ANNUAL GENERAL MEETING AND CONFERENCE:
7–11 November, 2011, Crossroads Hotel, Lilongwe, Malawi

8 NOVEMBER, 2011

REMARKS BY THE CHAIRPERSON, ALRAESA

Honorable Minister of Justice of the Republic of Malawi,
Ephraim Chiume;

Honorable Chief Justice of the Republic of Malawi,
Justice Munlo;

Honorable Law Commissioner of the Republic of Malawi,
Mrs. Gertrude Hiwa;

Distinguished Delegates of Law Reform Agencies of ALRAESA;

Distinguished Invited Guests, Ladies and Gentlemen

Permit me to take this opportunity, and to profess to speak on behalf of all of us who have travelled to Malawi, to thank the Government of the Republic of Malawi and the Malawians, whom acting through the Malawi Law Commission, have extended to us a delightful welcome to Lilongwe. Thanks to you Gertrude and your diligent staff, we are delighted to be here as your guests and as members of ALRAESA.

The theme for this Conference and the constitutional activities of ALRAESA in Malawi 2011, beseeches us in law reform never to lose sight of our principal function, which is, to ensure that there is a connect between the postage of a vote in an electoral process and the continued will of the governed through their legal environment and legal instruments.

Perhaps I mumble the words and there may be need for clarity in expression, so permit me to restate – that law reform agencies are supposed to keep relevant the electorate throughout the governance process, in between elections, ensuring that the legal landscape reflects a buy-in from all stakeholders. In so saying, I do not suppose that the function of governing will now pass to law reform agencies, neither do I propose that law reform agencies become the exclusive bodies to generate and promulgate laws. On the contrary, the unique environment in which law reform agencies exist, permits them to seek out, without necessarily becoming tainted with the actual administration of a policy or law, aspects for reform, review or introduction for the very purpose of the administration of a policy or law by Government or other agencies.

That disconnect is the strength of the law reform environment, as it engenders wide consultation by the very nature of how naked academic interrogation of concepts should be employed. While the administrator of a policy or law may take an institutional mindset borne out of actual implementation of that policy or law, the law reformer is not entitled to such luxuries of convenience. Alas. We are compelled to take the long walk to review, think beyond, ever dream and perhaps conclude similarly with the administrator, but we cannot walk the same walk.

In a constitutional order, ours is to ensure that the tools for governance are attuned to philosophical, jurisprudential and practical realities that inform the context for governance. Our practical realities, cemented by a history of much over coming as Africans, and I can lend you the example of Namibia for reference, informs us that we need to keep on the look out for deterioration in the principal means through which governance is acquired and conducted, that is, through elections and institutions of State power. We also need to continuously define for ourselves, and infuse some *Africology* into the concepts that exist in the academic debates of today – human rights, globalization – lest we end up adopting globalized norms alien to our own concepts and precepts.

Hence the emergence of ALRAESA within the law reform community, that we need to share experiences and garner mutual understanding as we more likely to understand concepts in the context of Malawi, better than if that concept was being extrapolated from a European context. This is true for matters that are closer to the lives of the people we serve. An example refers to matters of intestate succession, or the interaction of religion and cultural practices. These matters all have a bearing on constitutional rights, constitutionalism and good governance. For how can, in the context of post independence in Africa, it ever be regarded as good governance, that there are no progressive land reform policies to take into account the ancestral rights of inhabitants of areas in the advent of the urbanization of the African countryside? It is as if the colonial masters were better!?

Therefore, the first thing we need to do as a collective association of law reform agencies, as ALRAESA, is to recognize that our pivotal role to ensure that there needs to be that continuous thinking and probing, which in the words of Chief Justice Lehohla of the Kingdom of Lesotho is to be a *think-tank in the updating of law, with good research capacity, accessible to all, mounting independent empirical studies addressing the public's concerns and needs*.

This informs ALRAESA's efforts in the past months, through its committee on formal education, to arrive at a concept paper for a post-graduate course through which law reformers may be sent to become better prepared for the diverse needs of law reform work. Unlike the run-of-the-mill lawyer who can cite precedent, file it and argue on the admissibility of evidence or points of law before a court of law, law reform work requires a little bit more of an unconventional skill mix.

Law reformers must, in addition to knowing the law, must be capable of conducting research, preparing research proposals, analyzing and reviewing policies and laws, analyzing data and preparing reports, reviewing and considering legal texts, simplifying and translating laws, formulating policy for law reform in specific areas of law, conducting consultations, drafting bills, integrating and planning the unification of laws, consolidating laws and planning such, and these skills are not normally part of undergraduate programs for law in one composite grouping.

It pleases me to announce here that we are a step closer to having two African universities, one in East Africa and one in Southern Africa, taking on our staff for a post-graduate level training, which will ensure that we not only have staff attuned for the work they will be required to perform, but we are also able to grow our professionals into the law reform environment with motivation and confidence.

Permit me to also use this opportunity to notify our membership that we are well advanced in the Model Electoral Laws Project, with a view not only of generating a template of electoral laws for the ALRAESA membership, but most importantly, of generating a resource material from which we as Africans can refer to on the subject matter of election laws and election management bodies – their legal existence,

procedures and governance charters. It cannot be the case that academics from beyond our jurisdictions are better versed than we are on our own laws unless of course we do cut and paste jobs. Hence ALRAESA will be commencing soon with a study that will culminate into a report and from which draft texts can be prepared for our use from time to time. Further details will be discussed in our closed session.

Honorable Minister, Honorable Law Commissioner,

Before I end my remarks, well aware what the global economy has under gone in the recent times, it is important, I think, to share the perspective, that constitutionalism, good governance, democracy and all the other phraseologies that may exist in today's accepted world, cannot, and should not, escape reality that today, the inter-dependency of our democracies and their economies is so relevant to the governed, that even law reform agencies must take into account all practical and legal considerations to integrate programs that impact upon the economy.

Public interest litigation on behalf of the indigent, consumer protection laws, progressive land reform laws which I have broached earlier, are all manifestations of this creeping reality. In some cases, our own national constitutions compel us to achieve the objects of *'securing economic growth, prosperity and a life of human dignity for all'* (per Article 98 of the Namibian Constitution). Yet Mwalimu Nyerere of Tanzania has juxtaposed rights versus a hungry populace decades ago.

I challenge us law reformers to embrace an activist approach when dealing with economic matters, with equal fervor as when we deal with civil rights matters. I also challenge society to present law reformers with those matters, for there can be no compartmentalization of matters anymore in categories of legal or economic, as all are interrelated and interdependent. Yet I urge the understanding which I sought at the very beginning of my remarks, that I do not suppose that governing should now be the domain of the law reform agencies, neither the passage of laws, however, law reform agencies must continue to act as a think-tank around issues, without fear or favor.

With these remarks, I thank you for your kind attention and look forward to fruitful deliberations during our Conference and Annual General Meeting.