

PD-ABH-382
85571

MALAWI
DEMOCRATIC AND CIVIC
INSTITUTION
DEVELOPMENT
PROJECT PAPER
ANNEXES B-F
(612-0243)

AGENCY FOR INTERNATIONAL DEVELOPMENT
PROJECT IDENTIFICATION DOCUMENT
FACESHEET (PID)

1. TRANSACTION CODE
Revision No. _____
 A = Add
 C = Change
 D = Delete

DOCUMENT CODE
1

2. COUNTRY/ENTITY
MALAWI

3. PROJECT NUMBER
612-0243

4. BUREAU/OFFICE
AFR
A. Symbol _____ B. Code 06

5. PROJECT TITLE (maximum 40 characters)
Democratic/Civic Institution Development

6. ESTIMATED FY OF AUTHORIZATION/OBLIGATION/COMPLETION
A. Initial FY 93
B. Final FY 95
C. PACD 98

7. ESTIMATED COSTS (\$000 OR EQUIVALENT, \$1 = MK4.3)

FUNDING SOURCE		LIFE OF PROJECT
A. AID		4,500
B. Other	1.	
U.S.	2.	
C. Host Country		TBD
D. Other Donor(s)		
TOTAL		4,500

8. PROPOSED BUDGET AID FUNDS (\$000)

A. APPROPRIATION	B. PRIMARY PURPOSE CODE	C. PRIMARY TECH. CODE		D. 1ST FY 93		E. LIFE OF PROJECT	
		1. Grant	2. Loan	1. Grant	2. Loan	1. Grant	2. Loan
(1) SSA				500		4,500	
(2)							
(3)							
(4)							
TOTALS				500		4,500	

9. SECONDARY TECHNICAL CODES (maximum 6 codes of 3 positions each)

10. SECONDARY PURPOSE CODE

11. SPECIAL CONCERNS CODES (maximum 7 codes of 4 positions each)

A. Code _____ B. Amount _____

12. PROJECT PURPOSE (maximum 480 characters)

The project purpose is to establish and consolidate democratic and civic institutions in Malawi.

13. RESOURCES REQUIRED FOR PROJECT DEVELOPMENT

Staff: RLA 1 p/w CONT 1 p/w
PDO 2.5 p/m
Funds Mission OE
REDSO OE

14. ORIGINATING OFFICE CLEARANCE
Signature: Thomas Lofgren
Title: Director, Office of Program and Project Development
Date Signed: 10/9/21/93

15. DATE DOCUMENT RECEIVED IN AID/W, OR FOR AID/W DOCUMENTS, DATE OF DISTRIBUTION
MM DD YY
11/18/93

16. PROJECT DOCUMENT ACTION TAKEN
 A = Approved
 S = Suspended
 D = Disapproved
CA = Conditionally Approved
DD = Decision Deferred

17. COMMENTS

18. ACTION APPROVED BY
Signature: [Signature]
Title: Mission Director

19. ACTION REFERENCE

20. ACTION DATE
MM DD YY
10/9/21/93

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I. BACKGROUND

The One Party State Challenged

Since independence in 1965 Malaŵi has been a one party state. The country's only president, Dr. Hastings Kamuzu Banda, was declared president-for-life in 1971 and is the head of the ruling Malaŵi Congress Party (MCP). Until the 1990s there has been no effective political opposition in Malaŵi and dissent was dealt with harshly. Still, during the cold war, Malaŵi was seen as a peaceful, stable, pro-western government. In the 1980s, Malaŵi embraced economic structural adjustment by progressively implementing policies favorable to the openness of the economy and encouraging private sector investment and production. Unfortunately and in spite of a growth oriented macroeconomic framework, Malawians registered practically no improvement in their socioeconomic status. Indicators of poverty, disease and literacy continued to stagnate or worsen.

Since 1990, human rights groups and the international community have become increasingly critical of Malaŵi's human rights record. Within Malaŵi dissent was also growing. In March 1992 the Catholic bishops printed a letter saying Malawians lived in "a climate of mistrust and fear" and called on the government to begin a dialogue on the future of the country's development. The government's initial reaction was to declare the letter seditious. The bishops were subjected to police interviews and an Irish bishop was expelled from the country. Nevertheless, dissent spread throughout the country by letters, faxes, and leaflets. At least 20 people were killed in civil and industrial unrest in Blantyre in May and by June 1992 the government had arrested approximately 200 people. It was also in May when the donors, meeting in Paris, restricted aid flows to Malaŵi until there was tangible evidence of a fundamental transformation in the human rights situation in the country.

Between June and September 1992 the situation began to improve as the government released a number of political prisoners and the International Red Cross Committee was allowed into the country to inspect prisons. The Political Affairs Committee (PAC) was formed in August as a nongovernment umbrella organization representing church groups, businesses, the legal community, and nascent political opposition groups. In October, the government formed the President's Committee on Dialogue (PCD) and began meeting with the PAC on a wide range of social and political issues. A large number of independent newspapers began publication during this period.

The Referendum

In October 1992, President Banda unexpectedly called for a March 1993 referendum on the issue of a single versus multiparty system of government. At the request of the government, the UN Electoral Assistance Unit conducted a mission to Malaŵi and submitted a report with a number of recommendations concerning the referendum, including recommendations that the referendum be held in June 1993 and that a single ballot box be used. The president, however, set the referendum date for March 15, 1993, specified the use of two ballot boxes, and indicated he would choose the members of the referendum commission.

Two follow-up missions from the UN, a letter from Secretary General Boutros-Ghali, and threats to boycott the referendum by opposition groups resulted in modifications of the government's position. In February 1993, the referendum was postponed to June 14 and the composition of the referendum commission was changed to include opposition members. It was not until May, however, that use of a single ballot box was accepted by the government.

Approximately 3.5 million Malawians, out of some four million age 21 and over, registered to vote in the referendum. Over 3.1 million voted. There was some confusion over the registration process and the final numbers registered because of the use of the 1992 voter registration rolls in addition to the 1993 registration. There were instances of double registration due to unclear instructions, but multiple voting was prevented by careful administration at polling sites.

The campaign period, April to June, was marred by complaints from both the government and the opposition of intimidation and assaults, but the opposition "pressure" groups were clearly more disadvantaged. Rally permits were difficult to obtain and frequently cancelled while the MCP did not have to obtain permission for gatherings. AFORD's Chairman, Chakufwa Chihana, was kept in jail on prior sedition charges until the day before the referendum and many of his followers were detained for protesting his sentence in December. UDF Chairman Bakili Muluzi was held for four days on accusations of stealing money when he was the MCP secretary-general. A number of incidents of beatings and intimidation by Malaŵi's Young Pioneers (the MCP youth wing) were reported.

The opposition did not have access to the government controlled radio station, Malaŵi Broadcasting Corporation (MBC). Only the president could speak on referendum issues and he did so in support of continued one party rule. Very little official coverage was given to the opposition. The government made some early attempts to ban opposition newspapers but by March censorship of the printed media stopped and newspapers proliferated. The campaign climate improved during the month prior to the referendum. The MBC aired a debate between the PAC and PCD on the referendum and civic education campaigns were broadcast regularly.

The referendum on June 14 was carried out in an organized, fair and efficient manner. There were very few incidents and administrative problems reported, and they had no effect on the outcome. The final vote was 63.2 percent in favor of a multiparty system and 34.5 percent for a single party system (2.3 percent of the votes were voided). The vote was officially announced by the referendum commission on June 16 and the president went on the air June 17 to say that he "accepted the results of the referendum and government will respect the wishes of the people by setting up a machinery for the implementation of the referendum results as soon as possible." He said that section 4 of the constitution, banning all parties except the MCP, would be repealed and that "it is my hope that a general election would be held within a year."

The UN Joint International Observer Group (JIOG) which monitored the registration and campaign periods and fielded 210 observers for referendum day, declared "the vote was an accurate expression of the Malaŵi people" and that instances of intimidation and harassment and unequal access to the media were "not considered to seriously impair the final result of the democratic process."

Post Referendum Progress

Since the referendum, a number of important steps have been taken toward the transition to political pluralism. Section 4 of the constitution was promptly repealed and the regulations for the registration of political parties were put in place. Today Malaŵi has six registered parties. A general amnesty was announced for political exiles, many of whom have returned. The PAC and the PCD have agreed to the formation of the National Consultative Council (NCC), composed of seven members from each registered party, to function as a parallel body to parliament and the National Executive Council (NEC) to function parallel to

the cabinet. Early discussions after the referendum favored a December 1993 general election, but May 1994 now looks to be a more likely and practical date.

The government and opposition groups have committed themselves to make the transition to an open and democratic society. The tasks facing them are many and formidable, and assistance from the international donor community will be required to make the transition successful, but the commitment is clear and irreversible.

