

APPENDICES

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

1. INTRODUCTION

- A. Introduce yourself
- B. Explain 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.

1. 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?

2. 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 her/his 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?

3. 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 their 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?

4. 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 was a constitutional expert here today, what questions would you ask him/her?

FOCUS GROUP DISCUSSION SITES
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
TOTAL		
9 Districts	10 Discussions	53 Participants

CHIEFS AND THE NATIONAL CONSTITUTIONAL CONFERENCE
Preparatory Workshop, February 18 and 19, 1995.

AGENDA

Thursday, February 16.

- o Participants travel to Lilongwe.
- o Workshop registration at Kalikuti Hotel.

Friday, February 17.

8:30 Introduction and Opening Remarks

Edge Kanyongolo
Brent Preston

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 from 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

MFUNDO 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 tikukulupilira 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. kuweluzidwa 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 oweluzidwa 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.

DECLARATION OF CHIEFS ON THE CONSTITUTION

44 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.

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.

CHIEFS AND THE NATIONAL CONSTITUTIONAL CONFERENCE

Preparatory Workshop, February 18 and 19, 1995.

Kalikuti Hotel, Lilongwe

PARTICIPANTS

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

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

Mafumu aponya mfundo pamalamulo

*Wolemba
Mtolankhani Wathu*

Pokonzekera msonkhano wa malamulo atsopano womwe ukuchitikira ku Lilongwe mafumu adakumana moyimilira maganizo a mafumu anzawo omwe adavasakha adapereka mfundo zingapo kuti ziganiziridwe 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 atsogoleri 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 waehibadwidwe.

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 pampano a makhothiwo.

Adatinso lamulo lonyonga munthu wopezeka atapha mnzake mwadala lipitilire.

Conference favours Senate

by Kaulanda Nkosi

When 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, chief's 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 Ntaha 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," Ntaha 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.



Ntaha: he should have left it to UDF delegates



PRESS RELEASE

MAFUMU A M'MALAWI
February 19, 1995: Lilongwe

Ife mafumu amene tayimira mafumu onse muno m'Malawi ku rnsokhano 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 anagwirizana. Ndipo r fundo zina zimene tagwirizana ndi izi.

FUNDO ZA MAFUMU PA MALAMULO OYENDETSERA BOMA

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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 azigwillitsidwa ntchito powongolera malamulo afulu wa chibadwidwe.
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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 yokakamiziwa siyitanthauza ntchito yachitukuko.

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'No backdoor to parliament'

by Kaulanda Nkosi

United Democratic Front (UDF) delegates to the ongoing 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 Munyenembe 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 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 Nakanga 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.



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