that they are here as representatives of various stakeholders. Our expectation as a special Law Commission is that in their contributions, delegates and delegates shall reflect the views of those stakeholders as opposed to individual or partisan interests.

Your Lordship Chief Justice, Honourable Minister, distinguished delegates, may I finally take this opportunity to gratefully acknowledge the Malawi Government for the substantial funding and support it has given the special Law Commission on the Review of the Constitution. This support facilitated the carrying out of the major component of our work. I also wish to acknowledge the support from our co-operating partners which enabled the implementation of a parallel civic education and consultation programme to the constitution review process to ensure that the process was highly participatory.

Your Lordship Chief Justice, Honourable Minister, distinguished delegates and delegates, I thank you all.

---

## Appendix – C

SECOND NATIONAL CONSTITUTION CONFERENCE  
SUNBIRD CAPITAL HOTEL, LILONGWE  
17<sup>th</sup> to 19<sup>th</sup> APRIL, 2007

---

*Address to the Opening Ceremony by:  
Honourable BAZUKA M. K. MHANGO, MP,  
Minister of Justice and Constitutional Affairs*

(MORNING OF TUESDAY, 17<sup>th</sup> APRIL, 2007)

My Lord, Chief Justice, allow me, first of all to thank you, on behalf of His Excellency the President, Dr Bingu wa Mutharika, for accepting to be with us today to officially open the Second National Constitution Conference on the review of the Constitution. We are aware that Your Lordship has a busy and tight schedule each day in attending to other important matters, and we are most grateful, therefore, that Your Lordship were able to accommodate this event in your busy schedule.

I also wish to thank His Excellency the President for the guidance he has provided to me and to the Law Commission in arranging for this Conference, and for the success that the Conference appears to be. We value the instructions of His Excellency the President to us that in organizing this Conference we were to ensure that it is a forum for the people of Malawi to express their views on the shortcomings of their Constitution, and for us as officials to avoid imposing on the delegates our own views on the Constitution. The programme for this Conference has been appropriately designed with that objective in mind, and I trust that it will yield the intended results, including sharing views on how to address any shortcomings in the Constitution.

My Lord, allow me also to express my sincere gratitude to the Chairperson and other members of the special Law Commission on the review of the Constitution, and to the Law Commissioner and his staff, for the dedicated effort they have put into the process of the review of the Constitution, including the process leading to the holding of this Conference.

The Law Commissioner was able to brief me at every stage of the process and I was able, in turn, to brief His Excellency the President on the progress being made on the overall review of the Constitution and in arranging for this Conference so that we could receive the guidance of His Excellency the President.

My Lord, Chief Justice, as Minister responsible for Constitutional Affairs, I consider that the initiative to re-examine our Constitution is most appropriate.

While I remain convinced that our Constitution is by and large an appropriate legal framework which presents a working foundation for our

constitutional democracy, and that it has served our nation reasonably well, and while we can also take comfort in the knowledge that our Constitution is well respected internationally, particularly for its entrenchment of a Bill of Rights, among other democratic provisions, it must be acknowledged that the rush with which the Constitution was put together inevitably led to some gaps and some loose ends in it, which in some respects are of some significance. Some of the shortcomings in our Constitution could not have reasonably been foreseen at the time of drafting the Constitution, but have surfaced during the period the Constitution has been in operation, and have largely been exposed through the conduct of some office holders and the duty bearers.

After several years of the operation of the Constitution, there were loud outcries by stakeholders in civil society, as well as noticeable presentations from some concerned institutions in the public service, to have the Constitution revisited in some respects.

The Government heard those outcries particularly from civil society and has felt duty bound to invoke the State machinery into a Constitution review process, as provided by the Constitution.

The need for a review of our Constitution is, therefore, justifiable.

For us in Malawi, we regard ourselves as fortunate in that the Constitution itself provides for a mechanism for its own review, which is through the Malawi Law Commission.

As Minister of Justice, I can attest to the fact that the methodology which the Law Commission follows in all law reform programmes which it undertakes entails a wide consultative approach as has been the case with the present review of the Constitution.

Indeed, I have noted with satisfaction, from the remarks of the Law Commissioner and the Chairperson of the special Law Commission, that in the last few months leading up to this Conference, the Law Commission, in accordance with the expressed wishes of His Excellency the President that the Constitution review process must involve Malawians of all walks of life, has truly engaged the public in a wide consultation process.

I am particularly delighted to note that-

- **in addition, to the issues contained in the Consultation Paper and the Issues Paper, the special Law Commission has during the review process received oral submissions from specific stakeholders, including political parties, representatives of children and the youth, and civil society organizations; and**

- **the Law Commission has also engaged the public in the review process through, among others, the radio, television and targeted district consultations.**

My Lord, this Conference, at which the special Law Commission, in accordance with its terms of reference, will present its draft Report containing the various tentative recommendations regarding the Constitution for further input by the various stakeholders invited to this Conference, is itself part of the continuing consultation process .

