

*National Democratic  
Institute for  
International  
Affairs*

**Traditional Authority and Democratic  
Governance in Malawi**

*A Report on NDI program activities  
with Malawian Chiefs in preparation for  
the National Constitutional Conference*

April 1995

# National Democratic Institute For International Affairs

*conducting nonpartisan international programs to help promote, maintain and strengthen democratic institutions*



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On May 17, 1994, the Republic of Malawi held open, competitive elections for the first time since independence, marking an end to more than 30 years of one-party rule. Last September, the National Democratic Institute for International Affairs (NDI) began a two-year program designed to strengthen the democratic institutions that emerged from those elections. NDI is currently working with parliament, political parties, civic organizations and the media to support the development of representative democracy in Malawi.

NDI's work with civic groups and nongovernmental organizations (NGOs) in Malawi has been particularly challenging. Civic organizations were suppressed by the previous regime; the dearth of civic groups is particularly acute in rural areas, where more than 80 percent of Malawians reside.

Last year, Malawian participants in an NDI focus group study indicated that traditional chiefs are the most important leaders in the daily lives of those living in rural areas. Despite the lack of formal civic organizations or strong local government, informal and traditional structures exist that allow people in the villages to form consensus on mutually important issues, articulate grievances to government officials, arbitrate internal disputes and communicate with other rural people -- sometimes over vast distances in areas with virtually no transportation or communication infrastructure. NDI has begun to recognize the existence of what may be called "village civil society" in Malawi that is bound together by a system of traditional authority, of which chiefs are an integral part. Chiefs represent one access point through which NDI and other organizations can reach rural Malawians.

This report outlines NDI program activities with chiefs in preparation for Malawi's February 1995 National Constitutional Conference (NCC). The NCC marked the culmination of a process of public review of Malawi's provisional Constitution and was an important watershed in the political development of the country. NDI's work with chiefs prior to the NCC was only the first step, however, in what we hope will be an ongoing program to help reconcile the important role chiefs play in rural areas with Malawi's emerging democratic system. The lessons we have learned as an Institute during the preparations for the NCC will have implications for the way we view civil society in southern Africa and other regions.

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Two of the overriding goals of NDI's efforts in Malawi are to help improve communication between constituents and their elected officials and to increase the participation of Malawians in their own governance. The findings of this report suggest that chiefs can play a part in achieving these goals. Chiefs represent a resource that organizations and institutions can use to both impart information and gauge public opinion of Malawian citizens who are otherwise difficult to reach. NDI plans to work with political parties, members of parliament and NGOs in Malawi to help them utilize traditional authority structures to communicate with citizens in rural areas.

Chiefs have a great deal of responsibility and influence in rural areas. Political parties, the government, civic groups and international organizations working in Malawi, such as NDI, should be aware of this influence and help to involve chiefs in Malawi's democratic political process. At the same time, chiefs face the challenge of adapting to changes taking place in Malawi. In this regard, chiefs can respect the individual's right to vote, support open electoral processes, promote open public discussion of political issues and candidates in traditional forums, ensure that women are given a voice in the village decision-making process, and work in cooperation with local and national government leaders to help ensure that the interests of the average Malawian are addressed. Throughout NDI's work with chiefs, they have indicated that they are willing to use their authority in efforts to increase the political participation of the rural poor, advance the concerns of citizens and promote the inclusion of women in newly created democratic institutions.

NDI's work with chiefs in Malawi is a new program activity for the Institute. We hope that this report will help guide similar NDI programs in the region and beyond. NDI remains committed to supporting efforts that involve all aspects of Malawian society in the democratic process. We are confident that Malawi will continue to seek ways to reconcile traditional and civil authority and hope chiefs can exert a positive influence on the democratization process.

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April, 1995



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## NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

The National Democratic Institute for International Affairs (NDI) was established in 1983. By working with civic groups, political parties, legislatures and other institutions, NDI seeks to promote, maintain and strengthen democratic values and practices in new and emerging democracies. The Institute is headquartered in Washington, D.C. with field offices in Africa, Asia, Eastern Europe, Latin American, the Middle East and the former Soviet Union.

NDI has supported the development of democratic institutions in more than 60 countries. Programs focus on six major areas:

***Political Party Training:*** NDI conducts multipartisan training seminars in political development with a broad spectrum of democratic parties. NDI draws international experts to forums where members of fledgling parties learn first-hand the techniques of organization, communication and constituent contact.

***Election Processes:*** NDI provides technical assistance for political parties and nonpartisan associations to conduct voter and civic education campaigns and to organize election monitoring programs. The Institute has also organized more than 25 major international observer delegations.

***Strengthen Legislatures:*** NDI organizes seminars focusing on legislative procedures, staffing, research information, constituent services, committee structures and the function and role of party caucuses. NDI programs also seek to promote access to the legislative process by citizen groups and the public at large.

***Local Government:*** NDI provides technical assistance on a range of topics related to the process of local governance, including division of responsibility between mayors and municipal councils, and between local and national authorities. NDI programs also promote enhanced communication between local officials and their constituents.

***Civic Organization:*** NDI supports and advises nonpartisan groups and political parties engaged in civic and voter education programs. NDI programs work with civic organizations to enhance their organizational capabilities.

***Civil-Military Relations:*** NDI brings together military and political leaders to promote dialogue and establish mechanisms for improving civil-military relations.





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## **Traditional Authority and Democratic Governance in Malawi**

A Report on NDI program activities with Malawian Chiefs in preparation for the  
National Constitutional Conference, February 1995.

Project conducted by Brent Preston, Edge Kanyongolo and Naomi Mpemba  
Report prepared by Brent Preston





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## EXPLANATORY NOTE

NDI's work with traditional authorities has involved exclusively chiefs and sub-chiefs, of which there are approximately 200 covering all areas of the country. Chiefs control fairly large geographical areas containing many villages. Some villages are grouped under a Group Village Headman. All villages have a Village Headman, who assumes the name of the village upon appointment to the chieftaincy. Group Village and Village Headmen are subordinate to the chief of their area. Chiefs are selected from the reigning family by senior members of the family, and they can be removed by the same group if they fail to perform their duties. Some chiefs and headmen are women (the vernacular words for "headman" are gender neutral). Currently, there are three Paramount Chiefs in Malawi who represent three ethnic groups: Inkosi ya Makasi M'Mbelwa and Gomani of the Northern and Southern Ngoni people respectively, and Chief Lundu of the Mang'anja people. Most areas do not have a Paramount Chief.

## I. INTRODUCTION

One of the important challenges facing Malawians since the historic 1994 democratic elections is the reconciliation of formal representative government with informal, traditional authority structures. As part of a two-year post-election program designed to strengthen democratic institutions in Malawi, NDI is working with chiefs to help them define their role in the new democratic political system and their relationship with the democratically elected government. Chiefs represent an important, recognized structure of traditional authority in Malawi and have the ability to help legitimize or to undermine Malawi's new democratic institutions. Chiefs provide an important link between rural citizens and formal government. As Malawians work to create a truly democratic and participatory system of government, the position of chiefs and the role of traditional authority must be addressed. This report is a summary of the first phase of NDI's work with traditional authority and chiefs in Malawi, which revolved around the recent National Constitutional Conference.

### *Historical Role of Chiefs*

Chiefs have long played a prominent role in Malawian politics and society, although the structure of traditional authority has undergone important changes since the pre-colonial period. British colonial administrators formalized a system of "indirect rule" in the early 1930s under which chiefs assisted with the collection of taxes and local law enforcement. The colonial government also created, abolished or transferred chieftaincies where it saw fit. Many chiefs maintained a high degree of authority under British rule, but some were pushed from power or subjugated by colonial authorities.

One of the institutions created for indirect rule was a system of traditional courts, whereby chiefs and other traditional leaders were formally empowered to apply customary law for a range of offenses. These courts only had jurisdiction over cases involving indigenous Malawians. They were subordinate to the courts based on English common law. Although in general chiefs had often provided, to varying degrees, a judicial function in their villages, the formal power of the traditional courts came to be used for political purposes by the colonial government. As a result the courts fell into disrepute.