The cooperation exhibited between the donors, the Malawi government, opposition groups, and other interest groups in the period leading up to and during the referendum continues to serve as a model for the transition process. The UN Electoral Assistance Unit (UNEAU) provided critical expertise and advice on a wide range of issues as the practical aspects of the referendum process were being discussed. The UNEAS also provided technical experts to establish an Electoral Assistance Secretariat (UNEAS) in the UN's Malaŵi office. This Secretariat coordinated international donor assistance, maintained a dialogue with the PAC and PCD, and provided technical and logistical support to Malaŵi's referendum commission for the three month period leading up to polling day. The UNEAS provided weekly briefings to the local donor committee consisting of representatives from the U.S., U.K., EC, France, Germany, South Africa, and the IBRD under the chair of the UN. As an example of coordination, the five-person team of experts from the International Foundation for Electoral Systems (IFES), funded by USAID/Malaŵi, worked closely with the UNEAS in providing pollworker training and civic education programs through the National Referendum Commission (NRC). The UNEAS also coordinated the work of the international observers during the registration/campaign period and the referendum itself. (See the "UN Report on the Malaŵi Referendum," Reference A.)

After the referendum the government and opposition requested UN assistance in the transition to a multiparty system and for the general elections. As a first step the UN sponsored (with other donor support) a three-day Roundtable on Democratic Transition in Lilongwe from July 21-23, 1993. The roundtable was held to advance discussions, identify areas of agreement and disagreement, and set future agendas on the following topics:

- the establishment and consolidation of democratic institutions
- the role of civic education
- practical aspects of electoral reform
- decentralization, local government and development
- the role of law, the independent judiciary and constitutional reform
- the role of the media
- human rights

The roundtable was well attended by the PAC and PCD whose members participated in the general sessions and the working groups. (Reference B, "Report on the United Nations Roundtable Forum on Democratic Transition in Malaŵi," provides a list of participants, summaries of the working group findings, closing statements and press releases) The underlying basis of the roundtable was clear: the transition has been and will continue to be a Malawian process. PAC-PCD dialogue defined the agenda for the roundtable and Malawians debated the issues, aided by contributions from international participants. The PAC and PCD assumed responsibility for carrying forward the agenda, reaching

agreement on a range of constitutional and legal changes on which roundtable conferees had achieved consensus.

The Tasks Ahead: Constraints and Needs:

The circumstances are promising for Malaŵi to make the transition to political pluralism successfully, but the practical steps that must be taken not only in the coming months for the general election but over the longer term for democratic institutions to take root are daunting.

The responsibilities of the NCC and NEC and a list of laws the PAC and PCD have agreed to repeal or amend provide an idea of the immediate constitutional, judicial and legal tasks facing the government and opposition.

The National Consultative Council is responsible for carrying out the following tasks and submitting the results to the parliament for action:

- (1) Initiate relevant constitutional amendments to facilitate transition to the first multiparty general elections.
- (2) Prepare the draft of a new electoral law.
- (3) Review the law governing the registration of political parties.
- (4) Prepare a draft bill of rights.
- (5) Prepare the draft of a new constitution which shall become effective immediately after the first multiparty general elections.

Responsibilities of the National Executive Committee:

- (1) Receive information affecting the transition process from the government.
- (2) Monitor the activities of all public offices which have a bearing on the management of the transition.
- (3) Consult with the cabinet on any measures relating to the transition which have to be taken in the management of the transition.
- (4) Bring to the attention of cabinet for corrective action abuses of political authority, public finances or property in the parastatals or government for political campaigning or gain.
- (5) Monitor the implementation by government of legislation relating to the transition.
- (6) Monitor the activities of the Malaŵi Broadcasting Corporation to ensure equal and fair access and coverage of the activities of all political parties for the forthcoming general elections.

Laws to be amended or repealed:

- (1) Section 9 of the constitution which provides for the life presidency will be repealed before the general elections.
- (2) Sections 13 and 14 of the constitution which provide for the creation of a presidential commission or council to run the office of the president in the event of the incapacity or death of the president will be discussed for further action.
- (3) Sections 23(d), 28(2)(f) and 28(2)(h) of the constitution

which provide that all members of parliament must be members of the MalaWi Congress Party will be repealed.

(4) Section 60A of the penal code, which provides for the imprisonment of journalists for up to five years for disseminating false rumors about the country, will be amended to provide that no person could be arrested under this section without a court warrant.

(5) Sections 50 to 53 of the penal code on sedition will be amended to bring it into line with the position of the law in other Commonwealth countries.

(6) Sections 64 to 69 of the penal code dealing with unlawful societies will be reviewed but the part that declares Jehovah's Witnesses a prohibited society will be repealed.

(7) The power to detain people without trial as contained in the Preservation of Public Security Act will be repealed.

(8) The Forfeiture Act which allows the forfeiture of the property of persons or companies acting prejudicial to the security or economy of the state will be repealed.

(9) The Chiefs Act: All chiefs and the subjects will be at liberty to join any political party.

(10) The Business Licensing Act will be amended to provide that power to cancel business licenses will be subject to judicial review.

(11) The Protected Flag, Emblems and Names Act will be amended to remove the prohibition against the use of words such as "president, unity and freedom, national, etc." while retaining protection for the name and office of the president of the

country.

(12) The paramilitary position of the Malaŵi Young Pioneers will be reviewed with a view to turning it into a non-partisan organization.

(13) The legal status of the CCAM (an MCP affiliated women's group) will be reviewed.

(14) The status of the traditional courts will be reviewed as part of a larger exercise under a law reform committee to review the country's laws in line with practices in other Commonwealth countries.

(15) The Decency in Dress Act which regulates the manner in which persons dress will be repealed.

To carry out many of these reforms, Malaŵi will require the services and advice of international experts.

While elections and legal reforms are short and medium term efforts deserving of donor support, the long term success of democracy in Malaŵi will depend on the formation and development of government and nongovernment institutions committed to democratic principles -- civic education groups, legal aid societies, political parties, a free press, a permanent election commission, an independent legislature and judiciary. To consolidate and firmly establish gains made through free elections and through legal reforms, democratic and civic institutions have to be encouraged and strengthened over a period of years. This will be especially true in Malaŵi where laws have prohibited political parties and many civic organizations for almost 30 years. A number of organizations -- political and non-political -- have sprung up in the last few months, but development of democratic institutions and political culture has

only just started.

The UN sponsored a needs assessment to advise the government and opposition and to guide donor efforts on the transition process and the general election. The assessment was carried out by the United Nations Center for Human Rights from August 30 to September 5, 1993. The team of three lawyers identified legal and constitutional issues related to human rights and the transition that must be addressed in the coming months. The team also made recommendations on prison reforms and the establishment of an electoral commission. (The assessment summary and final report are found in Reference C.) A preliminary list of advisory services was developed by the team and includes:

- Advisory services of experts in the development and conduct of a national civic education program on democracy and human rights, financial support of that program, and assistance in the organization of national seminars on democracy and human rights and the production of multi-media civic education materials for various languages and levels of literacy.
- Advisory services of experts to assist the NCC and its technical committees in the drafting of legislation for the interim and ultimate reform of the constitution, and assistance in the organization of a national conference on the Malaŵi constitution, (including issues relating to a bill of rights, an independent judiciary, multiparty politics, and democratic governmental structures), as well as for the requisite attending publicity.
- Advisory services of experts to assist the NCC and its technical committees in the drafting of an electoral reform package, including provisions for constituency delimitation,

advance voter registration, an electoral commission and independent administrative structure, safeguards for full participation and fundamental rights, observation, etc., and assistance in the implementation of the law and the carrying out of free and fair elections, including legal, technical, material, logistical and financial support.

- Advisory services of experts in the development and conduct of a national electoral civic education program on the "who, what, when, where, how and why" of registration and voting, financial support of the program, and assistance in the organization of national seminars and training courses for observers, election and registration officials, police and security personnel, traditional authorities, the military, the parties, and the general public, as well as for the production of multi-media, multi-language civic education materials.

- Advisory services of experts in the drawing of electoral boundaries to assist the electoral boundaries commission in its ultimate mandate, as well as technical and logistical support to that end.

- Technical, logistical, financial and material support for the voter registration drive.

- Assistance in the fielding, training and facilitating of international electoral observers.

- Advisory services of experts to assist the NCC and its technical committees in the drafting of a legislative reform package on laws affecting free expression, assembly, association, and freedom from intimidation.

- Financial and organizational support and international expertise for the convening of a workshop for political parties

for the drafting of a code of conduct for the electoral campaign.

- Financial and organizational support and international expertise for the convening of a national media workshop for the drafting of a code of conduct for the media, and for examination of issues relating to the role and responsibilities of the media during elections and in a democratic society.

- Advisory services of experts to assist the NCC in the development of a plan to assure fair and equal access to the MBC and other publicly-owned media.

- Advisory services of experts to assist the NCC and its technical committees in the drafting of legislation for human rights in the administration of justice (including reform of the traditional and conventional courts and securing of their independence, and legislative reform for police, prisons, the legal profession, and public security laws), as well as financial and logistical support to these ends. (N/B: A fully independent and fully functioning judiciary, in order to meet the substantial increase of responsibilities attending democratic reforms, elections, and the changes recommended regarding the administration of justice in Malaŵi, will require urgent and substantial financial support, in terms of materials, staffing, training, housing, and supplementary legal expertise.)

- Advisory services of experts for the development of a relief and resettlement program for returnees, and donor support for its implementation.

- Advisory services of experts to advise the Malaŵi Government on ratification of major international human rights instruments, reporting obligations under those instruments, and the development of a long term national plan of action for human rights in Malaŵi.

- Training of government officials, parliamentarians, political parties, judges, lawyers, police, teachers, election officials, the military, traditional authorities, nongovernmental organizations, prison authorities, and other groups, in human rights, free and fair elections, democratic participation, the proper administration of justice, etc.