My Lord, I also wish to note with satisfaction that delegates and delegates to this Conference have come from all quarters of Malawian society: All the three branches of Government (The Executive, the Legislature and The Judiciary); Political Parties; The Traditional Leaders (including our Paramount Chiefs, Senior Chiefs and Traditional Authorities and among them a number of women chiefs); Civil Society Groups; The Faith Groups; Women Groups; Persons with Disabilities; Youth Groups, including the Children; the Business and Industry sector; Corporate Malawi; The Academic Community, represented by the two State Universities, University of Malawi and Mzuzu University; The Civil Service and other Public Institutions; Trade Unions; The Media; Professional bodies and Other Associations (among them Lawyers, Accountants, and other technical experts and professionals) and several eminent and ordinary citizens . In short, My Lord, the entire Nation is here.

I also wish to acknowledge the group of highly distinguished Malawians who have been invited in their individual capacities to preside and moderate over the various sessions into which the proceedings of the Conference have been divided.

My Lord, we are also most grateful indeed to all delegates and delegates for their overwhelming response with almost full attendance and to all the several dignitaries that have agreed to perform the various roles assigned to them. This high level of response and support attest to the fact that the initiative we have taken as Government to allow for a process of review of the Constitution has been well received by Malawians of all walks of life. It also attests to the importance of this conference as a national event. We trust that the outcome of this Conference and the entire review process can only be in the best interest of our nation for now, and for the future constitutional governance of this country.

The Law Commission has raised public confidence in the review process and has generated a strong sense of ownership of the process among major players and the general public. I am confident, therefore, My Lord, that at present we are all marching together to embrace this process as appropriate for the review of our Constitution; and I wish to express my gratitude and congratulations to the Law Commission and the members of the special Law Commission.

I also wish to express the hope that since this process has been truly consultative, it will absorb all efforts by any quarters of our society to separately initiate reviews or amendments to our Constitution.

My message to the Law Commission is that the people of Malawi are hoping, through this process, to have a constitutional framework that is proper for the democratic governance of the country and to leave behind them the unhappy experiences they may have had with our Constitution in its present state.

I wish also to thank our development partners, the donors, for providing the funding for the Constitution Review Programme, including this Conference to supplement Government's own funding and for coming forward so willingly and generously to support us in this national initiative.

My Lord, Chief Justice, donor funding for the entire Constitution review process is being coordinated by UNDP; and I wish to publicly acknowledge the generosity of UNDP itself, the European Union and the Governments of Norway and Sweden, who have supported our Constitution review programme, including the hosting this Conference.

I also wish to acknowledge the assistance received from the Netherlands Institute for Multi-party Democracy, through the Centre for Multi-party Democracy in Malawi, in relation to the hosting of this Conference.

We are truly grateful to them all.

I should hasten to add that the mention of these donors in relation to this Constitution review programme is not intended in any way to downplay the very large support that the Law Commission has received and continues to receive from the other donors, as well as the donors I have mentioned, for various other law reform programmes and for institutional capacity building. We are equally grateful to them all.

As Your Lordship will be aware, the Malawi Government itself has made a very significant funding allocation for the programme of the Constitution Review under the 2005/06 Government Budget. I trust that this will serve to demonstrate that the initiative to undertake this process of review of the Constitution has been taken by the Malawi Government in line with its commitment to principles of democracy and good governance by allowing for expression of popular views over the country's constitutional framework. The sizable allocation by the Malawi Government opened the way for our development partners to come forward and provide the supplementary funding I have referred to.

Distinguished invited guests, distinguished delegates and delegates, ladies and gentlemen, it is now my humble duty, honour and privilege to request His Lordship, the Chief Justice, Justice Leonard Unyolo, SC, to officially open the

Second National Conference on the review of the Constitution and guide the Malawi nation with his keynote address.

My Lord, the Chief Justice.

---

**Appendix - D**

**SECOND NATIONAL CONSTITUTION  
CONFERENCE**

**17<sup>TH</sup> TO 19<sup>TH</sup> APRIL, 2007**

***OPENING ADDRESS BY:***

***HIS LORDSHIP THE CHIEF JUSTICE,  
JUSTICE LEORNARD UNYOLO, SC  
(MORNING OF TUESDAY, 17<sup>TH</sup> APRIL, 2007)***

---

Distinguished invited guests, delegates and delegates, I stand before you today to perform the official opening of the Second National Constitution Conference. Indeed, I feel greatly honoured that His Excellency the President, Dr Bingu wa Mutharika, has kindly assigned me to perform this task on his behalf. It is, therefore, with great pleasure that I join the nation this morning, through the presence here of all of you, who have come together to continue the process of Constitution review in Malawi.

As we are all aware, this process started in 2004 with the approval of Government. At that time, the Law Commission identified what were perceived to be problematic areas in the Constitution based on the Law Commission's assessment of the performance of the Constitution since its adoption in 1994. Initially, the Law Commission envisaged a very selective process of review, targeting a few areas in the Constitution that have shown weaknesses in the operation of the Constitution. The areas identified were largely to do with political governance.