Chiefs were influential in the fight for independence; several of them lost their chieftaincy, were exiled or even killed in the struggle against colonialism. Although the post-independence, one-party regime of President Banda and his Malawi Congress Party (MCP) called for respect for chiefs, party functionaries usurped much of their authority. The appointment of MCP court chairmen to oversee the traditional courts symbolized the politically motivated interference in traditional affairs that characterized the previous regime. The traditional courts' jurisdiction was



expanded to include major offenses, and all cases of a political nature were heard by these courts. The traditional court system became a tool of repression under the control of the MCP. Regional and national traditional courts were suspended during the transition to democratic rule, although some local courts still handle minor matters such as land disputes.

### *Malawi's Democratic Transition*

"President-for-Life" Hastings Kamuzu Banda controlled Malawian politics from independence in the early 1960s until the 1993 referendum, when two-thirds of the country's citizens voted to end one-party rule. The referendum was preceded by internal protest against the government and the withdrawal of international donor aid. On May 17, 1994, Malawians participated in the first multiparty elections since independence, voting the opposition United Democratic Front (UDF) into power.

Malawi is currently operating under a provisional constitution adopted in haste only one day before last year's election. For this reason the Malawi parliament was given the task of conducting a public review and holding a National Constitutional Conference (NCC) before final ratification of the constitution in May 1995. At the NCC, which was held from February 20 - 24, delegates from parliament, political parties, civic organizations, women's groups, chiefs and society at large debated and proposed amendments to the provisional constitution.

### *NDI's Work in Malawi*

NDI established an office in Malawi in September 1993 to initiate a program to help political parties and civic groups prepare for the 1994 elections. Since those elections, NDI has continued to support the transition to democracy through a two-year program designed to provide technical assistance and training to parliament, political parties, nonpartisan civic organizations, and the media in order to promote the development of strong democratic institutions.

To assist parliament in defining its role in the constitution during the review process, NDI organized a two-day seminar in December 1994 for MPs and government officials on the balance of powers in a democratic system. In February of this year, NDI assisted a variety of organizations in preparing their delegations for the NCC, and worked with parliament on the organization and execution of the conference itself.

The preparations for the NCC were used as a vehicle for the initiation of NDI's planned long-term work with chiefs, and consisted of two distinct phases. The first involved a series of focus group discussions with groups of chiefs throughout the Southern and Central regions of Malawi. The second phase consisted of a two-day workshop for the chiefs who were to attend the National Conference. The workshop was held in Lilongwe on February 18 and 19, and was run



by Edge Kanyongolo of the University of Malawi.

This report outlines the major findings of the focus group discussions, describes and analyzes the workshop proceedings, and briefly describes the contributions chiefs made during the NCC. It also draws on the findings of NDI's post-election focus group survey, which was conducted in September 1994. That report assessed Malawian attitudes towards the democratic transition and the role citizens envisioned for various political actors and institutions. The findings of the focus group survey with chiefs further enhance NDI's understanding of the function and importance of traditional authority in Malawi and the relationship between chiefs and the government. The information contained in this report suggests possible directions for future program activities with chiefs, civic organizations and Malawians living in rural areas.

## II. EXECUTIVE SUMMARY

In February 1995, NDI conducted a series of 10 focus group discussions with chiefs across the Southern and Central regions of Malawi and held a two-day workshop for chiefs in Lilongwe. The survey was conducted to increase NDI's understanding of traditional authority and the role of chiefs in Malawi and to gather information for the design of the chiefs' workshop. The workshop was designed to educate the chiefs on the content and function of the constitution and to help them prepare for the National Constitutional Conference, the culmination of Malawi's one-year public review process of the provisional constitution. The workshop provided an opportunity for NDI to examine concerns raised in the focus group discussions more thoroughly and to explore the constitutional implications of the chiefs' common expectations.

Participants in NDI's September 1994 focus group research identified chiefs as the most important leaders in the day-to-day lives of ordinary Malawians. Many of the focus group participants from across Malawi distinguished chiefs, who they saw as local leaders, from members of parliament (MPs), who they saw as messengers or representatives of the central government. Previous focus group research also revealed that Malawians were concerned about the quality of their political representation. People in the rural areas expressed anger that their MPs, who had been elected four months earlier, had not visited their villages and suggested that the government was not fulfilling its representative duties. The chiefs who participated in the February 1995 NDI project echoed these sentiments, both during the focus group discussions and the workshop.

Chiefs perform such tasks as law enforcement, dispute resolution and the implementation of development projects, because of the lack of administrative authorities in the rural areas. In the focus groups and workshops, chiefs said they spend much of their time settling minor disputes over issues such as land tenure, marriage and inheritance. They placed great importance on their role as initiators and supervisors of community development activities, but they said that they had not been given the authority to effectively perform their duties. Chiefs said the past politicization of traditional courts under the Banda regime has severely hampered their ability to govern their villages effectively. They also indicated that the traditional court's domination by party functionaries reduced the prestige and respect previously accorded to the position of chief.

Chiefs also said that the MPs elected in the 1994 democratic elections are not yet fulfilling their representative duties. Chiefs say MPs are urban residents concerned with national issues while residents in the rural areas are concerned with predominantly local problems. Local leaders, such as political party functionaries, religious leaders, civil servants and chiefs, could therefore be much more influential in the daily lives of people in the rural areas than are MPs. Chiefs argued that they better appreciate the concerns of rural Malawians and, therefore, they should

be given a formal role in the country's new democratic institutions. Chiefs said that being part of the national legislature would enable them to bring local concerns to the attention of national leaders.

Malawi's provisional constitution provides for the inclusion of chiefs and representatives of other groups in a Senate which would have a deliberative function but would be subordinate to the National Assembly. Malawian chiefs, however, were uninformed of the content of the constitution and were totally unaware of the provision for a Senate before participating in this program. The chiefs said they were not given an adequate opportunity to learn about the constitution and that the public review required of parliament had reached an insignificant number of people in the rural areas.

During the NDI workshop, chiefs were able to further their knowledge of the provisional constitution. They produced resolutions on the role and responsibility of chiefs, the Senate, traditional courts and human rights. The participants analyzed in-depth topics such as the relationship between traditional and civil authority, the importance of traditional courts to the institution of chieftaincy, and the problems inherent in the reconciliation of tradition and collective rights with the individual rights enshrined in the constitution. In addition, the participants formed an alliance with several women's groups to argue for the retention of the Senate under the provisions of the final constitution. Chiefs made an important contribution to the National Constitutional Conference and presented coherent, thoughtful and comprehensive proposals for constitutional amendments.

### III. FOCUS GROUP DISCUSSIONS

The chiefs in each of Malawi's 24 districts were asked by parliament to choose two delegates to attend the National Constitutional Conference. NDI used the district-level meetings at which these selections took place to hold focus group discussions. Ten discussions were held in nine districts in the Southern and Central regions between February 4 and 9 (see Appendix A, Focus Group Discussion Sites). A total of 53 chiefs participated in these sessions. Logistical problems and time constraints prevented discussions from being held in the Northern region.

A focus group is a semi-structured discussion on specified topics among nine to twelve participants. A moderator guides the discussion, which lasts approximately two hours, and carefully notes the responses so that they can be analyzed.

Focus group research is internationally recognized as a reliable method of producing qualitative data. Although it does not have the statistical validity of a quantitative baseline survey, it does provide an understanding of public attitude. Focus group research is widely used in Africa because of the cultural adaptability of this method and the general lack of reliability of quantitative surveys.

The focus group discussion outline was designed by Naomi Mpemba and NDI Malawi, with contributions from Edge Kanyongolo of the University of Malawi School of Law and from NDI staff in Washington and Johannesburg (see Appendix B, Focus Group Discussion Outline). Naomi Mpemba is a lecturer in psychology at Kamuzu College of Nursing and has designed previous NDI focus group surveys in Malawi. Mpemba recruited Timothy Chikoti, Mary Msusa, Grey Kalindekafe and Kondwani Mwangalube from Chancellor College to act as discussion moderators. All of the moderators had worked on previous NDI focus group projects.

