



MALAWI LAW COMMISSION

**CONSTITUTION REVIEW CONFERENCE
28TH – 31ST MARCH, 2006
CAPITAL HOTEL, LILONGWE**

SUMMARY OF PRESENTATION

PAPER BY

Eye of the Child

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by

EYE OF THE CHILD

The organization identified several areas requiring revision in the Constitution and made some recommendations.

- That the definition of “child” be provided clearly in the Constitution and that it should be a person under eighteen years of age.
- The principle of the best interests of the child be included in the Constitution either under Chapter III or under section 23 having a bearing on the rights of the child.
- The discrimination clause in section 23 (i) is said to be arguably not comprehensive enough. It is being suggested that perhaps grounds such as sex, gender and disability be included under section 23 so as to extend the protection offered to girls and disabled children.
- The right to education should also be included under section 23 relating to child rights. It is thought that though the right is provided under section 25, it is seen to be in itself vague.
- The right to basic health care should also be specifically included in the Constitution in line with South African Constitution.
- The right to food is included under section 30 of the Constitution. This right is fundamental in advancing the welfare of the child. It is therefore suggested that the right to nutrition be incorporated in the Constitution as a stand-alone provision on the understanding that the term “nutrition” is broader than the term “food”.
- It also suggests that the right to safe water should be a stand-alone provision or as a facet of the right to health.
- Given the incidence of property grabbing, it would be beneficial to include a similar provision in section 23 protecting children’s rights to acquire and inherit property. It is believed the provision would operate alongside and complement section 28.

- Child labour is a problem which should be curtailed as it is hazardous to child health and may interfere with a child's education. The Constitution recognizes this in section 23. However, it does not expressly prohibit child labour. It is thought, that perhaps the provision should go further to prohibit child labour expressly.
- Child trafficking is perceived to be prevalent in Malawi. The Constitution, however, does not expressly prohibit it despite that it prohibits slavery and forced labour under section 27. Lack of legislation on this subject necessitates a provision in the Constitution as an entry point to bring such offenders to book until such time as domestic child trafficking legislation is drafted.
- It is suggested that the age of marriage be eighteen years. However, section 22 (8) be revised to reflect that the State shall actually discourage marriage between persons where either of them is under eighteen.
- Capital punishment though it does not apply to children, but it is a sound idea to include a prohibition on capital punishment in the Constitution.
- Section 42 (2) (g) (iii) be amended by inserting into the provision "when imprisoned or detained". The background to this is what is practically happening is that juveniles are not separated from adults.
- Birth registration for children should be incorporated in section 23. This it is thought will complement the right to a name and nationality.
- Section 46 on enforcement should open up not only those persons who claim their rights have been threatened or infringed. Perhaps, it may be plausible to state that, interested parties may make applications to the Ombudsman or Human Rights Commission on behalf of the children whose rights have been threatened or infringed.