Of the examples cited, one concerned the inadequate provisions in the Constitution regarding the procedure for succession to the Presidency in the event of simultaneous vacancies in the offices of the President and the First Vice President. The other related to the crisis created by the resignation of the then First Vice President in 2004 from the United Democratic Front, the political party under which he ascended to that office.

However, when the Law Commission approached Government with the intention to carry out a limited review, Cabinet through the Minister responsible for Justice properly suggested that the Law Commission should adopt a methodology that would render the review process more widely inclusive of the Malawian society.

Pursuant to that suggestion, the Law Commission redesigned the review process to allow for wider consultation. This resulted into a broader review than originally envisaged, and it was for that purpose that we were convened at this very venue in March last year during the First National Constitution Conference,

officiated by His Excellency, the President, Dr. Bingu wa Mutharika. The First National Constitution Conference launched the Constitution review process and sought to build consensus on the issues in need of reform as gleaned from the numerous oral and written submissions received by the Law Commission.

We are informed that the present Conference has been organized to consider the findings and tentative recommendations contained in the Report of the special Law Commission which was appointed in June last year following the First National Constitution Conference to move the process forward. The special Law Commission was mandated to analyze and consider the views and recommendations of the various stakeholders as compiled in the Papers developed by the Law Commission emanating from the consultations including the First National Constitution Conference.

We are further informed that the special Law Commission has worked tirelessly for the past nine months to compile the draft Report for our consideration as a nation. Please Mr. Chairperson and Commissioners, on behalf of His Excellency, the President and indeed on behalf on the Malawi nation, accept our sincere congratulations for the draft Report before us today and mostly also for achieving your targets as announced in your work plan, despite the challenges faced by your Commission during the course of your work. This is no mean achievement on the part of your special Law Commission.

We recognize the mammoth task your Commission has had to surmount to move this process forward and bring us where we are today. As a nation we appreciate the dedication and commitment of your Commission in carrying out this noble, but difficult task. Indeed, we are proud of your special Law Commission and the work that it has produced.

As delegates to this Conference we are expected to express our observations on the findings and tentative recommendations of the special Law Commission, and to exchange views on what improvements should be made to the recommendations made by the special Law Commission. Distinguished delegates, this process should not be seen as a rewriting of the Constitution but rather as an affirmation of the Constitution as the proper blue print for the country's governance.

I, therefore, urge that in your approach to the task before you during this Conference, you recognize that some of the perceived failings of our Constitution are sometimes confused with what are in fact failings on the part of duty bearers or holders of public office, such as the politicians, public officers, indeed us judicial officers as well, and many other actors that have a role to play in the application of the Constitution. Time and again we have observed that weaknesses in the structures and management of our political parties are blamed on the Constitution. The truth of the matter is that the Constitution is about national Government and it sets itself apart from structures and operations of political parties.

Let me also remind delegates that a Constitution exists to serve succeeding generations of a nation. Hence, no matter how well or expertly a Constitution may be framed, it takes the collective and concerted effort of all those exercising Government authority in ensuring the sustenance of constitutional governance. A Constitution should, therefore, not be the subject of frequent reviews or amendments in the way that Parliamentary statutes are.

Our Constitution reflects internationally accepted noble principles guaranteeing an open, democratic and accountable government. The Constitution has, however, shown some gaps and shortcomings that have necessitated this comprehensive review process. This Conference should, therefore, provide a rare opportunity for us Malawians to consider the recommendations made by the special Law Commission with sober minds and a common purpose to advance the interest of Malawi, as a nation.

I, therefore, urge delegates to refrain from making suggestions that border on targeting individuals. I would also encourage delegates to be constructive and focus on strengthening the weak areas of the Constitution with a view to ensure that our governance structures are effective so that at the end of day we should all be proud of our Constitution as a nation.

Let me also reiterate the appeal made by His Excellency the President, Dr. Bingu wa Mutharika, in his opening address at the First National Constitution Conference for soul searching in this noble task and His Excellency's emphasis that we should not quarrel among ourselves, but be constructive with a sense of purpose towards nation building.

This appeal is especially important since we have come together from different quarters of our society each one of us with a role to contribute as equally important as that of the other. It is, therefore, important that we all listen to one another and to respect each other's views as we deliberate over the findings and recommendations of the special Law Commission.

I also wish to encourage all of you to actively participate in the deliberations of this Conference. I further wish to specially encourage our women delegates and traditional and religious leaders to actively participate, and to be given as much chance as possible to make their contributions. Language should not be a barrier, delegates should express themselves in the language that they feel comfortable to speak, with translation as far as possible. This shall facilitate understanding of the matters being presented and the contributions from the floor.