#### *The Role of the Chief*

Chiefs said their primary responsibility is to act as judges, settling disputes among the people in their villages. Conflicts involving land, marriage and inheritance were cited most frequently; but disputes involving funerals, chieftaincy, theft, witchcraft, fighting and politics are also resolved by chiefs. Chiefs use their positions as judges and arbitrators to maintain peace and order within their areas.

Chiefs arbitrate and pass judgements during their normal daily activities and during informal village "courts." Throughout the MCP era, chiefs also nominally presided over formal, government-sanctioned traditional courts. However, these courts were highly politicized and

influenced by MCP officials. Therefore, one of the first actions of the new United Democratic Front government was to suspend the traditional courts. Chiefs remarked that with the advent of the multiparty system they were again "free to conduct our duties as judges," apparently referring to the fact that they enjoy less interference by government officials in the informal village judicial system. However, the chiefs would like to reinstitute some form of the traditional court system.

Chiefs cited that their second major responsibility is to promote community and economic development programs in the rural areas. Chiefs supervise self-help projects such as the building of schools and the maintenance of roads. They also help government workers with relief activities, agricultural extension projects, credit schemes and infrastructure development. Chiefs argued that the lack of government resources in the rural areas, the ability of chiefs to mobilize villagers and their intimate knowledge of local issues necessitate their inclusion in the rural development process. As one chief in Mangochi explained, "The chief acts as a middle-man between the people and the government."

Chiefs participate in the community development process through their positions on district development committees (which also include MPs, civil servants, district administrators and NGO representatives) and as chairmen of area action committees, which coordinate development activities in each chieftaincy. These committees are intended to supervise government and NGO development initiatives, but chiefs complain that often the committees are poorly funded and not consulted properly by government officials.

### *The Constitution and the National Constitutional Conference*

Only two or three of the focus group participants had even rudimentary knowledge of the purpose or contents of the constitution. While all had heard of the constitution and most were aware of the constitutional review process, the participants saw the review process as inadequate. The participants said that chiefs and rural people had not been given a sufficient opportunity to learn about or comment on the constitution. When asked what they thought the constitution *should* say, the chiefs said the constitution should better define their relationship with the government and restore their former powers. Many chiefs also hoped for representation in parliament, even though they were unaware of the Senate provisions.

When the Senate provisions in the current constitution were described, the chiefs reacted enthusiastically. They saw their participation in the national legislative process as a means of ensuring representation of the rural poor. A chief in Zomba said that "chiefs will be there to represent the local people at the grassroots level." This sentiment was echoed by a chief in Nsanje who said, "Chiefs will speak out the concerns of the local masses."

None of the chiefs were aware of the upcoming National Constitutional Conference before they were asked to select delegates. After the mandate and composition of the NCC was explained, the chiefs saw the conference as an opportunity to: regain some of their former powers; encourage MPs to be more representative; and increase their own understanding of laws and policies that affect rural people, including inheritance laws, international donor aid and community development.

### *Local Leadership and Political Representation*

When asked to name important leaders in their areas, chiefs mentioned political party representatives, local civil servants, religious leaders and members of local government councils most often. Teachers, police, leaders of various village committees and traditional healers also were said to be important leaders. The chiefs never mentioned members of parliament elected in the May 1994 elections.

The chiefs' view of current MPs is negative. Chiefs said that MPs should "represent the people in parliament," "take the people's problems to the government," and "act as a bridge between rural people and the government." In their view, however, these duties are not being carried out. MPs are seen as primarily urban residents who are interested in their own well-being, in contrast to chiefs who see themselves as rural people interested in the well-being of their people. A chief in Ntcheu said, "*Amakayenda nyama yogendagenda*," a proverb that translates literally as "They [MPs] chase the animal that has already been wounded." In this context, the saying means that MPs are more concerned with enjoying the comforts of their position than addressing the problems of their constituents. Another chief in the same meeting said, "Chiefs know the needs of the people in the villages, while MPs are not concerned with what the people need but with going to parliament alone."

Some of the negative feelings toward MPs apparently stem from jealousy or resentment of the respect accorded to MPs. Chiefs in Ntcheu and Dowa said "*maMP ndi ana athu omwe*" or "MPs are the children of chiefs." Many participants said that chiefs deserve more respect than MPs. The salaries, cars and benefits given to MPs were often contrasted to the meager official salaries received by chiefs. Much of the criticism leveled at MPs by chiefs, however, was echoed by citizens during NDI's September 1994 focus group survey and may stem from the widely perceived failure of MPs to communicate with their constituents or to follow through on campaign promises.

### *Chiefs and the Government*

Chiefs said that they have always been an essential part of the government of Malawi and will

continue to be so in the future. When asked if chiefs should help run the government, the most common response was "*mafumu ndi boma*" or "Chiefs are the government." The participants point to their position as judges and arbitrators and to their role in community development activities as examples of their governmental functions.

The erosion of chiefs' powers and the politicization of traditional authority under the Malawi Congress Party rule was strongly resented in all the areas visited. Chiefs' authority over functions such as funerals, the distribution of land and the succession of village headmen was usurped by local MCP officials. *Mutilo*, tribute that was traditionally paid to chiefs by their subjects, was diverted to the MCP and former President Banda in the form of "gifts." The chiefs cited the loss of control over traditional courts during the MCP period as the most serious blow to their authority and prestige.

The politicization of chieftaincy was thought of negatively by virtually all of the participants. A chief in Zomba said, "We are not politicians. The chief's job is to unite his people, so he should be nonpolitical." One of the major responsibilities of a chief, according to the participants, is to unite people of different political affiliations. A chief in Chikwawa said, "A chief is like a father who is there to see that there is peace in the family." The participants strongly denied that chiefs had interfered with political campaigning before the first multiparty elections last year, despite strong evidence that interference did occur in some areas. Chiefs implied that playing a partisan political role is unethical and discredits their call for protection from political interference.

### *Expectations*

Chiefs said the new democratic system in Malawi provides an opportunity to regain the powers they lost under the former regime. The most important of these powers for the chiefs is the ability to preside over traditional courts without what they consider to be undue political interference. Chiefs indicated that control over traditional courts provides the authority necessary to perform their day-to-day duties. They indicated that without the ability to enforce decisions in court, people are more likely to ignore the advice, directives or decisions chiefs make outside of the formal traditional court setting. Where the desire to be effective leaders ends and the desire for personal prestige begins, however, is sometimes difficult to establish. As one chief in Mangochi said, "Having judicial powers makes us have respect in society and increases our pride and importance."

Chiefs said that their political independence and neutrality should be ensured under the new regime. The participants see a strong distinction between "politics" and "government," however. For chiefs, "politics" means campaigning, partisanship, conflict and a focus on petty,



unsubstantial issues, and should be avoided. "Government" means district administrators, civil servants and development activities. In light of that distinction, the chiefs welcome the participation or even integration of chiefs in the government. Government oversight of chiefs, such as the appeal of traditional court decisions to magistrates or the participation of district administrators in the succession of chieftaincy, would also be accepted.

Chiefs said they hoped that the new government would show them respect and help restore their prestige. This could be accomplished, in their view, by: increasing their salaries; providing them with staff, houses and offices; and helping them to obtain cars.

#### IV. PREPARATORY WORKSHOP

##### Chiefs and the National Constitutional Conference

###### *Overview*

As part of its effort to help various groups prepare for the National Constitutional Conference, NDI Malawi organized a workshop for chiefs in Lilongwe on February 18 and 19. Forty-four of the 51 chiefs invited to the NCC took part in the workshop (see Appendix C, Preparatory Workshop Participants).

The workshop agenda was designed by NDI Malawi and Edge Kanyongolo, a lecturer in constitutional law at the University of Malawi School of Law, with the assistance of NDI's Washington staff (see Appendix D, Preparatory Workshop Agenda). The workshop was intended to help chiefs learn about the provisional constitution, to encourage them to carefully examine their role in society and their relationship with the government, and to allow them to formulate a plan of action for the NCC. Preliminary analysis of the focus group findings was used to identify specific topics for discussion. In preparation for the workshop, NDI commissioned the translation into Chichewa of important sections of the constitution and of the NCC agenda and standing orders.