Relationship to Strategy

Against this background USAID/Malaŵi has moved forward with the design of the Democratic and Civic Institution Development (DECIDE) Project for approval and obligation of \$500,000 in FY 1993. Even though a complete picture of donor support for the transition process and general elections will not emerge for several weeks, the mission is comfortable with developing the parameters of U.S. assistance at this time based on its involvement with the referendum earlier this year, consultations with the two UN assessment teams, thorough discussions within the local donor committee, and the proven capabilities of institutions the mission will utilize in the implementation of DECIDE. Of course, flexibility to respond to changing circumstances are essential to any initiative of this kind and they have been built into the DECIDE Project.

In April 1993 A.I.D./Washington approved USAID/Malaŵi's revision to its 1989 Country Program Strategy Paper. This revision reflects the changing environment in Malaŵi and will serve as an interim strategy until 1994 when a new strategy will be submitted. The strategy revision presents three program options depending on political developments. The most optimistic calls for a restoration of higher aid levels to Malaŵi if the government moves to a more open political system and improves the human rights climate. The revision also proposes a democracy/governance activity as a target of opportunity in the

best case scenario. Few would have dared to predict just a few months ago that Malaŵi would make the progress that it has toward a politically plural society. Clearly, the "sea change" and "irreversible" progress the donor community sought at the Paris CG in 1992 have occurred; support in the coming months from the donors will play an important role in encouraging and facilitating the transition to a democratic Malaŵi. DECIDE is USAID/Malaŵi's response to this irreversible progress.

Social and Economic Considerations

The social and economic ramifications of democratization are inseparable. They will occur, however, at different levels for different socio-economic groups according to ethnic origin, religion, gender, race, class and region. DECIDE will endeavor to ensure equal access, opportunity, and progress among all such groups.

A central premise of this project is that democracy should be seen by all Malawians as a means to improvement in the quality of their lives. It is rare for the political inequalities and constricted access associated with authoritarian regimes not to extend to the social and economic spheres. It follows that formulation and enforcement of constitutional and legal changes guaranteeing equal opportunity, a linchpin of any democratic order, are prerequisites for sustained economic and social development.

DECIDE will make special efforts to address gender concerns. In Malaŵi, women comprise a majority of the population in almost every age category, but they have lacked equality with men in decision-making processes and in access to resources. In social and political terms there is no democracy unless access and

opportunity are equal across gender as well as ethnic, economic, religious, and regional lines. As DECIDE supports the establishment of civic institutions, the impact of, and participation in, those institutions will be judged by their inclusiveness and representativeness in gender terms. Economic and social arguments abound for linking democratization and gender equality. Efforts to open up and broaden arenas of effective competition will be fundamentally flawed if men and women do not achieve equal access to political institutions that are instrumental in shaping the economic and business environment. Women have been tireless in their contributions to the Malawian economy, and the country must include them if its economic development initiatives are to bear fruit.

DECIDE will also be important in helping other socioeconomic groups attain political access and opportunities commensurate with their economic importance. For example, through structural adjustment regimes, the GOM has been persuaded to allow smallholders to grow the country's most valuable cash crop (burley tobacco) and to abandon producer price controls. This decision has already benefited smallholders who are known to be more efficient users of scarce resources than larger scale producers, albeit somewhat more risk averse. Newly minted democratic institutions, undergirded by cultivation of a democratic political culture will increase opportunities to assert political influence that corresponds to their economic importance.

These two arenas for achieving equal access and opportunity are intertwined, for women constitute 70 percent of all full-time farmers (30 percent of which are female headed households), and have been estimated to contribute from 63 percent to 71 percent of all seasonal agricultural labor.

Advancing and sustaining an emerging democratic culture is

crucial to the success of Malaŵi's democratic experiment. That democratic culture is essential for at least two reasons. First, it is essential to sustaining the country's transition from an authoritarian one-party state to a multi-party constitutional democracy. Second, it represents a crucial bridge between broad political, constitutional, and legal changes and the everyday lives of the Malawian people. Ultimately, democratic institutions in Malaŵi will not be sustained unless the people of Malaŵi put them to work. They will not do unless they see evidence that democratic institutions and processes make a positive difference in the quality of their lives. They will look for such evidence in the forms of, for example:

- increased encouragement and receptiveness by government to local organizations formed to advance their material interests
- increased awareness that they have a right to express their views and concerns and that government listens and responds
- tangible measures to secure their rights to property from arbitrary invasion by government or their neighbors
- governmental procedures for their equal treatment are in place (without regard to ethnicity, gender, religion, or socioeconomic status) and governmental adherence to them
- cessation of intimidation by any party to adhere to its views, attend its rallies, and contribute to its finances in violation of their right to choose among them freely
- commonly accepted informal procedures for peaceful conflict resolution are in place, equally accessible to all, and adhered to by all to them

- fair elections have occurred in which government adheres to transparent procedures, all eligible citizens are able to vote, do so in secret, and ballots are counted promptly and impartially
- there is equal access to a fair, impartial, competently managed legal system
- as part of a revised constitution, a comprehensive bill of rights is promulgated and adhered to by government.

Democratic institutions by their nature are designed to be antidotes to the kinds of human rights abuses Malawians have suffered under an authoritarian one-party state; however, democratic institutions by themselves are no guarantee that equal opportunity and basic liberties will be realized in practice. The importance of nurturing a democratic culture lies in its capacity to help make these potentialities become realities for all. By investing in the fostering of democratic political culture, DECIDE undertakes to advance both the security and durability of Malawian democracy.

II. PROJECT DESCRIPTION

The DECIDE Project has three components designed to achieve the project's purpose to establish and consolidate democratic and civic institutions: election support, judicial and legal reform, and civic institution development.

Election Support

Support for the general elections under DECIDE will mirror the successful activities USAID funded for the referendum, although on a slightly expanded basis. For the referendum, USAID executed an add-on to the existing cooperative agreement between A.I.D. and IFES. Under this arrangement IFES sent a nine-person team to Malaŵi to carry out a nation-wide pollworker training program, a voter education campaign, and a two month monitoring effort covering the registration process, the campaign and the referendum. IFES worked closely with the UNEAS, the JIOG, and the referendum commission. The pollworker training made a major contribution to the smooth operations at most polling sites. The civic education campaign was also successful in educating voters through print, radio and theater messages. The UNEAS found the monitor team from IFES particularly useful because they provided continuity over a two month period. (See "The June 14, 1993 Referendum in Malaŵi, Final Activity Report," IFES, Reference E.)

The National Democratic Institute (NDI) also provided an individual under the African Regional Election Assistance Fund (AREAF) to train local referendum monitors for the opposition groups and the MCP. This, too, was a successful effort judging by the correct and disciplined behavior of local monitors on polling day.

With the experience gained by IFES and NDI during the referendum, both have submitted unsolicited proposals to provide election support assistance, and A.I.D. is prepared to fund both proposals.

The IFES proposal (Attachment 4) offers personnel and associated support to assist a soon-to-be formed election commission in three areas. The first activity will provide expertise to the commission to develop rules and procedures in accordance with the new election laws, to plan tasks, deadlines, and logistical support against the election calendar, and to train commission

staff as pollworker trainers. The second activity will work with the commission to design and implement a voter registration, identification, and record keeping system and train registration personnel. Under the third activity IFES will assist the election commission to establish a public information program to disseminate information to local and international media on election activities. Seminars for journalists and government officials will also be conducted. In a possible fourth activity, IFES is prepared to provide international observers for the elections.

Under the NDI grant (see Attachment 5) the six political parties will develop the agendas for a series of conferences and workshops to strengthen the ability of the parties to participate in the elections. Experts will work with the parties in a number of areas: voter education, grassroots organization, message development, use of media, voter mobilization, election monitoring, code of conduct, and party responsibilities. Sessions will be conducted throughout the country and one-on-one consultations with party representatives will be available. These conferences and workshops will also permit dissemination of information and discussion on matters of common concern to all parties such as economic conditions, political transitions in other countries, and governance issues (corruption, transparency, decision-making, accountability, etc.). The NDI program will enhance the ability of parties to campaign by promoting education, participation and political choices for citizens. NDI's assistance will be offered on a nonpartisan basis.

No other unsolicited proposals have been sent to USAID for election support, although the International Republican Institute (IRI) has indicated an interest in working in Malaŵi and may submit a proposal to work with political organizations in Malaŵi later this year.

The IFES and NDI proposals are both set up to provide assistance through the general election. Some of their activities, however, may be appropriate for follow on support after the elections to consolidate experience gained during the campaign period and contribute to the continued institutional development of political parties or the election commission, for example.

Funding of international election observers is anticipated under DECIDE. The mission would prefer to fund a smaller number of observers -- four to six -- for a period of six to eight weeks rather than a larger number for a shorter period. Observers in country for several weeks before the election will be able to monitor the registration and campaign process in addition to the election. This perspective is useful to the international community in assessing the fairness of the entire electoral process and the experience gained by longer term observers is useful in orienting those who come for a few days to observe only the election.