I wish to end my address by acknowledging the commendable work done by the Malawi Law Commission under the leadership of the Law Commissioner, Mr. Anthony Kamanga, SC., in facilitating and taking the lead role in the review process. Indeed, the Law Commission was faced with a huge task in carrying out its mandate in this regard due to the very nature of Constitution reforms. I am aware that the initial challenge faced by the Commission was that of putting together a team of experts in accordance with section 133 of the Constitution to

consider the various submissions received by the Commission. There was a need to balance the issue of expertise with stakeholder representation in empanelling the team. Judging by the excellent quality of the draft Report, it is obvious that the selection of Commissioners was done with the utmost care and caution.

The volatile nature of constitution reforms requires participation from all sectors of society to ensure ownership of the process itself and ultimately the product of the process. The Law Commission was, therefore, faced with the other challenge of designing a work methodology that would ensure a two-way traffic of information between the Commission and stakeholders to ensure maximum and constructive participation in the review process. So far, I can vouch that the whole process has been reasonably transparent and inclusive. I recognize this as no mean achievement on the part of the Law Commission and please accept my congratulations for work professionally done.

On behalf of Government, I wish to encourage the Law Commission to continue on this path and pledge continued support of its work which is very crucial in carrying forward the democratization process in Malawi

Distinguished invited guests, distinguished delegates and delegates, it is now my pleasure to declare the Second National Constitution Conference officially open and I wish the delegates fruitful deliberations.

I thank you all for your attention and may God bless our Nation.

---

**Appendix – E****SECOND NATIONAL CONSTITUTION CONFERENCE****17<sup>TH</sup> TO 19<sup>TH</sup> APRIL, 2007***CLOSING ADDRESS BY:****THE HONOURABLE THE CHIEF JUSTICE,  
JUSTICE LEONARD UNYOLO, SC***

---

Distinguished delegates and delegates, once again, within a space of three days, I stand before you, and this time to close the Second National Constitution Conference.

I have followed and listened to your deliberations on Zodiac Broadcasting Station which has kindly been airing a live broadcast since Tuesday and also from the print media. I must say, I was impressed by the level of maturity and seriousness with which delegates conducted themselves during the deliberations. My assessment from the live broadcasts, the print media coverage, and also from comments made by notable figures in our society with whom I have had the opportunity to interact for the past two days, is that the Conference has been a success. I believe this success is attributed to all of us present here today. Let me therefore extend my sincere congratulations to all delegates, the Moderators, and the Presenters, and to the Media.

Most people have looked at this Conference as providing the much needed forum or “Bwalo” for the various stakeholders to express their views on specific issues that directly affect them. It is also obvious that the deliberations have given room for the special Law Commission to reflect further on some of the recommendations made in the Draft Report. Examples include the issue of national language, the age of marriage, the ever contentious issue of marriages by repute or cohabitation, the recommendations on the Recall Provision, on crossing the floor, the Senate, the issue of the office of the Second Vice President and the headship of the Electoral Commission.

The quality of participation has also illustrated that delegates had carefully and objectively considered the recommendations tabled by the special Law Commission. This was evident in the heated and sometimes emotional debates. This was to be expected since delegates were representing the interests of different stakeholders.

I was pleased to note that delegates spoke frankly and freely on issues which affected their particular interest groups. I am also glad to observe that for the most part, the deliberations reflected an attempt to build broad consensus on specific issues influenced by national interests as opposed to individual or

partisan interests. The debates on the death penalty and the age of marriage are testimony to this. This is a great achievement for the Conference since it satisfies one of its major expectations.

As indicated in my opening address, the Conference was part of the consultative process which started way back in 2004. However, this stage was critical because the special Law Commission was not merely collecting the views of stakeholders, or seeking confirmation of their analyses and the relevance of common practices from other jurisdictions, but it was also testing the acceptability and efficacy of its tentative recommendations on specific issues. I believe the special Law Commission now has a more focused indication and feel of the views of most Malawians, as expressed by you the delegates, on its recommendations at this crucial stage.

I am confident that the special Law Commission has, together with its Secretariat, noted all the observations, suggestions, and amendments made during the Conference.

I therefore implore the Commissioners to go back to the drawing board and consider seriously the comments and views expressed at this Conference, and re-visit those recommendations that call for amendment. As a nation we shall expect to see the views expressed at this Conference reflected in the final Report.

I am informed that the special Law Commission shall finalize its Report by the end of July and that the Commission shall submit its Report to Cabinet, through the Minister of Justice and Constitutional Affairs, and to Parliament.

In the final analysis, it shall be up to Cabinet and Parliament to adopt the recommendations of the special Law Commission as developed from the issues gathered from the stakeholders.

My plea to all role players, including politicians who will have the mandate to handle the next and final phase of the review process, is that we should all proceed on this task with a conscious that the review of our Constitution affects Malawi as a nation and that individual or partisan interests should take secondary stage.