Edge Kanyongolo took the role of lead trainer and coordinator during the workshop. Kanyongolo also recruited Jande Banda, a lecturer in public administration at the University of Malawi, and Ambokire Salimu and Zolomphi Nkowani, students in the School of Law, to act as workshop facilitators.

The workshop concentrated on five main topics: chiefs and Malawian Society; chiefs and the government; political representation; traditional courts; and constitutional rights. Each topic was introduced by one of the trainers and discussed in small groups. Each discussion group was led by one of the facilitators, and group findings were presented in plenary session. All discussions took place in Chichewa, with translation to other vernacular languages or English when required.

Several participants commented that the workshop was the first occasion in which chiefs from all parts of the country could hold open discussions. Under the MCP government, national meetings of chiefs were rare, and those that did occur took place in an atmosphere of fear and distrust. During the workshop, the chiefs carefully discussed their role in society. They were receptive to the information presented by the facilitators and quickly formulated concrete political and constitutional proposals. The workshop resolutions were compiled in a one-page Chiefs' Declaration (see Appendix E, *Nfundo Za Mafumu*, and Appendix F, Chiefs' Declaration). On the second day of the workshop, the chiefs asked for advice on how to

promote their resolutions during the NCC. Edge Kanyongolo and NDI staff member Brent Preston conducted a session in the afternoon on strategy and organization during the NCC.

Several women's groups requested a meeting with the chiefs on the afternoon of the second day to discuss their support for a bicameral parliament, with the Senate as a second legislative chamber. The chiefs had already resolved to support the retention of the Senate in the constitution and agreed to meet with the women. Catherine Munthali of the Society for the Advancement of Women and Linly Kamtengeni of the National Commission for Women in Development addressed the chiefs in Chitumbuka and Chichewa, respectively, and asked for the chiefs' support for a Senate composed primarily of women and chiefs. This proposal was greeted enthusiastically. Chief Tengani, acting as a spokesperson for the chiefs, said, "We are happy that you have made the same resolution on the Senate. It is as if we have been discussing in the same room. Chiefs and women should be like two hands together. We welcome this alliance." The strength and authenticity of the alliance between women and chiefs at the NCC came as a surprise to many observers, who believe chiefs and traditional authority represent major impediments to the advancement of women.

At the close of the workshop, the chiefs elected an organizing committee to coordinate activities during the NCC. The organizing committee issued a press release, refined the Declaration and created a list of specific amendments to the constitution that was later presented to the NCC chairman. The press release was faxed to the Malawi Broadcasting Corporation (MBC) and all major newspapers in the country. Copies of the declaration, the press release and proposed amendments are attached at the end of this report (see Appendix G, Suggestions for Constitutional Amendment, and Appendix H, Newspaper Articles).

### *Workshop Themes*

The topics on the workshop agenda were addressed through a series of specific tasks, such as the creation of a job description for chiefs, and the writing of a traditional courts act. These tasks were intended to build on each other, creating a progression of thought as the workshop proceeded. Three major themes emerged during the workshop discussions.

#### *1. Civil and Traditional Authority*

One of the major complaints heard during the workshop was that chiefs have many responsibilities without the authority or resources to fulfill them. Administrative authorities (such as the police, extension workers, health workers, teachers and other government agents in the rural areas) are few and must cover large areas. Therefore, they are compelled to

work through chiefs, who have a more intimate knowledge of their areas. The chiefs said the government, however, is unwilling to grant them the powers that they feel are necessary to be effective.

The implementation of local development initiatives illustrates this problem. Although they are proud of their role in the community development process, chiefs complained that they are used by the government without being consulted. One participant summed up this sentiment, saying, "Chiefs have responsibility but no power over development."

The maintenance of law and order in rural areas also illustrates the chiefs' complaint of responsibility without authority. During the rule of the Malawi Congress Party, local MCP officials and members of the Youth League maintained discipline in rural areas. MCP-controlled traditional courts were used to suppress both criminal and anti-government activities. The new multiparty system has seen local MCP structures disintegrate in many parts of the country and become weak or discredited in others. Chiefs perceived an increase in disrespect, disorderliness, theft and violence in the villages as a result of recent political change. The police and other civil authorities are clearly unprepared to control disorder or criminal activity in the rural areas; but chiefs said that, without control over traditional courts, they are not equipped to deal with changing circumstances. Chiefs want control over courts and the ability to enforce their decisions in order to maintain order in their areas.

While chiefs felt they should be given greater authority to compensate for weak civil authority structures, they also believed that they should be included in the national legislature. Chiefs said they might be willing to forego participation in the legislative process if MPs were advancing rural interests, consulting chiefs and fulfilling their representative duties. Given the small size of constituencies in Malawi, this could be accomplished; but, in the short term at least, chiefs felt that their presence in the Senate is necessary.

## *2. Traditional Courts*

The removal of chiefs from traditional courts symbolizes for chiefs many of the negative aspects of both the past and present political systems. During the previous regime, the appointment of MCP court chairmen to oversee traditional courts symbolized the politically motivated interference of the party in traditional affairs. Partisan appointees, usually from another part of the country, were allowed to assume the weighty and respected position of judge, while the legitimate holders of authority were pushed aside. During the workshop, some participants proposed that court chairmen be allowed to continue presiding over traditional courts along with chiefs, while others contended that chiefs alone should preside.

After an animated and passionate debate, the issue was put to a vote, with the participants voting more than two to one to recommend the exclusion of court chairmen from traditional courts.

The removal of chiefs from traditional courts also symbolizes the loss of respect and erosion of tradition that the chiefs see in their areas. In the past, presiding as a judge meant respect, prestige, status and importance for chiefs. As one chief said, "I saw my mother sitting as a judge. The taking away of this judicial power has been responsible for our belittlement." Another said, "We cry for our cultural respect. Please leave it [traditional courts] to the chiefs." Chiefs seem to feel that their presence in the courts alone would help slow the trends of disobedience, lack of respect and disregard for tradition that they see in the youth of their areas.

The chiefs endorsed a traditional court system that was limited in jurisdiction to civil and very minor criminal cases and for the government to determine maximum sentences or punishments. They also called for the introduction of a jury system and of the right of appeal to the High Court. Traditional courts can, in the opinion of the participants, solve minor disputes and enhance the authority of chiefs, but major criminal cases and punishments such as the death penalty should remain outside their jurisdiction.

### *3. Human Rights*

The chiefs seemed to have come to the workshop having already accepted the notion that all Malawians should be bound by a supreme, inviolable code of human rights. They also recognized that many Malawians believe political freedom means unrestrained personal freedom, even to the point of breaking the law or infringing upon the rights of others. The fact that all societies set limitations on individual rights is not widely appreciated in Malawi. The discussion of issues such as freedom of speech, dress, and the press during the workshop followed a set pattern: the participants solidly endorsed the necessity and benefits of such freedoms, called for restraint and respect in their enjoyment and asked for defined limits to be set. Chiefs feel that tradition and custom should be considered when setting limits on individual rights. They also recognize, however, what one participant called "bad traditions." Many participants suggested that the bill of rights in the new constitution could be used as a guide to identify and modify regressive or damaging traditions. The chiefs see tradition and culture as changeable and evolving.

A particular area of concern for chiefs is inheritance law and the rights of women. Chiefs seemed to have an understanding of the plight of women and their children when relatives unlawfully seize the property of a deceased husband. However, these same chiefs are

generally not knowledgeable about the law and do not have the legal authority or enforcement capabilities to protect widows. The rights of rural women are poorly understood, and civil authorities have been unable to prevent the violation of these rights. The participants said that chiefs should be given the power to enforce customary inheritance practices that seek to protect widows and children and that they need access to information on the written inheritance law.

### *Resolutions*

The workshop resolutions were compiled in a declaration that was originally written in Chichewa. The following is a summary of the major workshop resolutions adopted by the chiefs:

#### *1. The Role of the Chief:*

The primary responsibility of chiefs in Malawi is to provide leadership and to help insure a better standard of living for ordinary people by:

- maintaining peace in their areas;
- initiating and overseeing community development activities;
- distributing residential plots and farmland;
- settling disputes and passing judgements; and
- acting as a link between the people and the government.

