

Civil Society Presentation at the Constitution Review Conference

Capital Hotel 31th March, 2006
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Background

- Following the Law Commission's announcement for the Constitutional review process and call for submission from the general public and other stakeholders, the Civil society organisations conducted a number of activities to complement efforts on the importance of the process as well as soliciting views from the general public.

Objectives

- To conduct, promote and facilitate civic education in order to stimulate public debate and awareness on constitutional issues
- To enable communities to mobilise themselves into organised groups for effective participation as well as monitoring of the Constitutional review process

Objectives

- To collect and collate views from communities on issues of particular concern/interest to them on some Constitutional provisions with a views to identify possible areas requiring review *and*
- To set up structures that would promote discussion around Constitutional issues

Summary of issues

- **Governance Issues**
- **A) Executive**
- The Constitution should include resignation of the President. The Constitution in S. 84 only makes reference for the resignation of the Vice President. S. 83 should be amended to take care of this gap.
- Provide for a mechanism for an acting President in the event of both the President and the Vice President are not outside the country. (avoid ruling by roaming)

Cont'd

- Provide for, in special circumstances (such as political turbulence), a Government of National unity.
- The office of the Vice President should be an elected one as is the case now.
- Prescribe a first degree as a minimum education qualification for presidential aspirants.

Cont'd

- Cabinet ministers should not double as Members of Parliament to ensure separation of powers.
- The minimum age limit for presidential aspirants should be reduced from 35 to 30.

Executive Issues continue

- The declaration of assets by MPs and Ministers should be done prior to swearing in (it must be a precondition).
- Declaration of assets by presidential aspirants should be done during presentation of nomination papers through the Electoral Commission.
- Information must be accessible to the public for scrutiny.

B. LEGISLATURE

- The minimum educational qualification for MPs to be a Diploma
- The constitution should revisit the appointment of the Speaker as a Minister (sec. 53.3.c).
- Need to reduce number of seats in the national assembly and provide for the second chamber/senate/upper house (section 68-72)
- Need for a quota system for special interest groups e.g youth and women

Cont'd

- Section 65 should be maintained, provided that members are elected in the prescribed manner in accordance with S. 62 and also taking into account the nullification of the 2001 amendment.
- The constitution must protect MPs from oppression by their own parties so that they freely exercise their opinions.
- Section 64 to be re-introduced. Procedures for recall to be revised.

Judiciary

- Constitution should provide for the position of Deputy Chief Justice
- Retirement age of the of the judges to be at 70 (sec119(6). (increased from 65)
- Need for establishment of constitutional court.*
- Need to elevate industrial relations court to the status of the High court sec.110 (2) e.g Zambia,RSA,

Elections

- Need to consider change of the electoral system in Malawi from FFP to either PR or MMP (i.e. a system that is inclusive/ promotes participation, representation and reduces disputes or conflicts.)
- Need to change composition of the Electoral Commission i.e. moving towards professionalism. De-politicize the Commission
- Chairpersonship should not necessarily be a Judge. Conflict of interest.

Cont'd

- Commission should be accountable to Parliament.
- Winner in Presidential election must command 50+1 % of the vote
- Constitution must provide for tripartite elections
- The Mayor must be an executive position rather than symbolic.

POLITICAL PARTIES

- Funding to be provided to all political parties represented in parliament.i.e. proportional to their representation (40) (2).
- Political parties to ensure a 30-50% quota for women candidates.
- Constitution must ensure Accountability by Political Parties through period audited accounts.

Cont'd

- Democratization of political parties must be a constitutional provision
- Disclosure laws for sources of funding to political parties.
- Electoral Commission to supervise party primaries.

Economic, Social and Cultural Rights issues

- A) **economic issues**. There is need to review section 13 (n). Why dictate the model of economic development. (**market economy**).
- Need to consider customary Land to be in the hands of the people themselves. (... land is wealth).
- Language: Recognize some languages as official languages while also protecting minority languages. e.g sign languages etc
- Some of ESCR to be under bill of Rights. e.g right to food, water and sanitation, shelter, housing, health

ESCR.. continue

B) Women issues. I.e. as outlined above.

Other emerging issues.

- Security of Tenure of the office of Commander of Defence Force: i.e Appointment and Removal should be through Parliament like is the case with Inspector General.
- Establishment of provincial administrative machinery to manage and administer district, town, city assemblies.
- Establishment of the State Council for Retired Presidents and other senior citizens. e.g. retired top civil servants etc

Cont'd

- Clearly distinguish roles of Ombudsman vs Human Rights Commission
- Anti Corruption Bureau to be entrenched as a Constitutional body.
- Preamble to include, “We the people...”

Cont'd

- Role of traditional leaders to be constitutionally recognized as custodian of customary laws
- Law commission to be empowered further on matters of legal reforms. (e.g all proposed legislation to go through MLC)
- Giving feed back to International treaties may be to be provided for in the constitution.

Challenges

- Limited Resources
- Limited time
- Fragmented approach to the review due to lack of common guide
- Inadequate of IEC materials
- Postponement of the previous National Constitutional Conference in 2005

Challenges

- Lack of interest among some people to give input in the process as they felt the process did have direct benefit on them
- Scepticism: National Assembly would not approve their views.

Challenges

- Low literacy levels making it impossible to give meaningful contribution.
- Access to the Constitution was a problem. (in terms of physical and language barrier)
- Absence of guiding principles from the Law Commission on the process.

Lessons Learnt

- Developed good working relationship with the Law Commission on the subject matter
- In Certain areas coordination was enhanced.
- Use of faith based and traditional structures proved very effective
- The use of media was very effective

Way forward

- Civic Education on the Constitutional review process should continue.
- CSOs and MLC should have a common approach to the review process – Develop a Guide
- Appeal to the MLC to follow calendar of events.

Way forward

- Continued recognition of CSOs as key partners in the process.
- Structures (faith based and traditional) should continue being used
- Final recommendation –adoption of the revised constitution should be through a National Referendum. **This will be constitutionally wise, legally possible and popularly demanded.**

Way forward

- Donor support towards the process is crucial.
- Next phase should emphasise on holistic approach on issues such as those affecting children, women, Persons Living with Disability , PLWHA among others.
- CSO's should be included in the Special Law Review Commission

End of presentation

- THANK YOU
- ZIKOMO
- YEBO