More importantly, we have already testified, that the stark reality is that the Constitution we are reviewing today is not intended to serve the Malawi Nation for the next few years or until the 2009 Presidential and Parliamentary Elections only, but will have to stand the test of time and continue to be a living document for future generations.

The fundamental point that also came out clearly during the Conference was that the review process is not intended to target individual or political groupings that are looking to the Constitution for solutions to their current predicaments. The final objective is to fill the gaps and strengthen the

weaknesses which have resulted in unnecessary litigations during the past twelve years.

Let me repeat the passionate appeal which I made when I opened this Conference, which was that some of the perceived failings in the application of the Constitution must not be confused with what are in fact failures on the part of duty bearers and holders of public office, such as the politicians, public officers and, not excluding, judicial officers.

In conclusion, let me take this opportunity to thank most sincerely all delegates, moderators, presenters, and those distinguished Malawians who have successfully guided the deliberations of the Second National Constitution Conference, notably the Law Commissioner and his staff. I should also extend my deep gratitude to the Chairman and Commissioners of the special Law Commission, and congratulate them for a job well done. You have a huge task ahead of you, and I wish you success.

Distinguished Malawians, ladies and gentlemen, I now declare this Conference closed.

---

## Appendix - F

### List of Commissioners

1. Professor Zimani Kadzamira, University of Malawi, Zomba
2. Mrs Mary Nkosi, Reserve Bank, Lilongwe
3. Mr Anthony Kamanga, SC, Malawi Law Commission, Lilongwe
4. Mr E.T Nandolo, Congoma, Blantyre
5. Dr Mustafa Hussein, University of Malawi, Zomba
6. Dr Msaiwale Chigawa, University of Malawi, Zomba
7. Rev. Dr Winston Kawale, CCAP Nkhoma Synod, Lilongwe
8. Fr. B. Tamani, Lilongwe
9. Mr Moses Mkandawire, Church and Society CCCAP Synod of Livingstonia, Mzuzu
10. Mr Ron Nkomba, Mzuzu University Trust, Mzuzu
11. Sheik Abdulqadir Sayini, Islamic Information Bureau, Limbe
12. Mrs Dorothy Nyasulu, Malawi Human Rights Commission, Lilongwe
13. Mr Willie Samute, Office of the President and Cabinet, Lilongwe
14. Dr Edrine Kayambazinthu, Chancellor College, Zomba
15. Mrs Sophie Kalimba, Blantyre City Assembly, Blantyre
16. Mr Kapote Mwakasungura, Karonga Museum, Karonga
17. Mr Mabvuto Hara, Hara and Associates, Blantyre
18. Justice Michael Mtegha, Malawi Supreme Court of Appeal, Blantyre
19. Justice Lovemore Chikopa, High Court of Malawi, Mzuzu
20. Justice Frank Kapanda, High Court of Malawi, Blantyre
21. Mr Maxon Mbendera, Mbendera & Nkhono Associates, Blantyre
22. Mrs Bertha Sefu, Malawi Council of Churches, Lilongwe
23. Mr T. O'Dalla, Office of the President and Cabinet, Lilongwe
24. Mrs Gertrude Lynn Hiwa, Ministry of Justice, Lilongwe

## **Appendix - G**

### **List of Moderators**

- 1 Mrs. Janet Karim, Sunday Times, Blantyre
- 2 Justice Ivy Kamanga, High Court of Malawi, Lilongwe
- 3 Professor Matthews Chikaonda, Press Corporation, Blantyre
- 4 Professor Benson Kandoole, Malawi Institute of Management, Lilongwe
- 5 Mr. Dye Mawindo, Lilongwe
- 6 Mr. Michael Kamphambe-Nkhoma, Lilongwe
- 7 Professor Peter Mwanza, Mzuzu University, Mzuzu
- 8 Dr. Augustine Magolowondo, Netherlands Institute for Multiparty Democracy,  
Lilongwe
- 9 Hon. Mrs Rachel Zibelu-Banda, Blantyre Magistrate Court, Blantyre
- 10 Mr. Necton Mhura, Chancellor College, Zomba

## Appendix - H

### List of Delegates

1. Dr. Nandini Patel, Chancellor College, Zomba
2. Prof. Chirwa Chijere, Chancellor College, Zomba
3. Mr. Noel Mbowera, Mzuzu University, Mzuzu
4. Dr. Isaac Lamba, Tertiary Students Loan Trust, Lilongwe
5. Mr. Samuel Malitoni, Reserve Bank of Malawi, Lilongwe
6. Mr. M.B. Mbewe, Ministry of Foreign Affairs, Lilongwe
7. Mr. Bright Msaka, Office of the President and Cabinet, Lilongwe
8. Mr. George Mkondiwa, Ministry of Local Government, Lilongwe
9. Mr. C.G. Jeke, Ministry of Women and Children Dept, Lilongwe
10. Mr. I. Gomani, National Audit, Lilongwe
11. Mr. Beaton Munthali, Ministry of Information and Tourism, Lilongwe
12. Mr. E. Gondwe, Ministry of Youth, Sports and Culture, Lilongwe
13. Mr. Chris Kangómbé, Ministry of Health, Lilongwe
14. Dr. Mary Shawa, Department of Nutrition, HIV and Aids, Lilongwe
  