#### *2. Recognition of Chiefs:*

The constitution should recognize chiefs and the established system of traditional authority over which they preside. Chiefs are vitally important leaders in the day-to-day lives of ordinary Malawians. The constitution should acknowledge the role of chiefs, and tradition and cultural values should be used as guides when setting limitations on constitutional rights.

#### *3. The Senate:*

The provision for a second chamber of Parliament should remain in the constitution, and membership of the Senate should include 24 chiefs, as well as other individuals. Legislators should be free to speak the language of their choice.

#### ***4. Traditional Courts:***

Traditional courts must continue to function. Traditional courts should be presided over by chiefs and only chiefs. The jurisdiction of traditional courts should be limited and limits should be set on the powers of judges. Appeals of traditional court decisions should be heard by the High Court.

#### ***5. Human Rights:***

Tradition and custom are subordinate to the constitution, but traditional values should be considered when setting limits on individual rights. The death penalty should remain in effect for murder cases. Marriage should be subject to parental consent, regardless of the age of those marrying. Primary education should be compulsory to standard eight. Community development and self-help projects should be excluded from the definition of forced labor. Inheritance laws should be enforced to protect widows and their children.

## V. THE NATIONAL CONSTITUTIONAL CONFERENCE

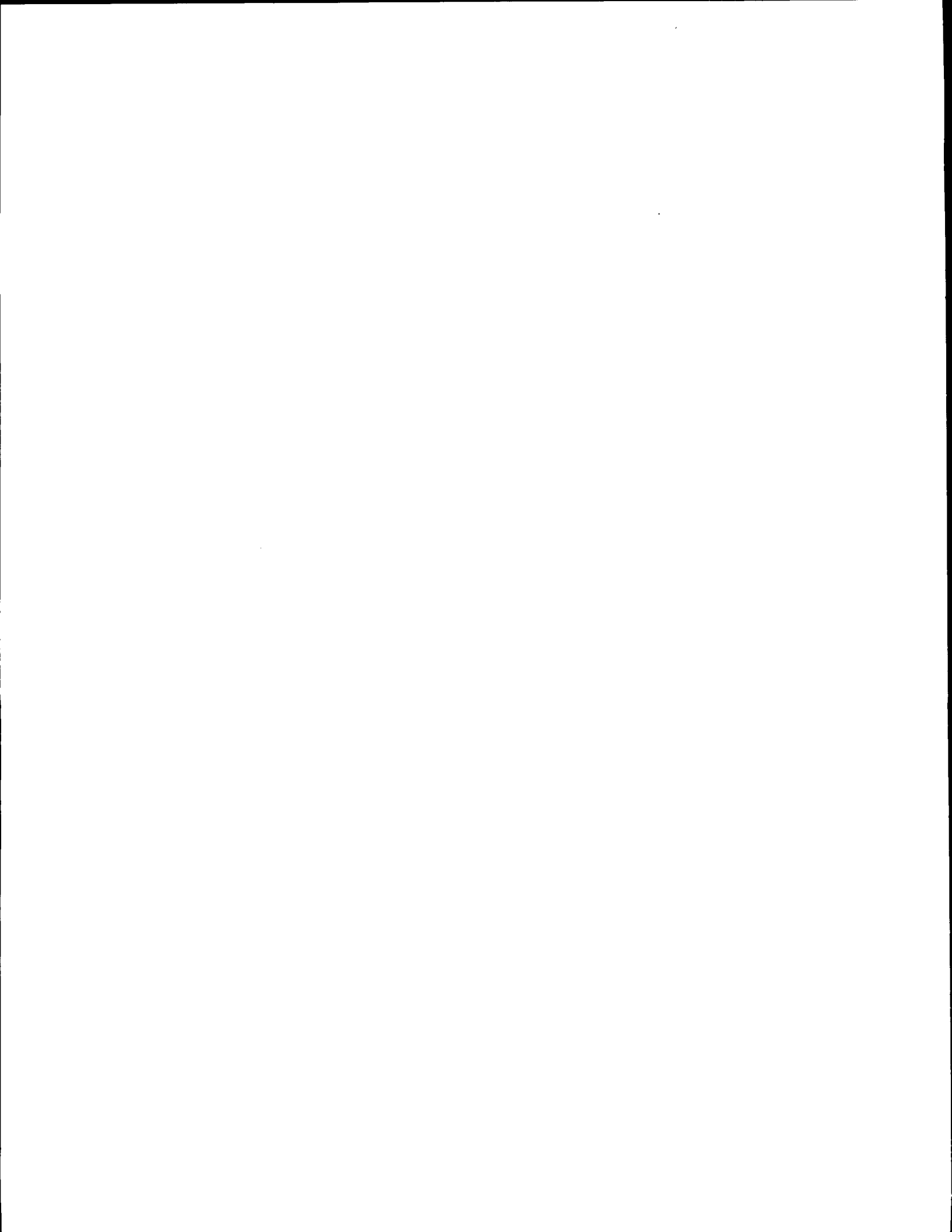
The Chiefs' Declaration was widely circulated during the NCC. Many delegates were surprised at the preparation and organization displayed by the chiefs, and the NCC chairman used the chiefs' proposals for amendment to resolve debates over certain issues.

The most important contribution by chiefs to the National Constitutional Conference occurred during the debate over the Senate on the first day of the Conference. When arguing for retention of the Senate, the chiefs emphasized their ability to represent the rural poor and their alliance with the women. Chief Mzikubola said, "Chiefs are marginalized and not recognized. We have experienced 30 years of ignoring popular opinion. If villagers were allowed to speak, things would have been better." Chief Tengani stressed that "chiefs and women are the ones who stay in the villages. The heaviest burden in society falls on women, but this forum does not seem to listen to women's opinions. Chiefs and women should be recognized at all times, not just during campaigns." At the conference, chiefs took the opportunity to correct an MP's statement that chiefs and villagers did not want the Senate. One chief stated, "no one came to ask my view. All chiefs are here. All want Senate. We are ready to be in the house of Senate. We know the troubles of the ladies, we hear them night and day. This is an opportunity for our voice to be heard. We are ready."

During the NCC, the chiefs actively sought out journalists to explain their position, gave a number of interviews on MBC radio and gave an interview to a Zimbabwean television crew. Chiefs lobbied other delegates, and, after displaying their voting power on the Senate issue, were approached by various groups seeking their support on other issues.

The participation of chiefs at the NCC prompted many to reexamine some of the stereotypes associated with chiefs and traditional authority. The lack of partisanship, the depth of feeling towards rural people, the eloquence, organization, and reasonableness displayed by chiefs during the debate, and most importantly, their strong alliance with women on a number of issues, surprised many observers. During the NCC, chiefs gained support for their claim to a place in Malawi's new democracy.





## APPENDICES

## APPENDIX A

### FOCUS GROUP DISCUSSION SITES Traditional Authority and Democratic Governance in Malawi Constitutional Conference Preparations February 3 to 10, 1995

DISTRICT	DATE	NUMBER OF CHIEFS
Zomba	3-2-95	2
Mangochi	4-2-95	8
Ntcheu	6-2-95	5
Chikwawa	7-2-95	4
Nsanje	7-2-95	5
Blantyre	8-2-95	2
Kasungu	9-2-95	12
Dowa	9-2-95	5
Lilongwe	10-2-95	5
Lilongwe	10-2-95	5
<b>TOTAL</b> 9 Districts	<b>10 Discussions</b>	<b>53 Participants</b>

## APPENDIX B

### FOCUS GROUP DISCUSSION OUTLINE Traditional Authority and Democratic Governance in Malawi Constitutional Conference Preparations February 1995

#### 1. INTRODUCTION

- A. Introduce yourself
- B. Define what a focus group is.
  - 1. A discussion.
  - 2. No right or wrong answers, just your ideas and opinions.
  - 3. Be honest and say what you think.
  - 4. Feel free to disagree with people; I want you to tell me your own opinions, even if they are different from other people in the group.
  - 5. Everyone should participate in the discussion because everyone's opinions and ideas are important.
  - 6. Please raise your hand if you have something to say so I can call on you, and keep answers short so everyone can speak.
- C. Explain the purpose of the group.
- D. Explain that the tape recorder is there so I can listen to it later and take notes.
- E. Have participants introduce themselves.