The final element of election support under DECIDE will be limited grant funding to the UN for selected technical and logistical support. Once more precise estimates for election requirements are prepared by the UNEAS assessment team, the UNEAS in Lilongwe will solicit pledges from the donor community. During the referendum USAID was limited to making a small grant to the UN to purchase ballot envelopes. The requirements for the general election will be greater than those for the referendum and expanded USAID support for important logistical elements will be required.

Judicial/Legal Reform

The constitutional, legal and judicial reforms facing the country in the coming months and over the longer term are many and

substantial. They will affect the lives of all Malawians and establish the course of the new Malaŵi. The needs assessment carried out by the UN Commission for Human Rights (Reference C) has identified legal and constitutional issues related to the transition period and to human rights concerns. Another nine-month study on the administration of justice recommending a number of changes is just being completed by the British Council. The agenda of reforms coming from these two assessments alone will be beyond the capacity of the Malawian legal community to implement. For the next several years Malaŵi will require the assistance of international legal experts in drafting constitutional provisions, new laws, codes and regulations. Training of judicial personnel will also be a priority.

Assistance from several donors is being contemplated. The U.K. will likely provide legal experts in the administration of justice following release of the British Council report. The EC is discussing a \$250,000 grant to the International Commission of Jurists to provide experts to Malaŵi. The U.S. can also make a significant contribution and has already initiated several legal activities under the Democracy and Human Rights Project -- 116(e) grants -- including seminars on human rights practices and the role of traditional courts, support for a legal aid scheme/resource center, court reporting equipment, and funding for the publication of a book entitled "Women and the Law in Malaŵi." With several donors involved, it will be important to target DECIDE's legal support only after a further assessment of what areas would be most appropriate.

Building on the UN and British Council assessments, USAID will provide legal expertise to the NCC, Malaŵi judiciary and other bodies constituted to propose, draft and implement legal reforms associated with the transition process under A.I.D.'s indefinite quantity contract (IQC) with Checchi and Company and Howard University (No. AOT-0542-I-00-2066-00). Demands for U.S. funded

legal advice cannot be specified precisely at this time. They will depend on a schedule of reforms, assistance from other donors, and the ability of the IQC to deliver the expertise. It will be important that legal assistance be provided quickly once tasks are identified. The IQC mechanism will allow for the needed flexibility. Another area where IQC legal expertise will be required will be to work with existing and potential organizations that will be active in conducting civil education activities related to the changed legal environment in Malaŵi and organizations that will be developing legal defense mechanisms for average Malawians.

DECIDE will strengthen the capacity of the newly established Human Rights Desk, launched by the Christian Council of Malaŵi (CCM), to defend the human rights of Malawians in all walks of life. The CCM's unsolicited proposal broadens a nascent human rights movement in Malawi on the foundation of the Human Rights Desk. The movement proposes to remain politically non-partisan, serve rural as well as urban Malawians, unite peoples of all ethnic, religious and regional ties behind the cause of spreading a human rights culture throughout Malaŵi, and to be democratic and fiscally responsible. The Human Rights Desk will offer Malawians legal advice, intervention and referral services, litigation assistance and mediation facilities. It will monitor human rights practices, offer street law education by encouraging people to be aware of, and to assert their basic rights, and it will lobby government to improve policies and policy implementation to support human rights.

Civic Institution Development

DECIDE will nurture and strengthen non-governmental civic institutions committed to democracy. Specifically, it will support the commitment of the PAC to promote a democratic culture

in Malaŵi over the long term building on its leading role in facilitating the transition to multi-party democracy. As they emerge, the Inter-Agency Democracy Committee, comprised of USAID, U.S. Embassy and USIS staff, will be prepared under DECIDE to support other NGOs which, like PAC exemplify the following characteristics:

1. legal registration in Malaŵi
2. financial capability to administer funds
3. political non-partisanship
4. breadth of membership, with particular reference to roots in the rural areas where 90 percent of Malawians live and derive their incomes.
5. membership across regional or religious lines and/or demonstrated commitment to cooperate with organizations based in other regional or religious communities
6. equal participation of and/or benefits to both men and women
7. internal democratic organization and commitment to strengthen internal democracy under the project
8. demonstrated willingness to work with other NGOs committed to democratic norms
9. commitment to produce tangible, positive manifestations of democracy in the lives of ordinary Malawians.

USAID will support the PAC on the basis of its unsolicited proposal calling for a program of Education for Participatory Democracy (EPD). Among the long term objectives of EPD are:

- to build a culture of democracy -- by familiarizing people with the constitution and methods of proper governance
- to provide political empowerment of the rural electorate (the majority of whom are women and youth) through civic education
- to educate Malawians on how to relate their basic needs (food, health, and education) to politics, political representation and elections
- to promote the democratization of socio-political-economic life after years of dictatorship, exploitation, and manipulation.

Achievements/Accomplishments

DECIDE will be a successful project to the extent that, at its conclusion, Malawian society exhibits the following characteristics:

1. A democratic constitution is in place providing for:
 - regular elections in which more than one party may freely compete;
 - executive branch accountability;
 - an independent judiciary;
 - a bill of rights consistent with international conventions including habeas corpus, core elements of due process, and freedom of speech and assembly;

- basic human rights for all individuals without regard to ethnic origin, religion, gender, race, or economic class; and
- universal adult suffrage.

2. Civil and criminal codes are revised to be consistent with the new democratic constitution.
3. Legal services are broadly available to all Malawians.
4. A solid set of well-functioning civic education and human rights NGOs are in place that are internally democratic, assert citizen interests without governmental interference or reprisal, and publicly advance and defend core democratic values.
5. Two or more parties effectively define and debate key public policy issues, are democratically organized, and exhibit sound financial and management practices.
6. Free and fair national elections have been conducted in 1994.
7. The Election Commission administers registration and election procedures competently and fairly and becomes a permanent institution.
8. Human rights organizations report few abuses.
9. Laws protecting security of property from arbitrary confiscation are in place and observed.
10. Laws in respect to women's rights to reproductive decisions, inheritance and succession, property and land, family, and immigration are reviewed and amended in order to eliminate all forms of discrimination against women.

III. PROJECT IMPLEMENTATION, FINANCING AND EVALUATION

Proposed Grantees/Implementing Agencies/Methods of Financing/Estimated Costs

Funds under this project will be directly obligated by A.I.D. through grants to U.S. and Malawian NGO institutions, institutional and personal services contracts for technical assistance, and grants to public international institutions. Project components will be handled as follows:

Election Support: HB13 grants will be made to the UN, IFES, NDI (and possibly one other U.S. NGO) for assistance to the Malaŵi election commission, for assistance in multiparty organization and development, and for international election monitors. Financing will be through letter of credit and direct reimbursement. The estimated amount for these grants is \$1,900,000.

Judicial/Legal Reform: Legal technical assistance will be provided through an IQC with direct payment. Estimated amount is \$450,000. Grants to the Human Rights Desk of the Christian Council of Malawi and perhaps other legal/human rights nongovernmental organizations will be made up to an amount of \$500,000. Direct reimbursement will be made for expenses.

Civic Institution Development: A grant will be executed with the Public Affairs Committee (and perhaps other NGOs). This component is estimated at \$1,200,000. Direct reimbursement payments will be utilized.

Project Management/Evaluation/Contingency: Assistance to manage

DECIDE will be procured through a personal services contract.
\$650,000 is set aside for these services, evaluation and project contingencies.

DECIDE BUDGET
Detailed Project Budget
(\$000)

Election Support		1900
IFES Grant	500	
NDI Grant	600	
Other Grant(s)	150	
Observer Group	250	
UN Grant	400	
Judicial/Legal Reform		950
IQC	450	
Malawian NGO Grant	500	
Civic Institution Development		1000
Grant(s) to Malawian NGO(s)	1000	
Project Management/Evaluation		
Contingency		650
PSC - 2 Years	300	
Evaluation	100	
Contingency	250	
TOTAL		4500

DECIDE
Project Budget
(\$000)

Obligations by FY

Element	FY 93	FY 94	FY 95	Total
Election Support	500	1400	0	1900
Judicial/Legal Reform	0	500	450	950
Civic Institution Development	0	500	500	1000
Project Management/Evaluation/ Contingency	0	400	250	650
Total	500	2800	1200	4500

Expenditures by FY

Element	FY 93	FY 94	FY 95	FY 96	FY 97	Total
Election Support	0	1900	0	0	0	1900
Judicial/Legal Reform	0	400	350	150	50	950
Civic Institution Development	0	200	300	300	200	1000
Project Management/Evaluation/ Contingency	0	200	200	200	50	650
Total	0	2700	850	650	300	4500

AID Support Requirements/Capability

USAID/Malaŵi is adequately staffed to manage the DECIDE Project as designed.

The early project activities related to election support will be implemented through grants to IFES, NDI and the UN. These grants will be monitored by the mission but will not require significant or substantive mission involvement or support in their implementation. Another early activity will be the use of the IQC mechanism to provide legal expertise. This will require substantive staff involvement during the first year of the project.

Routine project management will be the responsibility of USAID's Office of Program and Project Development. The mission's supervisory project development officer and chief of the office will provide overall supervision and a project development officer will be the project manager. A PSC will be hired to assist in project implementation for the first two years.