15. Mr. Fletcher Nyirenda, Department of Immigration, Lilongwe
16. Mr. Chandiwira Chisi, Action Aid International, Lilongwe
17. Mr. Adamson Mkandawire, Malawi Human Rights Resource Centre
18. Ms. Sophie Dambe, Catholic Commission for Justice and Peace, Dedza
19. Mr. Peter Chisi Peter, Human Rights Consultative Committee, Blantyre
20. Mr. John Soo Phiri, Malawi Human Rights Resource Centre, Blantyre
21. Mrs. Mercy Makhambé, Malawi Human Rights Resource Centre, Lilongwe
22. Mrs. Sigere Kasasi, Human Rights Consultative Committee, Lilongwe
23. Mrs. Susan Sipiwe Kaunda, Danish Church Aid, Lilongwe
24. Mrs. Rachel Kachaje, Federation of Disability Organization, Blantyre
25. Mrs. Emmie Chanika, Civil Liberties Committee, Blantyre
26. Mr. Billy Banda Billy, Malawi Watch, Blantyre
27. Mr. Luther Mambala, Malawi Congress of Trade Unions, Limbe
28. Mrs. Margret Ali, Human Rights Resource Centre, Blantyre
29. Mr. Justin Dzonzi, Justice Link, Blantyre
30. Mr. Lucy Mbewe, HRCC, Lilongwe
31. Mr. George Dambula, Public Affairs Committee, Lilongwe
32. Mr. John Chawinga, Catholic Commission for Justice and Peace, Mzuzu
33. Mr. Unandi Banda, Human Rights Consultative Committee, Blantyre
34. Mrs. Dingile Kumwenda, Human Rights Consultative Committee, Lilongwe
35. Mrs. Joyce Phekani, Human Rights Consultative Committee, Blantyre
36. Rev. Mac Donald Sembereka, Maphunziro Foundation, Balaka
37. Mrs. Reen Kachere, Human Rights Consultative Committee, Mwanza
38. Mr. Anderson Fumulani, Christian Service Committee, Limbe
39. Ms. Cecilia Mussa, Gender Support Programme, Blantyre
40. Mr. Maxwell Matewere, Eye of The Child, Blantyre

41. Ms. Michele Maynard, Salama Shield Foundation, Lilongwe
42. Mr. George Jobe, Civil Society Coalition for Quality Basic Education , Zomba
43. Mr. Lewis Msiyadungu, CCJP, Chikwawa
44. Mr. David Njaidi, Fedoma, Lilongwe
45. Mr. Vincent Chibowa , CCJP, Blantyre
46. Mrs. Chrissie Ngauma, National Police Headquarters, Lilongwe
47. Mr. Peter Ngulube Chinoko CCJP, Lilongwe
48. Mr. Harold Williams, Centre For Harmony Amongst Races in Malawi, Blantyre
49. Mrs. Diana Linda Nkomba Jere, Malawi Human Rights Commission, Lilongwe
50. Mr. Ollen Mwalubunju, Malawi Human Rights Commission, Lilongwe
51. Mrs. Emelliana Tembo, Malawi Human Rights Commission, Lilongwe
52. Justice Anastazia Msosa, SC Malawi Electoral Commission, Blantyre
53. Mr. Gaston Mwenelupembe, Anti-Corruption Bureau, Blantyre
54. Mr. H.M. Kondowe, Malawi Broadcasting Corporation, Lilongwe
55. Lt. General Enerst Ntonya, Malawi Defence Force, Lilongwe
56. Mr. Wilber Marimo, Zimbabwe High Commission, Lilongwe
57. Mr. Mussa Amani, Democracy Consolidation Programme, Lilongwe
58. Mrs. Dorothy De Gabriele, DFID, Lilongwe
59. Vaneputte Bianca, EU Delegation, Lilongwe
60. Hon. Joyce Banda Joyce, Minister of Foreign Affairs, Lilongwe
61. Hon. Vuwa Kaunda, Ministry of Lands, Housing and Survey, Lilongwe
62. Hon. Marjorie Ngaunje, Ministry of Health, Lilongwe
63. Hon. Bazuka Mhango, Ministry of Justice and Constitutional Affairs, Lilongwe
64. Hon. Henry Mussa, Ministry of Transport & Public Works, Lilongwe
65. Hon. Davis Katsonga, Ministry of Defence, Lilongwe
66. Hon. Frank Mwenefumbo, Ministry of Irrigation And Water Dept, Lilongwe
67. Hon. Ken Lipenga, Ministry of Industry, Trade & Private Sector, Lilongwe
68. Hon. Dr George Chaponda, Ministry of Local Government, Lilongwe
69. Justice Dr Jane Ansah, Ministry of Justice, Lilongwe
70. Fr. Martin Kalimbe, Anglican Diocese of Southern Malawi, Blantyre
71. Fr. Augustine Kanyendula, Community of St Egidio, Blantyre
72. Chief Chowe, Community of St. Egidio, Mangochi
73. Mr. Paolino Alexia, Community of St. Egidio, Lilongwe
74. Mr. Francisco Zuze, Community of St. Egidio, Lilongwe
75. Mr. Saiti Jambo, Muslim Youth Assembly, Lilongwe
76. Mr. Adil Chilungo, Islamic Information Bureau, Blantyre
77. Mr. Allison Liwanda, Islamic Information Bureau, Blantyre
78. Mr. Nurdeen Kaondo, Islamic Information Bureau, Blantyre
79. Dr. Haneef Aufi Yusuf, P.O. Box 207, Mangochi
80. Sheik Mjaidi Wanja, Ulama Council, Blantyre
81. Sheik Chongolo Cassim, Ulama Council, Zomba
82. Mr. Cassius Chidothe, Islamic Information Bureau
83. Ms. Caroline Sakina Bwanali, Islamic Information Bureau
84. Sheik Chabulika Dinala, Islamic information Bureau, Blantyre

