



## **MALAWI LAW COMMISSION**

### ***PRESS RELEASE***

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## **SECOND NATIONAL CONSTITUTION CONFERENCE**

It is with grave concern that, as Law Commissioner, I have learnt of the protestations by one of the political parties in this country, the United Democratic Front, over the outcome of the just ended Second National Constitution Conference on the Review of the Constitution (the “Conference”) held at Sunbird Capital Hotel in Lilongwe from 17<sup>th</sup> to 19<sup>th</sup> April, 2007. These protestations have been expressed and conveyed in several written communications to my office directly and in press releases published in newspapers and carried on radio broadcasts.

As a reminder, the Conference was organized by the Malawi Law Commission as the forum for the twenty-four member special Law Commission on the Review of the Constitution (the “special Law Commission”), as part of the consultation process and in accordance with its mandate, as is well known to the Nation, to present to stakeholders its tentative recommendations on the review it has carried out in relation to the Constitution.

In its protestations, the United Democratic Front appears to be particularly incensed with a clarification made by me, as Law Commissioner, in relation to the

presentation by the special Law Commission that the Commission does not agree with the view that section 83(3) of the Constitution, as it reads at present, would allow a former President (or First Vice President or Second Vice President) who has served two consecutive terms to stand for election to that office again after leaving office.

The submissions received by the Law Commission in relation to section 83 (3) during the consultation process, and identified both in the Consultation Paper and the Issues Paper, were to the effect that “*unless [section 83 (3)] is improved an ex President who has served his or her two terms can bounce back after serving two consecutive terms*”. With respect to this particular submission the special Law Commission is of the view that the basis of the submission is flawed because it is not possible under the present wording of section 83 (3) for a former President (or First Vice President or Second Vice President) who has served two consecutive terms to “bounce back” to the same office. The view of the special Law Commission and the reasons for its tentative recommendation to amend section 83 (3) are stated on page 70 of its draft Report as follows-

*“..... In its deliberation on this matter, the Commission unanimously refused to subscribe to the view that, having regard to the current wording of section 83 (3) and the mischief of that provision, a President, First Vice President or Second Vice President who has served in his or her position as such for two consecutive terms would be eligible to “bounce back” and serve a further term. It was the unanimous view of the Commission that such a reading of the provision would defeat the whole purpose of the provision, namely, that a President, First Vice President or Second Vice President should serve in his or her position as such for only two terms.*

*The Commission, nevertheless, noted that the wording of section 83 (3) is liable to misinterpretation, particularly where a*

*President, First Vice President or Second Vice President does not serve two consecutive terms but one term of five years, and is subsequently elected or appointed, as the case may be, to the office of President, First Vice President or Second Vice President.*

*In order to avoid any possible misinterpretation in relation to a President, Vice President or Second Vice President who serves only one term of five years, the Commission recommends two solutions. First, the Commission recommends the deletion of the word “consecutive” in section 83 (3). This shall make it clear that a person can only be President of Malawi for a maximum of two terms whether consecutive or not...”.*

That is the position the special Law Commission presented to the Conference.

However, in its protestations, the United Democratic Front is geared to attribute the position of the special Law Commission to me personally, or as holder of the public office of the Law Commissioner. I wish, therefore, to reiterate that the position presented to the Conference on section 83(3) is that of the special Law Commission, as is the case with all other positions or tentative recommendations that were presented to the Conference.

Another protestation by the United Democratic Front is over the composition of the special Law Commission empanelled in June, 2006, notification of which was duly gazetted and widely published in the newspapers. The United Democratic Front views the composition of the special Law Commission as skewed towards favouring the “incumbent government”; and this is also being attributed to the workings of my office. The United Democratic Front also questions why political party representation was excluded on the membership of the special Law Commission.

My office has on a number of occasions explained to the public that political party representation was excluded on the membership of the special Law Commission precisely to remove the appearance of political bias on the membership of the special Law Commission. The approach in constituting the special Law Commission was in full accordance with section 133 of the Constitution and was to ensure that there was appropriate expertise and representation of the stakeholder interest on the Commission.

I wish to assure the general public, including the United Democratic Front, of the resolve of Law Commission, in accordance with section 136 of the Constitution, to remain professionally and functionally independent, and not to be influenced partisan interests, but what it considers to be in the national interest.

It is, therefore, not the intention of my office to respond any further to the protestations made so far.

Dated this 23<sup>rd</sup> day of April, 2007.

Anthony Kamanga, SC

**LAW COMMISSIONER**

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