Procurement Plan

Under the election support component of DECIDE, USAID/Malaŵi will execute three and possibly four HB13 grants to U.S. NGOs and public international organizations. The two U.S. grantees already identified based on unsolicited proposals are IFES and NDI. The UNDP will be the recipient of an election support grant as a public international organization. The mission will consider making a third grant to a U.S. NGO and/or amending the grants to IFES and NDI based on needs identified closer to the election and available funding. HB13 grants are expected to

total \$1,900,000.

Procurement of technical services under the judicial and legal reform will be obtained under A.I.D.'s indefinite quantity contract with Checchi and Company and Howard University (No. AOT-05-42-I-00-2066-00). Estimating \$30,000 per person as fully loaded costs, approximately 15 months of legal consultancies can be provided with the \$450,000 budgeted. Several PIO/Ts will be executed to obtain services over the first two years of the project. This component also provides funding for one (or possible more) grant to a Malawian NGO working to expand knowledge of the changing legal environment and deliver legal services. \$500 is budgeted for this grant over the life-of-project.

One (or more) grant to a Malawian NGO will also be executed under the civic institution development component. \$1,000 is budgeted over the five years of the project.

The mission will procure the services of a PSC project assistant manager/democracy and governance advisor for two years (\$300,000) under the project management/evaluation/contingency component. \$100,000 has been budgeted for evaluations; one outside individual for the mid-term and final evaluations is planned. Procurement of evaluation services could be through an IQC or PSC.

Monitoring and Evaluation Plan

A. Monitoring

A USAID/Malaŵi direct hire project development officer will be

responsible for day-to-day monitoring. In addition, the mission plans to hire a PSC for a period of up to two years to assist in implementation and monitoring of the project.

The Inter-Agency Democracy Committee and a committee within USAID will support the work of the day-to-day project manager. These committees will review on a regular basis the relevance of the inputs and the validity or the expected outputs, and the feasibility of realizing the project's intended achievements.

The project manager will gather and evaluate contractor and grantee reports. She will review project financial data including project disbursement reports, vouchers, and receipts. The project manager will be responsible for insuring that the collaborating organizations submit these required reports. She will also insure that contractors and grantees prepare and submit substantive reports that will enable the mission to determine progress in realizing intended outputs.

B. Evaluation

The end of project evaluation of DECIDE will follow standard A.I.D. procedures in mid-1998.

A mid-course assessment of DECIDE will occur 18 to 24 months after the project begins. This assessment will be conducted by the Inter-Agency Committee, key USAID mission staff, the REDSO regional democracy and governance advisor, appropriate Malawian counterparts, and possibly a U.S. academic with research-based knowledge of Malawian political development.

Finally, all DECIDE contracts and grants will include provisions for self-evaluation during and at the conclusion of the work.

The scope of work for both the assessment and the end of project evaluation will be prepared by the project manager, the mission program and project officers, and the REDSO democracy and governance advisor.

Issues to be examined for both the assessment and the end of project evaluation will fall into two categories: (1) financial and administrative management; and (2) substantive progress in achieving project outputs and end-of-project targets. Issues in the first category will include absorptive capacity of the recipient Malawian institutions and their effectiveness in managing and utilizing the assistance they receive. Issues in the latter category concern: (1) NGO progress in strengthening their internal democratic processes, effective representation of their constituents' interests, and skillful advocacy of working democratic norms; (2) progress in reforming and strengthening the judicial system, including broad, effective access for all Malawians to legal services; (3) effectiveness in contributing to free, fair, and well organized elections in 1994; and (4) progress in achieving gender equality in all project activities.

Funds for project evaluations are included in the DECIDE budget under Project Management/Evaluation/Audits/Contingency.

Recommended Environmental Threshold Decision

A categorical exclusion is recommended in the IEE for this project.

Attachments

Preliminary Logical Framework

IEE

Summary of 116(e) and USIS activities

**Project Title and Number: Democratic and Civic Institution Development (DECIDE)
612-0243**

NARRATIVE SUMMARY	OBJECTIVELY VERIFIABLE INDICATORS
<p>Program or Sector Goal:</p> <p>To promote sustained economic development</p>	<p>Measures of Goal Achievement:</p> <ol style="list-style-type: none"> 1. Formation of a democratic society supportive of sustained economic growth 2. Real improvements in the lives of ordinary Malawians
<p>Project Purpose:</p> <p>To establish and consolidate democratic and civic institutions</p>	<p>End of Project Status:</p> <ol style="list-style-type: none"> 1. Two or more political parties represented in an independent legislative body 2. A newly ratified democratic constitution 3. An independent judiciary 4. Effective non-governmental monitoring and checks on government actions
<p>Outputs:</p> <ol style="list-style-type: none"> 1. Effective election commission 2. Democratic constitution drafted, ratified 3. Formation of an effective multiparty system 4. Reorganized, trained judiciary 5. Improved legal administration 6. Revised legal codes 7. Functioning civic institutions in place 	<p>Magnitude of Outputs:</p> <ol style="list-style-type: none"> 1. Free, fair general elections in 1994 based on revised registration system 2. A democratic constitution drafted and adopted 3. Two or more parties with effective, democratic procedures and sound financial management practices 4. Improved legal procedures in place 5. Legal services available to all Malawians 6. Professional, church, business, labor, agricultural, women's and other representative nongovernmental organizations that manifest <ul style="list-style-type: none"> - democratic internal processes - regular assertion of citizen interests to government without governmental interference - public assertion of democratic values to public and government
<p>Inputs:</p> <p><u>A.I.D.</u></p> <ol style="list-style-type: none"> 1. Technical assistance 2. Grants to U.S. institutions and PIOs 3. Grants to Malawian NGOs <p><u>PVOs/NGOs</u></p> <p>Contributions to grant activities</p>	<p>Implementation Target:</p> <p>A.I.D.: \$4,500,000</p> <p>PVOs/NGOs: In kind contributions</p>

MEANS OF VERIFICATION	IMPORTANT ASSUMPTIONS
<ol style="list-style-type: none"> 1. Regular elections/peaceful governance 2. Constitutional provisions protecting human rights/civil liberties 3. <u>Habeas corpus</u>/core due process observed in all courts 4. Human rights groups report few abuses 	<p>Commitment by all political and social groups to a transparent democratic system of government</p>
<ol style="list-style-type: none"> 1. U.N. observer reports positive 2. Democratic Constitutional reforms 3. <u>Habeas corpus</u>/core due process observed in courts 4. Basic human rights are afforded to all and human rights groups report few abuses 	
<ol style="list-style-type: none"> 1. Election results analysis 2. Number of parties contesting elections 3. Democratic constitutional democratically ratified 4. Published/observed changes in legal processes 5. Observation of legal services at grass roots 6. registration, records, activities of NGOs 7. Laws affecting women are corrected and enforced 	<p>MPC, opposition parties, police continue to honor referendum results and transition process</p>
<ol style="list-style-type: none"> 1. Signed grant agreements/contracts 2. USAID financial reports 3. PVO/NGO reports 4. Evaluations, audits 	<p>Timely funding available at levels adequate to carry out project activities.</p>

INITIAL ENVIRONMENTAL EXAMINATION

I. PROJECT DATA

Project Location : MalaWi
Project Title and Number : Democratic and Civic
Development (DECIDE
612-0243)
Recipient : USAID/MalaWi, Government of
MalaWi and Non-Government
Organizations
Funding : US\$4.5 million
Life of Project : 5 years
IEE Prepared by : Benson Phiri
Agricultural Economist
USAID/MalaWi
Environmental Action Recommended : Categorical exclusion

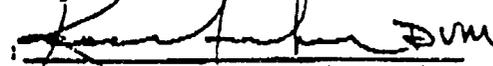
Approval


: Cynthia Rozell
Director
USAID/MalaWi
Date 9/93

Date IEE Prepared

: September 16, 1993

Clearances


for John Gaudet, AFR/ARTS/FARA JJK
Washington DC
: MAK
Mary A. Kleinjan, GC/AFR
Washington DC

II. PROJECT GOAL AND PURPOSE

The goal of the Democratic and Civic Development Project is to promote sustained economic development. The purpose is to establish and consolidate democratic and civic institutions which will be accomplished through three components: election support, judicial and legal reform, and civic institution development.

III. PROJECT PROBLEM

Since independence in 1965, Malaŵi citizens have been subjected to authoritarian rule, inability to participate in politics except within the single Malaŵi Congress Party, harassment and imprisonment for daring to speak out or organize to advance their interests, capricious judgement at the hands of government and traditional courts, insecure guarantees of property rights, meaningless elections controlled by the MCP, lack of access to legal services, and heavy-handed civil and criminal codes. The economy has suffered because the government has failed to make full use of human resources resulting in poor social services in agriculture, education and health.

Within the last year, as a consequence of sustained domestic and international pressure, the Government acceded to a referendum on the issue of permitting more than one political party. It agreed to modifications in the election procedures to increase their fairness, and it accepted the referendum results which overwhelmingly favored multi-party democracy. Since the referendum, the Government established a President's Commission on Dialogue (PCD) to work with a coalition advocating transition to full-scale, multi-party democracy - the Public Affairs Committee (PAC). In less than three months after the referendum, negotiations between PCD and PAC have produced broad areas of agreement on constitutional and legal changes and the creation of a "shadow government" to work with the Government on implementing the transition in the form of a National Consultative Council (NCC) and a National Executive Committee (NEC) paralleling the existing parliament and cabinet, respectively.