85. Mr. Panjwani Abba A.I., Mai Aisha Trust, Blantyre
86. Bishop Kambalazaza Mark, Evangelical Association of Malawi, Blantyre
87. Dr. Mahomed Imran Shareef, Muslim Association of Malawi, Blantyre
88. Mr. Maulidi Bakali, Muslim Association of Malawi, Blantyre
89. Mr. Billy Mayaya, Church and Society CCCAP Synod
90. Mr. C. Chikukula Mhango , Church and Society Synod of Livingstonia, Mzimba
91. Rev. L. Chakwera, Evangelical Association of Malawi, Lilongwe
92. Rev. Canon Mkoko, Diocese of Lake Malawi (Anglican), Lilongwe
93. Rev. Dr. Silus Ncozana, Zomba Theological College, Zomba
94. Rev. Howard Matiya Nkhoma, Synod of Livingstonia, Mzuzu
95. Fr. Alex Muyebe, Kasungu Catholic Parish, Kasungu
96. Fr. Andrew Timpunza , Bishop's House, Dedza
97. Mr. Mabvuto Bamusi, Malawi Economic Justice Network, Lilongwe
98. Mr. Orison Chaponda, NICE , Lilongwe
99. Mr. Kizito Tenthani, Netherlands Institute for Multiparty Democracy, Lilongwe
100. Mrs. Emily Chintu, Centre For Multiparty Democracy, Nkhata Bay
101. Mr. Dereck Lakudzala, Centre For Multiparty Democracy, Limbe
102. Justice Joseph Manyungwa, High Court, Blantyre
103. Justice Anaclet Chipeta, High Court of Malawi, Blantyre
104. Justice Elton Singini, SC, High Court of Malawi, Lilongwe
105. Mr. Silvester Kalembera, High Court of Malawi, Blantyre
106. Mr. Dingiswayo Madise, Mzuzu High Court. Mzuzu
107. Ms. Agnes Nyirenda, Mzuzu High Court, Mzuzu
108. Mrs. Matilda Katopola, National Assembly, Lilongwe
109. Hon. J.Z.U. Tembo, MCP, Lilongwe
110. Hon. Aleke Banda, PPM, Blantyre
111. Hon. Friday Jumbe, UDF, Blantyre
112. Hon. Steven Ashani Kamoto, MCP, Lilongwe 4
113. Hon. R.P. Dzanjalimodzi, MCP, Lilongwe
114. Hon. Joseph Njovuyalema , MCP Lilongwe
115. Hon. John Alfred Chikalimba,UDF Zomba
116. Hon. Good Kaira, DPP, Mzuzu
117. Hon. Clement Stambuli, UDF, Nkhotakoka
118. Hon. Hamilton Gadama, MCP, Ntchisi
119. Hon. David Faiti, Republican Party, Chikwawa
120. Hon Alice Mtodwa Mwale,MCP, Mponela, Dowa
121. Hon. Jannat Adden Mbowani, MCP, Nkhotakota
122. Hon. Brown Mpinganjira, UDF, Mulanje
123. Hon. George Nga Mtafu, UDF Likoma
124. Hon. Steven Malamba, RP, Nsanje
125. Hon. Rodrick Kavuta, PPM, Mzuzu
126. Hon. Lillian Patel, UDF, Mangochi
127. Hon. Leonard Mangulama, UDF, Blantyre
128. Hon. Gerald Mponda, Independent Member of Parliament, Blantyre
129. Mr. V.P. Mulula, Lilongwe City Assembly, Lilongwe
130. Mr. S.M. Chirwa, Mzuzu City Assembly, Mzuzu
131. Mr. Lot Dzonzi, National Police Headquarters, Lilongwe