#### 2. BACKGROUND

- A. Are things in your area getting better or worse or staying the same?
- B. What is the best and worst thing that has happened in your area over the last few years?
- C. What is the biggest problem facing the people in your area?

#### 3. THE ROLE OF THE CHIEF

- A. What are your most important responsibilities as a chief? (Probe for specific answers.) What are the responsibilities of Village Headmen in your area?

- B. Who are the most important leaders in your area other than chiefs and Village Headmen?
- C. What kinds of problems do people in your area bring to you? Are you able to help them solve their problems?
- D. When you are faced with a big problem, who do you go to in the government for help?
- E. In May 1994, people voted for Members of Parliament to be their representatives. Do you know the MP in your area? What is his/her name? Do you work with him/her? (If yes, how do you work together; if no, why not?)
- F. What responsibilities does the MP in your area have? How are your responsibilities different from those of an MP?
- G. How have your responsibilities changed over time? Did chiefs have more powers in the past? How was the colonial period different from the MCP period? How have things changed with the introduction of multiparty democracy?
- H. Did chiefs in your area participate in the election campaign last year? How did they participate? Do you think chiefs should be involved in politics?

#### **4. EXPECTATIONS**

- A. What do you think your role should be in the new democratic Malawi?
- B. If you could decide, what responsibilities would you give to the chiefs, and what would you give to the MPs? Are there any powers or responsibilities that chiefs have lost that they should have back again?
- C. Who should decide who becomes a chief or who should have his/her chieftaincy removed? What should be done with chiefs who do not do their job properly?
- D. Do you think that chiefs should help in the running of the government? How should chiefs be involved? Should chiefs be involved at the national or local level? If chiefs helped to govern Malawi, how would the country be different?

#### **5. THE CONSTITUTION AND THE NATIONAL CONFERENCE**

- A. Have you heard of the constitution? What do you think it says? (If the group has little understanding, translate "constitution" and explain.)
- B. Have you had a chance to learn about the constitution? Do the people in your area know

about the constitution?

- C. What do you think the constitution says about chiefs? What do you think the constitution should say about chiefs?
- D. (Explain the composition and function of the Senate in the provisional constitution.) Do you think the Senate is important? Why? Should chiefs be members of the Senate? How should chiefs be chosen for the Senate? What other people, other than the chiefs, should be represented in the Senate?
- E. Some chiefs will attend the National Constitutional Conference this month in Lilongwe. There will also be MPs, lawyers, people from the University, teachers, representatives of women's groups and others. All of these groups will be able to make suggestions and contributions to the constitution. If you were at the Conference what suggestions would you make about the constitution? Would you feel free to talk? What language do you think should be used at the National Conference? Have you talked to other chiefs or people in your area about the Conference?
- F. If there were a constitutional expert here today, what questions would you ask him/her?

## APPENDIX C

### CHIEFS AND THE NATIONAL CONSTITUTIONAL CONFERENCE

Preparatory Workshop  
Lilongwe, Malawi  
February 18 to 19, 1995

#### PARTICIPANTS

Chikwawa:	Chief Makhuwira Chief Maseya	Salima:	Chief Kalonga Chief Bibi Maganga
Blantyre:	Chief Kapeni Chief Machinjiri	Dedza:	Chief Kaphuka Chief Chilikumwenda
Lilongwe:	Chief Khongoni	Dowa:	Chief Kayembe Chief Mkanda
Zomba:	Chief Mkumbira Chief Chikowi	Nchisi:	Chief Chilowooko Chief Chikho
Mangochi:	Chief Katuli Chief Makanjira	Mchinji:	Chief Mlonyeni Chief Mkanda
Machinga:	Chief Kalembo Chief Kawinga	Nkhotakota:	Chief Malengachanzi Chief Kanyenda
Kasungu:	Chief Kaomba Chief Lukwa	Nkhata Bay:	Chief Fukamapiri Chief Mkumbila
Mwanza:	Chief Mlauli Chief Kanduku	Rhumpi:	Chief Chikulamayembe Chief Mwamlowe
Nsanje:	Chief Tengani Chief Chimombo	Karonga:	Chief Kawonga Chief Kilupula
Mulanje:	Chief Nkanda Chief Nkhumba	Chitipa:	Chief Mwablamba
Thyolo:	Chief Bvumbwe Chief Nchilamwera		
Chiradzulu:	Chief Kadewere Chief Ntchema		
Ntcheu:	Chief Mpando Chief Champiti		

## APPENDIX D

### AGENDA

#### CHIEFS AND THE NATIONAL CONSTITUTIONAL CONFERENCE

Preparatory Workshop, February 18 and 19, 1995

#### THURSDAY, FEBRUARY 16

Participants travel to Lilongwe.

Workshop registration at Kalikuti Hotel.

#### FRIDAY, FEBRUARY 17

8:30 **Introduction and Opening Remarks**

Edge Kanyongolo, University of Malawi School of Law

Brent Preston, NDI

#### POLITICAL REPRESENTATION

9:00 **Introduction to Day 1**

Overview of the nature and function of a constitution, and summary of the Malawi Constitution from the perspective of political representation and participation.

Edge Kanyongolo

10:00 **Chiefs and Malawian Society**

Ambokire Salimu and Zolomphi Nkowanji: The importance of understanding one's own role, goals and expectations is emphasized.

Discussion groups: Participants are asked to create a concise job description for a chief. Participants are also encouraged to think about what their people expect of them. The job description is then used to formulate a one-sentence mission statement for chiefs.

11:30 Discussion groups report back to the plenary, followed by discussion and questions.

12:15 Lunch

1:00 **Chiefs and the Government**



Edge Kanyongolo: The three branches of government are described in theory and as laid out in the provisional constitution.

Discussion groups: Using the job description created in the first session, participants categorize their responsibilities as Legislative, Judicial or Executive. Participants are asked to debate in which branch of government they best fit, and to discuss their current interaction with the political system.

2:30 Break

2:45 **Chiefs and the Government**

Discussion groups report back to the plenary, followed by discussion and questions.

3:30 **Political Representation**

Jande Banda: The Senate, as provided for in the provisional constitution, is described. Alternative means of political representation for chiefs are suggested.

Discussion groups: Participants are asked to design three different structures:

- A Senate with a different structure or membership from that outlined in the provisional constitution;
- An alternative to the Senate at either the national or local level; and
- An alternative representative structure for chiefs that does not have legislative powers.

5:00 Discussion groups report back to plenary, followed by discussion and questions

5:45 Closing Remarks and Summary of Day 1

**SATURDAY, FEBRUARY 18**

### **CONSTITUTIONAL RIGHTS**

8:30 **Traditional Courts**

Ambokire Salimu and Zolomphi Nkowan: The provisions for traditional courts in the current constitution are outlined.

Discussion Groups: Participants are asked to design a new Traditional Courts Act. The Act should outline:

- who should preside over traditional courts;
- the jurisdiction of traditional courts;
- the settlements traditional courts could impose;

- how traditional courts should relate to the formal judicial system;
- how enforcement of constitutional rights might effect decisions of traditional courts.

10:00 Discussion groups report back to the plenary, followed by discussion and questions

10:30 Break

11:00 **Introduction to Constitutional Rights**

Edge Kanyongolo

12:00 Lunch

1:30 **Constitutional Rights**

Edge Kanyongolo

Discussion groups: Participants are asked to identify specific rights listed in the constitution that might conflict with traditional values or customs in the village, and to identify ways in which such conflict could be reconciled.

2:45 Discussion groups report back to plenary, followed by discussion and questions.