The progress achieved in 1993 justifies some confidence that the transition is irreversible and will be completed within a reasonable period. Many of the basic, agreed-upon constitutional and legal changes, however, must still be made. Democratic institutions and laws cannot survive in a hostile culture and socio-economic environment. A vibrant democratic culture is required to sustain democratic institutions, and democracy must be seen by ordinary Malawians to contribute to improving their livelihood if that democratic culture is to take root. A crucial moment in the transition will be the first multi-party general elections in thirty years, tentatively scheduled for May 1994. The DECIDE project will help Malawians make the transition to political

pluralism through support for general elections, political party training, legal reforms, and development of civic institutions.

IV. PROJECT OUTLINE, STRATEGY, AND IMPACTS

Project Description:

The DECIDE project has three components designed to achieve the project's purpose to establish and consolidate democratic and civic institutions: election support, judicial and legal reform, and civic and institution development.

1. Election Support. The project will support free and fair elections in 1994 through activities that mirror successful activities USAID funded during the referendum, but on a slightly expanded basis. This will be implemented by a grants to the International Foundation for Electoral Systems (IFES), National Democratic Institute (NDI), and the United Nations (UN). The IFES grant will provide expertise to the Malawi election commission in developing rules and procedures consistent with the new election laws and other logistical and technical support. IFES will provide a consultant to the commission to design and implement voter registration and identification systems, and train registration personnel. The commission will also be assisted by IFES with the establishment of a public information system for election purposes.

A second grant will be made to the NDI to work on a nonpartisan basis with all parties in areas of voter education, grassroots organizations, message development, use of the media, voter mobilization, election monitoring, and a code of conduct.

The mission also plans to provide grant money to fund a small number of election observers and to defray logistics costs of the election to the UN Electoral Assistance Office in Lilongwe.

2. Judicial/Legal Reform. DECIDE will support the processes of reforming the constitution, and civil and criminal codes. It will also encourage the development of existing and new legal aid societies and human rights groups which empower Malawians to assert and realize their new legal freedoms and opportunities. This will be implemented by two mechanisms: Under AID's indefinite quantity contract (IQC) with Checchi and Company and Howard University and through a grant to the Christian Council of Malawi (CCM).

The IQC will provide legal assistance to the National Consultative Council, the Malawi judiciary and other bodies constituted to implement legal reforms. It will also provide consultants to work with organizations that will be active in conducting civic education activities related to the changed legal environment in Malawi.

The grant to CCM will strengthen the Human Rights Desk of the CCM which offers legal advice, intervention and referral services, litigation assistance and mediation facilities to average Malawians.

3. Civic Institutional Development. DECIDE will nurture and strengthen non-governmental civic institutions committed to democracy. One such institution which A.I.D. has identified for potential support is the PAC which has proposed a program of Education for Participatory Democracy (EPD) to educate voters prior to the next general elections. PAC is also developing a longer range program of civic education for Malawians at the grassroots level. As other institutions emerge, USAID will also review them for support.

V. PROJECT ENVIRONMENTAL CONCERNS, MITIGATION AND MONITORING

Environmental concerns:

There are no environmental concerns from DECIDE as all three components of the project have no impact on the environment. DECIDE will provide training and awareness, institution building and technical assistance. Events in Malaŵi, however, have indicated that the transition to pluralism may mean disobedience of the governing laws and regulations. In some instances, this has resulted in negative environmental impacts such as the encroachment into forested areas in the City of Lilongwe by human habitation ("multiparty plots"); the alleged fishing in Lake Malawi during the closed season; and rampant cutting down of trees for fuel wood and charcoal especially along the Zalewa portion in Mwanza of the M1 road. These are three examples which have occurred during the last year where citizens have disobeyed the laws which govern them.

Mitigation:

Civic and political institutions will be encouraged to adopt responsible positions on the economic, social, political and environmental situations in the country.

VI. RECOMMENDED ENVIRONMENTAL ACTION

Based on 22 CFR 216.2 (C) (2) (i) a proposed categorical exclusion is recommended for all the three components of DECIDE.

APPENDIX -- Mission D/G Efforts to Date

116(e)

1. Two Law Society seminars on rule of law/human rights issues -
- designed to convene government personnel and private practice lawyers for discussions on the need for change in key legal areas (1991/92)
2. Computer equipment for Law Society and Journalists Association -- to give both organizations wherewithal to articulate, publish institutional/professional views (1991)
3. Funding for booklet "Women and the Law in Malaŵi" -- to support the education of women regarding their legal rights (1991 - ongoing)
4. Seminar series for Traditional Court personnel -- first ever discussions on rule of law/defendants rights bringing in high court judges, Law Society and traditional authorities (May/June 1992; handbook soon-to-be published)
5. Desktop publishing seminar -- to provide information, basic training in low-cost publishing techniques to independent journalists and aspiring publishers (May 1992)
6. Legal Aid Scheme/Resource Center with the Malaŵi Law Society -- to facilitate development of a legal network to provide basic legal counsel for indigent/political cases and promote public education on legal issues (ongoing)
7. Media Resource Center with independent Publishers Association -- designed to offer access to low-cost desktop publishing facilities to independent publishers -- and promote cooperation in other areas (newsprint purchase, for example) and provide same

access to human rights NGOs (July 1993 - ongoing)

8. Court Reporting Equipment -- funding for purchase of one audio-recording system at Blantyre High Court to expedite civil/criminal proceedings (July 1993)

9. Christian Council Human Rights Office -- staff support and two consultants to help CCM prioritize goals and establish appropriate methodology (July/August 1993 - ongoing)

10. Traditional Courts Research -- reimbursement of expenses related to researching a position paper on Malaŵi's traditional court system -- with an eye toward reorganizing it (August-September 1993)

11. Magistrates Association Administration of Justice Seminars - - partial funding for seminar involving Ministry of Justice, High Court and Magistrates to address ways to improve the administration of justice in Malaŵi (August 16-20, 1993)

12. Ecumenical Human Rights Seminars -- funding for meals/lodging for participants at three regional human rights seminars for rural-based church lay leaders (September-October 1993)

USIS Activities:

USIS offers short and long term exchanges, visits by U.S. speakers, electronic programming and print outreach as part of their continued support to the democratization process.

ANNEX B

Annex B

APPENDIX cD - A.I.D. PROJECT STATUTORY CHECKLIST

Introduction

The statutory checklist is divided into two parts:
cD(1) - Country Checklist; and 5C(2) - Assistance Checklist.

The Country Checklist, composed of items affecting the eligibility for foreign assistance of a country as a whole, is to be reviewed and completed by AID/W at the beginning of each fiscal year. In most cases responsibility for preparation of responses to the Country Checklist is assigned to the desk officers, who would work with the Assistant General Counsel for their region. The responsible officer should ensure that this part of the Checklist is updated periodically. The Checklist should be attached to the first PP of the fiscal year and then referenced in subsequent PPs.

The Assistance Checklist focuses on statutory items that directly concern assistance resources. The Assistance Checklist for FY 1993 includes items previously included under separate "project assistance," "nonproject assistance," and "standard item" checklists. The Assistance Checklist should be reviewed and completed in the field, but information should be requested from Washington whenever necessary. A completed Assistance Checklist should be included with each PP; however, the list should also be reviewed at the time a PID is prepared so that legal issues that bear on project design are identified early.

The Country and Assistance Checklists are organized according to categories of items relating to Development Assistance, the Economic Support Fund, or both.

These Checklists include the applicable statutory criteria from the Foreign Assistance Act of 1961 ("FAA"); various foreign assistance, foreign relations, anti-narcotics and international trade authorization enactments; and the FY 1993 Foreign Assistance Appropriations Act ("FY 1993 Appropriations Act").

These Checklists do not list every statutory provision that might be relevant. For example, they do not include country-specific limitations enacted, usually for a single year, in a foreign assistance appropriations act. Instead, the Checklists are intended to provide a convenient reference for provisions of relatively great importance and general applicability.

Prior to an actual obligation of funds, Missions are encouraged to review any Checklist completed at an earlier phase in a project or program cycle to determine whether more recently enacted provisions of law included on the most recent Checklist may now apply. Because of the reorganization and consolidation of checklists reflected here, such review may be particularly important this year. Space has been provided at the right of the

5C(2) - ASSISTANCE CHECKLIST

Listed below are statutory criteria applicable to the assistance resources themselves, rather than to the eligibility of a country to receive assistance. This section is divided into three parts. Part A includes criteria applicable to both Development Assistance and Economic Support Fund resources. Part B includes criteria applicable only to Development Assistance resources. Part C includes criteria applicable only to Economic Support Funds.

CROSS REFERENCE: IS COUNTRY CHECKLIST UP TO DATE?

A. CRITERIA APPLICABLE TO BOTH DEVELOPMENT ASSISTANCE AND ECONOMIC SUPPORT FUNDS

1. **Host Country Development Efforts** (FAA Sec. 601(a)): Information and conclusions on whether assistance will encourage efforts of the country to:
(a) increase the flow of international trade; (b) foster private initiative and competition; (c) encourage development and use of cooperatives, credit unions, and savings and loan associations; (d) discourage monopolistic practices; (e) improve technical efficiency of industry, agriculture, and commerce; and (f) strengthen free labor unions.