132. Mr. J.K. Langa, Aford, Mzimba
133. Mr. Ephraim Chiume, DPP, Lilongwe
136. Mrs. Dorothy Chirambo, MCP, Lilongwe
134. Dr. Hitherwick Ntaba, DPP, Lilongwe
135. Mr. Eric Nyirenda, Aford, Mzimba
136. Mr. Makoza Chirwa, PPM, Mzuzu
137. Mrs. Beatrice Mwale, Aford, Mzuzu
138. Mrs. Zeria Chakale, DPP, Lilongwe
139. Mr. Francis Mphepo, DPP, Lilongwe
140. Mr. Knox Varela, PPM, Blantyre
141. Mr. George Nnesa, Mafunde, Blantyre
142. Mr. Nicholas Dausi, MCP, Blantyre
143. Mr. Kamlepo Kalua, MDP, Blantyre
144. Mr. Kennedy Makwangwala, UDF, Limbe
145. Mr. Kamuzu Chibambo, Petra, Blantyre
146. Mr. Hophmally Makande, UDF, Limbe
147. Mrs. Effie Somanje, RP, Blantyre
148. Mr. Dickens Thunde, Petra, Blantyre
149. Mr. Chipimpha Mughogho, Aford, Rumphhi
150. Hon. Loveness Gondwe Loveness, Aford, Lilongwe
151. Bishop Daniel Nkhumbwe CONU, Blantyre
152. Mr. Ralph Kasambara, Congress of Democrats, Blantyre
153. Mr. Awadi John Ajileje, Liwonde
154. Mr. Likango Saidi, Liwonde
155. Mr. Gome Ashan Smile, Salima
159. Mr. Charles Kazembe, Mponela
160. Mr. H.Mthinda, Malawi Institute of Engineers, Lilongwe
161. Mr. Temwa Nyirenda, SC, Nyirenda, Msisha, Blantyre
162. Mr. R. Mbvundula, Malawi Law Society, Blantyre
163. Mr. John Gift Mwakhwawa, Malawi Law Society, Blantyre
164. Mr. Chimwemwe Kalua, Malawi Law Society, Blantyre
165. Mr. J.J. Somba, National Construction Industry Council, Lilongwe
166. Mr. Rafiq Hajat, Institute For Policy Interaction, Blantyre
167. Ms. Achiwa Ntodwa, Lilongwe
168. Dr. Vera Chirwa, Malawi Carer, Blantyre
169. Mr. Robert Martin, Economic Resource, Blantyre
170. Mr. S.J. Omar, State House, Lilongwe
171. Themba Chikulamayembe, Traditional Leader, Rumphhi
172. Senior Chief Kaomba, Traditional Leader, Kasungu
173. Senior Chief Mwaulambia, Traditional Leader, Chitipa
174. Chief Karonga, Traditional Leader, Karonga
175. Chief Chitera, Traditional Leader, Chiradzulu
176. Chief Mthiramanja, Traditional Leader, Mulanje
177. Senior Chief Kachindamoto, Traditional Leader, Dedza
178. Inkosi Gomani, Traditional Leader, Ntcheu
179. Chief Malemia, Traditional Leader, Nsanje
180. Senior Chief Kanyenda, Traditional Leader, Nkhotakota
181. Paramount Chief Lundu, Traditional Leader, Chikwawa

182. Mr. Edward Chileka-Banda, Chancellor College, Zomba
185. Mr. Kabera Charles, Childrens Parliament, Ntcheu
186. Ms. Chinsinsi Mbekeani, Children's Parliament, Mulanje
187. Mr. Francis Kalonga, National Youth Council, Lilongwe
188. Ms. Janet Kayuni, National Youth Council, Blantyre
189. Mr. Marcel Chisi, Ayise, Blantyre
190. Ms. Sara Nayeja, Women Lawyers Association, Lilongwe
191. Mrs. Grace Malera, Women Lawyers Association, Lilongwe
192. Mrs. Seodi White, Women & Law, Blantyre
193. Mrs. Faustace Chirwa, National Women's Lobby & Rights Group, Blantyre
194. Mrs. Catherine Munthali, Society for Advancement Of Women, Lilongwe
195. Mrs. Eddah Chavula, Society for Advancement Of Women, Lilongwe

## **Appendix – I**

### **List of Programme Officers**

1. Mrs. Janet L. Banda, Chief Law Reform Officer
2. Mr. Allison T. Mbang'ombe, Deputy Chief Law Reform Officer
3. Mr. Peter T. Chiniko, Deputy Chief Law Reform Officer
4. Mr. Willian Yakuwawa Msiska, Asst. Chief Law Reform Officer
5. Mrs. Fiona Mwale, Asst. Chief Law Reform Officer
6. Mr. Chizaso Eric Nyirongo, Law Reform Officer
7. Mr. Austin Bwagadu Msowoya, Law Reform Officer