



# **MALAWI LAW COMMISSION**

**CONSTITUTION REVIEW CONFERENCE**

**28<sup>TH</sup> – 31<sup>ST</sup> MARCH, 2006**

**CAPITAL HOTEL, LILONGWE**

***COMMENTS BY D.D. PHIRI***

***Participant  
(Issues from the Floor)***

**THE LAW COMMISSION**

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Dear Sir,

**Thoughts on the Constitution**

I eagerly responded to your invitation to the above conference hoping that I will have the opportunity to speak on every subject. But the first day's experience has shown that because there are so many delegates and time to speak is going to be severely rationed.

On a number of occasions I raised my hand but was not seen. Hence I did not have the chance to say what I would have loved to. I put my thoughts on some of the chapters and topics. These views should be taken as my contributions during discussion.

**CHAPTER I  
LANGUAGE**

I support the idea of a national language but it should be given the name "**Chi Malawi**".

The name of this country is based on the confederation or empire known to the Portuguese in the 16<sup>th</sup> century as *Maravi*, in the *Mbiri ya Achewa* by Samuel J. Nthala. What did the Maravi or Malawi people call their language? They must have called it Chi Malawi. This is what we should call our national tribal. It gives all the people of Malawi the sense of ownership in the way Chichewa does not.

Until 1969 there was no language in Malawi called Chichewa. The common language was called Chi Nyanja. The change from Chi Nyanja to Chichewa was guided by feelings of other national. It did not please everyone. At that time people did not speak because of fear. Now they are speaking with their books. A number of books have been published in Chinyanja: Dictionaries are said in “English, Chichewa – Chinyanja. It is obviously wrong to have a national language with these names. To end revolution between the Chewa and the Nyanja let us call the language Chi Malawi.

It is common worldwide for national languages. The national language of England is English; of France is French, of China is Chinese of Botswana is Sechuana.

Supplementary to declare Chi Malawi as our national language we should declare English as a second national language or the language of business and higher education. Learning of English should be compulsory in schools.

The Constitution must also state that the other languages have the right to exist and expect support from the State whenever necessary such as in the provision of text books for children to start learning in the mother tongues.

## **CHAPTER 2**

### **FUNDAMENTAL PRINCIPLES**

Dr. Chigawa spoke of the Constitution having supremacy above the Legislature, the Executive and the Judiciary. This is only legal supremacy.

Political supremacy belongs to the people who are capable of amending the Constitution. The Constitution cannot change the people. It is just a scrap of paper.

The people cannot exercise power directly. They delegate it to the executive. The terms of the delegation must be enshrined in the Constitution which are

Executive must observe at all times or seek the concurrence of the Legislature and the Judiciary if he sees the need to act different.

## 2.1 **Death Penalty**

It should on the statute book but only persons engaged in:

- (a) high treason; and
- (b) mass murder such as bombing an aeroplane or derailing a train.

The first country to abolish sentence was the now defunct Soviets. But this only in respect of murders of private persons. The sentence remained for high treason.

Before finally abolished the maximum consultation with the public including a referendum should be tried.

## 2.2 **Marriage by Reports or Permanent Cohabitation**

I do not like this. To discourage such women should be told the right to the property of their extra-legal husbands would not be recognized. But children of the cohabitation should be protected.

Does the Constitution say something about women in polygamous marriage? Which of the wives inherits the property? Are they treated as equals in intestate situations.

### **EXTRA ITEM**

We were asked by Mr. Nkomba if we had any suggestion about extra chapters or topics that could be discussed.

I suggest a decision be made on who fixes the salaries of MPs. In the United States in 1992 the Constitution was amended look out the privilege of Congress People (MP) fixing their own salaries.

MPs have a tendency to raise their salaries at the expense of the other deserving categories of society.

**D. D. PHIRI**