(a), (b), (c), (d),
(e), (f) -
N/A

2. **U.S. Private Trade and Investment** (FAA Sec. 601(b)): Information and conclusions on how assistance will encourage U.S. private trade and investment abroad and encourage private U.S. participation in foreign assistance programs (including use of private trade channels and the services of U.S. private enterprise).

Technical Assistance will be contracted from U.S. sources, including private organizations and universities.

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3. Congressional Notification

a. **General requirement** (FY 1993 Appropriations Act Sec. 522; FAA Sec. 634A): If money is to be obligated for an activity not previously justified to Congress, or for an amount in excess of amount previously justified to Congress, has Congress been properly notified (unless the Appropriations Act notification requirement has been waived because of substantial risk to human health or welfare)?

CN cleared on
September 24, 1993

b. **Notice of new account obligation** (FY 1993 Appropriations Act Sec. 514): If funds are being obligated under an appropriation account to which they were not appropriated, has the President consulted with and provided a written justification to the House and Senate Appropriations Committees and has such obligation been subject to regular notification procedures?

N/A

c. **Cash transfers and nonproject sector assistance** (FY 1993 Appropriations Act Sec. 571(b)(3)): If funds are to be made available in the form of cash transfer or nonproject sector assistance, has the Congressional notice included a detailed description of how the funds will be used, with a discussion of U.S. interests to be served and a description of any economic policy reforms to be promoted?

N/A

4. **Engineering and Financial Plans** (FAA Sec. 611(a)): Prior to an obligation in excess of \$500,000, will there be: (a) engineering, financial or other plans necessary to carry out the assistance; and (b) a reasonably firm estimate of the cost to the U.S. of the assistance?

N/A

5. **Legislative Action** (FAA Sec. 611(a)(2)): If legislative action is required within recipient country with respect to an obligation in excess of \$500,000, what is the basis for a reasonable expectation that such action

N/A

will be completed in time to permit orderly accomplishment of the purpose of the assistance?

6. **Water Resources** (FAA Sec. 611(b); FY 1993 Appropriations Act Sec. 501): If project is for water or water-related land resource construction, have benefits and costs been computed to the extent practicable in accordance with the principles, standards, and procedures established pursuant to the Water Resources Planning Act (42 U.S.C. 1962, et seq.)? (See A.I.D. Handbook 3 for guidelines.)

N/A

7. **Cash Transfer and Sector Assistance** (FY 1993 Appropriations Act Sec. 571(b)): Will cash transfer or nonproject sector assistance be maintained in a separate account and not commingled with other funds (unless such requirements are waived by Congressional notice for nonproject sector assistance)?

N/A

8. **Capital Assistance** (FAA Sec. 611(e)): If project is capital assistance (e.g., construction), and total U.S. assistance for it will exceed \$1 million, has Mission Director certified and Regional Assistant Administrator taken into consideration the country's capability to maintain and utilize the project effectively?

N/A

9. **Multiple Country Objectives** (FAA Sec. 601(a)): Information and conclusions on whether projects will encourage efforts of the country to: (a) increase the flow of international trade; (b) foster private initiative and competition; (c) encourage development and use of cooperatives, credit unions, and savings and loan associations; (d) discourage monopolistic practices; (e) improve technical efficiency of industry, agriculture and commerce; and (f) strengthen free labor unions.

N/A

10. **U.S. Private Trade** (FAA Sec. 601(b)): Information and conclusions on how project will encourage U.S. private trade and investment abroad and encourage private U.S. participation in foreign assistance programs (including use of private trade channels and the services of U.S. private enterprise).

See A.2 above

11. **Local Currencies**

a. **Recipient Contributions** (FAA Secs. 612(b), 636(h)): Describe steps taken to assure that, to the maximum extent possible, the country is contributing local currencies to meet the cost of contractual and other services, and foreign currencies owned by the U.S. are utilized in lieu of dollars.

The country is not a party to this project.

b. **U.S.-Owned Currency** (FAA Sec. 612(d)): Does the U.S. own excess foreign currency of the country and, if so, what arrangements have been made for its release?

No

c. **Separate Account** (FY 1993 Appropriations Act Sec. 571). If assistance is furnished to a foreign government under arrangements which result in the generation of local currencies:

N/A

(1) Has A.I.D. (a) required that local currencies be deposited in a separate account established by the recipient government, (b) entered into an agreement with that government providing the amount of local currencies to be generated and the terms and conditions under which the currencies so deposited may be utilized, and (c) established by agreement the responsibilities of A.I.D. and that government to monitor and account for deposits into and disbursements from the separate account?

(2) Will such local currencies, or an equivalent amount of local currencies, be used only to carry out the purposes of the DA or ESF chapters of the FAA (depending on which chapter is the source of the assistance) or for the administrative requirements of the United States Government?

(3) Has A.I.D. taken all appropriate steps to ensure that the equivalent of local currencies disbursed from the separate account are used for the agreed purposes?

(4) If assistance is terminated to a country, will any unencumbered balances of funds remaining in a separate account be disposed of for purposes agreed to by the recipient government and the United States Government?

12. Trade Restrictions

a. **Surplus Commodities (FY 1993 Appropriations Act Sec. 520(a)):** If assistance is for the production of any commodity for export, is the commodity likely to be in surplus on world markets at the time the resulting productive capacity becomes operative, and is such assistance likely to cause substantial injury to U.S. producers of the same, similar or competing commodity?

N/A

b. **Textiles (Lautenberg Amendment) (FY 1993 Appropriations Act Sec. 520(c)):** Will the assistance (except for programs in Caribbean Basin Initiative countries under U.S. Tariff Schedule "Section 807," which allows reduced tariffs on articles assembled abroad from U.S.-made components) be used directly to procure feasibility studies, prefeasibility studies, or project profiles of potential investment in, or to assist the establishment of facilities specifically designed for, the manufacture for export to the United States or to third country markets in direct competition with U.S. exports, of

N/A

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textiles, apparel, footwear, handbags, flat goods (such as wallets or coin purses worn on the person), work gloves or leather wearing apparel?

13. **Tropical Forests** (FY 1991 Appropriations Act Sec. 533(c)(3) (as referenced in section 532(d) of the FY 1993 Appropriations Act): Will funds be used for any program, project or activity which would (a) result in any significant loss of tropical forests, or (b) involve industrial timber extraction in primary tropical forest areas?

14. **PVO Assistance**

a. **Auditing and registration** (FY 1993 Appropriations Act Sec. 536): If assistance is being made available to a PVO, has that organization provided upon timely request any document, file, or record necessary to the auditing requirements of A.I.D., and is the PVO registered with A.I.D.?

PVO recipients have not yet been selected, but this requirement will be met when the selection takes place.

b. **Funding sources** (FY 1993 Appropriations Act, Title II, under heading "Private and Voluntary Organizations"): If assistance is to be made to a United States PVO (other than a cooperative development organization), does it obtain at least 20 percent of its total annual funding for international activities from sources other than the United States Government?

Yes

15. **Project Agreement Documentation** (State Authorization Sec. 139 (as interpreted by conference report)): Has confirmation of the date of signing of the project agreement, including the amount involved, been cabled to State L/T and A.I.D. LEG within 60 days of the agreement's entry into force with respect to the United States, and has the full text of the agreement been pouched to those same offices? (See Handbook 3, Appendix 6G for agreements covered by this provision).

N/A

16. **Metric System** (Omnibus Trade and Competitiveness Act of 1988 Sec. 5164, as interpreted by conference report, amending Metric Conversion Act of 1975 Sec. 2, and as implemented through A.I.D. policy):

Does the assistance activity use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms? Are bulk purchases usually to be made in metric, and are components, subassemblies, and semi-fabricated materials to be specified in metric units when economically available and technically adequate? Will A.I.D. specifications use metric units of measure from the earliest programmatic stages, and from the earliest documentation of the assistance processes (for example, project papers) involving quantifiable measurements (length, area, volume, capacity, mass and weight), through the implementation stage?

Yes

17. **Women in Development** (FY 1993 Appropriations Act, Title II, under heading "Women in Development"): Will assistance be designed so that the percentage of women participants will be demonstrably increased?

Yes

18. **Regional and Multilateral Assistance** (FAA Sec. 209): Is assistance more efficiently and effectively provided through regional or multilateral organizations? If so, why is assistance not so provided? Information and conclusions on whether assistance will encourage developing countries to cooperate in regional development programs.

Assistance being provided is complementary to assistance of the U.N., ODA, the EC and other bilateral donors involved in democracy activities. The project is suitable for implementation by AID due to our presence in the country and our experience with project components. Assistance will encourage sharing of information and experience the region.

19. **Abortions** (FY 1993 Appropriations Act, Title II, under heading "Population, DA," and Sec. 524):

a. Will assistance be made available to any organization or program which, as determined by the President, supports or participates in the management of a program of coercive abortion or involuntary sterilization?

No

b. Will any funds be used to lobby for abortion?

No

20. **Cooperatives** (FAA Sec. 111): Will assistance help develop cooperatives, especially by technical assistance, to assist rural and urban poor to help themselves toward a better life?