3:15 **Adoption of Workshop Recommendations and Strategy Discussion**

4:30 **Closing Remarks**

Edge Kanyangolo

5:00 **Presentation by Representatives of Women's Groups**

6:00 **Reception**

## APPENDIX E

### NFUNDO ZA MAFUMU PA MALAMULO OYENDETSERA BOMA

Mafumu 44 ochokera m'maboma onse m'malawi muno osankhidwa ndi mafumu anzawo anasonkhana ku Lilongwe pokonzekera msonkhano wa malamulo oyendetsera boma. Ife mafumu a m'Malawi tagwirizana ndipo tikukhulupilira kuti:

- 1 Udindo wa mafumu m'Malawi ndi kutsogolera ndi kutukula miyoyo ya anthu awo pochita izi:
  - i. kukhazikitsa bata m'madera mwawo;
  - ii. kuyambitsa ntchito za chitukuko;
  - iii. kuweluzza milandu malingana ndi miyambo yathu;
  - iv. kugawa malo olimapo ndi okhalapo;
  - v. kukhala mkhala-pakati wa anthu ndi boma.
- 2 Malamulo oyendetsera boma azindikire kuti mafumu ndi anthu ofunikira m'Malawi ndipo ndi atsogoleri amene ali ndi udindo malingana ndi miyambo yathu. Udindo umenewu ndiwofunika pa miyoyo ya a Malawi ya tsiku ndi tsiku. Malamulo oyendetsera boma abvomereze udindo wa mafumu, ndipo malamulo a miyambo azigwilitsidwa ntchito powongolera malamulo afulu wa chibadwidwe.
- 3 Mafumu anagwirizana kuti pakhale nyumba ya malamulo ya chiwiri imene idzakhale ndi mafumu 24 osankhidwa ndi mafumu anzawo ndi anthu ena.

Nthumwi za m'nyumba ya malamulo zidzakhale ndi ufulu wolankhula mu chilankhulo chimene angafune, choncho, ndime 51(1)b ichotsedwe moyenera.

- 4 Makhoti amiyambo apitilire kugwira ntchito yawo.

Mafumu okha ndi amene adzakhale apampando a makhotiwo.

Choncho ndime 110(3) isinthidwe kukhala:

"Malamulo apangidwe kuti pakhale mabwalo oweluzza milandu yokhudza miyambo yoweluzidwa ndi mafumu."

Makhoti amiyambo asazenge milandu yayikulu yolakwila boma ndipo ma apilo ochokera mumakhotiwa ayenera kupita ku High Court.

- 5 Kunyongedwa kwa munthu akapezeka ndi mulandu opha mnzake mwa dala kupitilire.
- 6 Makolo akhale ndi udindo kubvomereza kuti ana awo akwatiwe kapena akwatire.
- 7 Maphunziro akhale aulere ndipo ana ayenera kuphunzira kufika sitandade 8 mwalamulo.
- 8 Ndime 27(3) iyenera kusinthidwa popeza kuti ntchito yokakamizidwa siyitanthauza kugwira ntchito yachitukuko.

## APPENDIX F

### DECLARATION OF CHIEFS ON THE CONSTITUTION

Forty-four chiefs, selected by their peers from all parts of Malawi, met in Lilongwe to prepare for the National Constitutional Conference. We, the chiefs of Malawi, believe that:

1 The primary responsibility of chiefs in Malawi is to provide leadership and to help insure a better standard of living for ordinary people by:

- i. maintaining peace in their areas;
- ii. initiating and overseeing community development activities;
- iii. distributing land to their subjects;
- iv. settling disputes and passing judgements;
- v. acting as a link between the people and the government.

2 The constitution should recognize chiefs and the established system of traditional authority over which they preside. Chiefs are vitally important in the day to day lives of ordinary Malawians. The constitution should acknowledge the role of chiefs, and tradition and cultural values should be used as guides when setting limitations on constitutional rights.

3 The provision for a second chamber of Parliament should remain in the constitution, and membership of the Senate should include 24 chiefs, as well as other individuals.

Legislators should be free to speak the language of their choice, therefore section 51(1)c should be removed from the constitution.

4 Traditional courts must continue to function.

Traditional courts should be presided over by chiefs and only chiefs.

Therefore, section 110(3) should be amended to read:

"Parliament shall make provisions for traditional local courts to be presided over by chiefs"

Appeals of Traditional Court decisions should be heard by the High Court.

5 The death penalty should remain in effect for murder cases.

6 Marriage should be subject to parental consent, regardless of the age of those marrying.

7 Primary education should be compulsory to standard eight.

8 Section 27(3) should be amended to exclude community development and self-help projects from the definition of forced labor.

## APPENDIX G

### SPECIFIC PROVISIONS IN THE CONSTITUTION REQUIRING AMENDMENT

The caucus of chiefs acting as delegates to the National Constitutional conference recommend the following specific amendments to the Provisional Constitution:

A Chapter or Section should be added, at an appropriate place in the constitution, that:

- 1) Recognizes the importance of chiefs in Malawian society and the existence of an established, legitimate and beneficial system of traditional authority that is presided over by chiefs with the consent of their people.
- 2) Defines the powers and authorities of chiefs and their relationship to the government.
- 3) Emphasizes that chiefs and other holders of traditional authority are bound by the constitution, and that customary law and tradition are subordinate to the fundamental principals of the constitution.

Section 51(1)b, which requires Members of Parliament to be able to speak English, should be deleted.

Section 110(3) should be amended to read:

"Parliament shall make provision for traditional local courts presided over by chiefs, provided that the jurisdiction of such a court shall be limited exclusively to civil cases at customary law and such minor common law and statutory civil cases as prescribed by an act of Parliament, and that decisions of traditional courts be subject to appeal to the High Court."

Please note that the word "may" in the first sentence has been changed to "shall", the provision allowing lay persons to preside over traditional courts has been removed, and a clause allowing for appeal of Traditional Court decisions to the High Court has been added.

Section 25(1) should be amended to read:

"Primary education shall consist of at least eight years of education."

Section 22(6), (7) and (8) should be amended to encourage children to seek the consent of their parents when marrying, regardless of the age at which they marry.

Section 27(3) should be amended to exclude community development and self-help projects from the definition of forced labor.

# THE NATION

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## CHIEFS TABLE THEIR RESOLUTIONS ON THE CONSTITUTION (From the Chiefs' Press Release)

### Mafumu aponya mfundo pamalamulo

*Wolemba  
Mtolankhani Wathu*

**P**okonzekera msonkhano wa malamulo atsopano womwe ukuchitikira ku Lilongwe mafumu adakumana moyimilira maganizo a mafumu anzawo omwe adawasakha adapereka mfundo zingapo kuti ziganziridwe kumsonkhanowu. Onse anali 44 kuchokera mzigawo zonse zadziko lino.

Mchikalata chawo chomwe adachitumiza kunyuzipepala ya *The Nation*, mafumuwa

adakambapo zaudindo wawo kuwonjezapo kuthandiza kutukula umoyo wa anthu: kuyambitsa ntchito zachitukuko, kuweruza milandu motsatira miyambo, kugawa malo olima ndi okhalapo komanso kukhala mkhalapakati pakati pa anthu ndi boma.

"Malamulo oyendetsera boma azindikire kuti mafumu ndi ofunika kwambiri m'Malawi muno ndipo ndi atsojoleri amene ali ndi udindo malingana ndi miyambo yawo." adatero mchikalata

chawochi ndi kuwonjeza kuti udindo wawo ndi ofunika pamoyo wa tsiku ndi tsiku wa anthu.

Adakumbutsanso boma kuti malamulo oyendetsera dziko avomereze udindo wa mafumu ndipo malamulo a miyambo azigwiritsidwa ntchito powongolera malamulo a ufulu wachibadwidwe.

Komanso anapereka mfundo yoti nyumba yachiwiri ya malamulo idzakhala ndi mafumu 24 osankhidwa ndi anzawo ndi anthu ena.

Komanso anati makhoti a miyambo apitilire kugwira ntchito yawo ponena kuti mafumu okha ndiwo adzakhale a pampando a makhothiwo.

Adatinso lamulo loniyonga munthu wopezeka atapha mnzake mwadala lipitilize.

## Conference favours Senate

*by Kaulanda Nkosi*

**W**hen the National Constitutional Conference (NCC) settled down to business in Lilongwe yesterday, delegates indicated they would vote for the creation of a Senate.

But opening the conference, President Bakili Muluzi warned the delegates that the second chamber would only worsen the financial burden of the government and delay decision-making.

"Our cabinet has been frequently criticised as over-size. In view of this, does it make sense to take on extra financial burden in the form of expanded

parliament?" Muluzi queried.

Muluzi also said expanding the parliament would make it the dominant organ of government and hence tilt the balance of power in favour of the legislature.

However, chiefs who stand to gain from the creation of the Senate, said they had agreed at a caucus held at Kalikuti Hotel in Lilongwe two days ago to lobby for the second chamber.

Chiefs Fukamapiri of Nkhata Bay and Lukwa of Kasungu, speaking on behalf of other chiefs, said before the conference, chiefs meeting in their districts to elect representatives to the conference agreed to vote for the senate.

The two chiefs argued that they were the true representatives of the rural people and hence needed representation in the legislature.

"Our members of parliament usually don't meet the electorate to get their views before they go to parliament and when they come back they don't brief the electorate either," Lukwa charged.

He said chiefs in parliament would check the powers of politicians who he claimed could easily coalesce to safeguard their interests.

MCP publicity secretary Hetherwick Ntuba criticised the president for commenting on the senate, saying this would make it difficult for delegates to make independent

decisions.

"He should have left it for UDF delegates to push that. He has a number of able men in his party," Ntuba said.

UDF government partners Aford also supported the Senate which, they said, would allow wider participation by non-politicians.

Commenting on the feared cost of having a senate, Aford publicity secretary Matembo Nzunda retorted: "Who has calculated the cost of having the Senate?"

Meanwhile, women activists who started agitating for the creation of a Senate last week staged a small demonstration outside the conference hall as Muluzi arrived to open the forum.



**Nfaha: he should have left it to UDF delegates**

# THE NATION

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## 'No backdoor to parliament'

by Kaulanda Nkosi

**U**nited Democratic Front (UDF) delegates to the on-going National Constitutional Conference in Lilongwe on Monday accused those who were agitating for the creation of a senate of seeking backdoor entry into parliament.

But when the matter was put to the vote, UDF lost by 83 to 176 votes after a heated and exhaustive debate that saw the conference chairman Rodwell Munyenyembe cautioning two UDF ministers for using strong language.

Nearly all UDF delegates rallied behind President Bakili Muluzi who in his state opening address said the Senate would be an expensive venture which would give parliament more powers at the cost of other organs of government.

"Those who stood in the election and failed want to go into parliament by using women," Lands minister Alhaji Shaibu Itimu said. A charge that aroused immediate protest from Janet Karim of the Journalists Association of Malawi.

"Mr. Chairman, I demand that the honourable minister withdraw that statement. He is talking as if we women have

no independent judgement. We cannot take that, we are professional women." Karim countered to the applause of women delegates and male lobbyists for the Senate.

However, Itimu remained undaunted. He maintained that even those women who called for the creation of the Senate did so more out of personal ambition to hold office in that chamber than for the welfare of other women.

"It is women elites who want the Senate and not those women from the village," Itimu argued.

Backing Itimu's argument, MP from Mangochi South Lilian Patel (UDF) argued that women's lack of interest in public affairs was evident at grassroot level in local development committees.

"In Mangochi the only women DDC members are my fellow lady MP in the district and myself," Patel said.

The Alliance for Democracy (Aford), UDF partners in government, launched a blistering attack on their colleagues for withdrawing their support for the Senate whose creation they had voted for at the NCC last year.

"We are surprised that the same people [UDF] with whom we sat together, in the National Consultative Council and



**Itimu: no backdoor**

agreed that the second chamber was necessary are today turning round and say that the Senate is costly." Aford National Chairman Chipimpha Mughogho said.

Environmental and Research minister Matembo

Nzunda was more biting: "When you are in power, it is natural that you don't want to share it. This can happen even in a multiparty era."

Earlier, Chief Nchiramwela of Thyolo dismissed claims by ministers Rolf Patel and Wenham Nankanga that during

their tour of some areas in the country to solicit public opinion on the constitution, people had rejected the idea of introducing a Senate.

"In whose area did you go where people rejected the Senate? Certainly not in my area," Nchiramwela said.

Patel is an MP for Nchiramwela's area.

Chiefs are worried that their powers are being undermined by the withdrawal of traditional courts from them and hence see the Senate as a forum where they can wield power.

During the Malawi Congress Party era, chiefs presided over traditional courts which were directly under the Minister of Justice who manipulated them to victimize enemies of the government, both imagined and real.

But from April this year, trained court chairmen answerable to the Chief Justice will preside over the traditional courts under the High Court system.

# PRESS RELEASE

**MAFUMU A M'MALAWI**  
February 19, 1995: Lilongwe

Ife mafumu amene tayimira mafumu onse muno m'Malawi ku msonkhano okonzekera msonkhano wa malamulo oyendetsera boma womwe uchitike kuyambira Lolemba pa 20 Febuluwale kufika Lachinayi pa 23 Febuluwale tagwirizana kwatunthu kuti nyumba ya malamulo yachiwiri ikhale monga momwe magulu a mai anagwirizanila. Ndipo nfuno zina zimene tagwirizana ndi izi.

## FUNDO ZA MAFUMU PA MALAMULO OYENDETSERA BOMA

Mafumu 44 ochokera m'maboma onse m'Malawi muno osankhidwa ndi mafumu anzawo anasonkhana ku Lilongwe pokonzekera msonkhano wa malamulo oyendetsera boma. Ife mafumu a m'Malawi tagwirizana ndipo tikuhulupilira kuti:

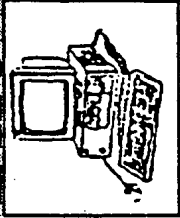
1. Udindi wa mafumu m'Malawi ndi kutsogolera ndi kutukula miyoyo ya anthu awo pochita izi:
  - i. kukhazikitsa bata m'madera mwawo
  - ii. kuyambitsa ntchito za chitukuko
  - iii. kuweluzana milandu malingana ndi miyambo yathu
  - iv. kugawa malo olimapo ndi okhalapo
  - v. kukhala mkhala-pakati wa anthu ndi boma
2. Malamulo oyendetsera boma azindikire kuti mafumu ndi anthu ofunikira m'Malawi ndipo ndi atsogolera amene ali ndi udindo malingana ndi miyambo yathu. Udindo umenewu ndiwofunika pa miyoyo ya a Malawi ya tsiku ndi tsiku. Malamulo oyendetsera boma abvomereze udindo wa mafumu, ndipo malamulo a miyambo azigwilitsidwa ntchito powongolera malamulo afulu wa chibadwidwe.
3. Mafumu anagwirizana kuti pakhale nyumba ya malamulo ya chiwiri imene idzakhale ndi mafumu 24 osakhidwa ndi mafumu anzawo ndi anthu ena.

Nthumwi za m'nyumba ya malamulo zidzakhale ndi ufulu wolankhula mu chilankhulo chimene angafune, choncho, ndime 51(1)b ichotsedwe moyenera.
4. Makhoti amiyambo apitilire kugwira ntchito yawo. Mafumu okha ndi amene adzakhale apampando a makhotiwo. Choncho ndime 110(3) isinthidwe kukhala:

"Malamulo apangidwe kuti pakhale mabwalo oweluzana milandu yokhudza miyambo yoweluzidwa ndi mafumu."
5. Kunyongedwa kwa munthu akapezeka ndi mulandu opha mnzake mwa dala kupitilire.
6. Makolo akhale ndi udindo kubvomereza kuti ana awo akwatiwe kapena akwatire.
7. Maphunziro akhale aulere ndipo ana ayenera kuphunzira kufika sitandade 8 mwalamulo.
8. Ndime 27(3) iyenera kusinthidwa popeza kuti ntchito yokakamiziuwa siyitanthauza ntchito yachitukuko.

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