No

21. **U.S.-Owned Foreign Currencies**

a. **Use of currencies** (FAA Secs. 612(b), 636(h); FY 1993 Appropriations Act Secs. 507, 509): Are steps being taken to assure that, to the maximum extent possible, foreign currencies owned by the U.S. are utilized in lieu of dollars to meet the cost of contractual and other services.

N/A

b. **Release of currencies** (FAA Sec. 612(d)): Does the U.S. own excess foreign currency of the country and, if so, what arrangements have been made for its release?

No

22. **Procurement**

a. **Small business** (FAA Sec. 602(a)): Are there arrangements to permit U.S. small business to participate equitably in the furnishing of commodities and services financed?

Yes

b. **U.S. procurement** (FAA Sec. 604(a) as amended by section 597 of the FY 1993 Appropriations Act): Will all procurement be from the U.S., the recipient country, or developing countries except as otherwise determined in accordance with the criteria of this section?

Yes.
DFA procurement regulations will be followed.

c. **Marine insurance** (FAA Sec. 604(d)): If the cooperating country discriminates against marine insurance companies authorized to do business in the U.S., will commodities be insured in the United States against marine risk with such a company?

N/A

d. **Non-U.S. agricultural procurement** (FAA Sec. 604(e)): If non-U.S. procurement of agricultural commodity or product thereof is to be financed, is there provision against such procurement when the domestic price of such commodity is less than parity? (Exception where commodity financed could not reasonably be procured in U.S.)

N/A

e. **Construction or engineering services** (FAA Sec. 604(g)): Will construction or engineering services be procured from firms of advanced developing countries which are otherwise eligible under Code 941 and which have attained a competitive capability in international markets in one of these areas? (Exception for those countries which receive direct economic assistance under the FAA and permit United States firms to compete for construction or engineering services financed from assistance programs of these countries.)

N/A

f. **Cargo preference shipping** (FAA Sec. 603): Is the shipping excluded from compliance with the requirement in section 901(b) of the Merchant Marine Act of 1936, as amended, that at least 50 percent of the gross tonnage of commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) financed shall be transported on privately owned U.S. flag commercial vessels to the extent such vessels are available at fair and reasonable rates?

DFA procurement regulations will be followed.

g. **Technical assistance** (FAA Sec. 621(a)): If technical assistance is financed, will such assistance be furnished by private enterprise on a contract basis to the fullest extent practicable? Will the

Yes

facilities and resources of other Federal agencies be utilized, when they are particularly suitable, not competitive with private enterprise, and made available without undue interference with domestic programs?

N/A

h. U.S. air carriers

(International Air Transportation Fair Competitive Practices Act, 1974): If air transportation of persons or property is financed on grant basis, will U.S. carriers be used to the extent such service is available?

Yes

i. Termination for convenience of U.S. Government (FY 1993 Appropriations Act Sec. 504): If the U.S. Government is a party to a contract for procurement, does the contract contain a provision authorizing termination of such contract for the convenience of the United States?

Yes

j. Consulting services

(FY 1993 Appropriations Act Sec. 523): If assistance is for consulting service through procurement contract pursuant to 5 U.S.C. 3109, are contract expenditures a matter of public record and available for public inspection (unless otherwise provided by law or Executive order)?

Yes

k. Metric conversion

(Omnibus Trade and Competitiveness Act of 1988, as interpreted by conference report, amending Metric Conversion Act of 1975 Sec. 2, and as implemented through A.I.D. policy): Does the assistance program use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms? Are bulk purchases usually to be made in metric, and are components, subassemblies, and semi-fabricated materials to be specified in metric units when economically available and technically adequate? Will A.I.D. specifications use metric units of measure from the earliest programmatic stages, and from the earliest

Yes

documentation of the assistance processes (for example, project papers) involving quantifiable measurements (length, area, volume, capacity, mass and weight), through the implementation stage?

1. **Competitive Selection**

Procedures (FAA Sec. 601(e)): Will the assistance utilize competitive selection procedures for the awarding of contracts, except where applicable procurement rules allow otherwise? Yes

23. **Construction**

a. **Capital project** (FAA Sec. 601(d)): If capital (e.g., construction) project, will U.S. engineering and professional services be used? N/A

b. **Construction contract** (FAA Sec. 611(c)): If contracts for construction are to be financed, will they be let on a competitive basis to maximum extent practicable? N/A

c. **Large projects, Congressional approval** (FAA Sec. 620(k)): If for construction of productive enterprise, will aggregate value of assistance to be furnished by the U.S. not exceed \$100 million (except for productive enterprises in Egypt that were described in the Congressional Presentation), or does assistance have the express approval of Congress? N/A

24. **U.S. Audit Rights** (FAA Sec. 301(d)): If fund is established solely by U.S. contributions and administered by an international organization, does Comptroller General have audit rights? N/A

25. **Communist Assistance** (FAA Sec. 620(h)). Do arrangements exist to insure that United States foreign aid is not used in a manner which, contrary to the best interests of the United States, promotes or assists the foreign aid projects or activities of the Communist-bloc countries? N/A

26. Narcotics

a. **Cash reimbursements** (FAA Sec. 483): Will arrangements preclude use of financing to make reimbursements, in the form of cash payments, to persons whose illicit drug crops are eradicated? **Yes**

b. **Assistance to narcotics traffickers** (FAA Sec. 487): Will arrangements take "all reasonable steps" to preclude use of financing to or through individuals or entities which we know or have reason to believe have either: (1) been convicted of a violation of any law or regulation of the United States or a foreign country relating to narcotics (or other controlled substances); or (2) been an illicit trafficker in, or otherwise involved in the illicit trafficking of, any such controlled substance? **Yes**

27. **Expropriation and Land Reform** (FAA Sec. 620(g)): Will assistance preclude use of financing to compensate owners for expropriated or nationalized property, except to compensate foreign nationals in accordance with a land reform program certified by the President? **Yes**

28. **Police and Prisons** (FAA Sec. 660): Will assistance preclude use of financing to provide training, advice, or any financial support for police, prisons, or other law enforcement forces, except for narcotics programs? **Yes**

29. **CIA Activities** (FAA Sec. 662): Will assistance preclude use of financing for CIA activities? **Yes**

30. **Motor Vehicles** (FAA Sec. 636(i)): Will assistance preclude use of financing for purchase, sale, long-term lease, exchange or guaranty of the sale of motor vehicles manufactured outside U.S., unless a waiver is obtained? **No purchase of motor vehicles are anticipated. If such vehicles are later purchased, DFA procurement regulation will be followed.**

31. **Military Personnel** (FY 1993 Appropriations Act Sec. 503): Will assistance preclude use of financing to pay pensions, annuities, retirement pay, or adjusted service compensation for prior or current military personnel? **Yes**

32. **Payment of U.N. Assessments** (FY 1993 Appropriations Act Sec. 505): Will assistance preclude use of financing to pay U.N. assessments, arrearages or dues? **Yes**

33. **Multilateral Organization Lending** (FY 1993 Appropriations Act Sec. 506): Will assistance preclude use of financing to carry out provisions of FAA section 209(d) (transfer of FAA funds to multilateral organizations for lending)? **Yes**

34. **Export of Nuclear Resources** (FY 1993 Appropriations Act Sec. 510): Will assistance preclude use of financing to finance the export of nuclear equipment, fuel, or technology? **Yes**

35. **Repression of Population** (FY 1993 Appropriations Act Sec. 511): Will assistance preclude use of financing for the purpose of aiding the efforts of the government of such country to repress the legitimate rights of the population of such country contrary to the Universal Declaration of Human Rights? **Yes**

36. **Publicity or Propaganda** (FY 1993 Appropriations Act Sec. 516): Will assistance be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress, to influence in any way the outcome of a political election in the United States, or for any publicity or propaganda purposes not authorized by Congress? **No**

37. **Marine Insurance** (FY 1993 Appropriations Act Sec. 560): Will any A.I.D. contract and solicitation, and subcontract entered into under such contract, include a clause requiring that U.S. marine insurance companies have a fair opportunity to bid for marine insurance when such insurance is necessary or appropriate?

Yes

38. **Exchange for Prohibited Act** (FY 1993 Appropriations Act Sec. 565): Will any assistance be provided to any foreign government (including any instrumentality or agency thereof), foreign person, or United States person in exchange for that foreign government or person undertaking any action which is, if carried out by the United States Government, a United States official or employee, expressly prohibited by a provision of United States law?

No

39. **Commitment of Funds** (FAA Sec. 635(h)): Does a contract or agreement entail a commitment for the expenditure of funds during a period in excess of 5 years from the date of the contract or agreement?

No

40. **Impact on U.S. Jobs** (FY 1993 Appropriations Act, Sec. 599):

(a) Will any financial incentive be provided to a business located in the U.S. for the purpose of inducing that business to relocate outside the U.S. in a manner that would likely reduce the number of U.S. employees of that business?

No

(b) Will assistance be provided for the purpose of establishing or developing an export processing zone or designated area in which the country's tax, tariff, labor, environment, and safety laws do not apply? If so, has the President determined and certified that such assistance is not likely to cause a loss of jobs within the U.S.?

No

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(c) Will assistance be provided for a project or activity that contributes to the violation of internationally recognized workers rights, as defined in section 502(a)(4) of the Trade Act of 1974, of workers in the recipient country?

No

B. CRITERIA APPLICABLE TO DEVELOPMENT ASSISTANCE ONLY

1. **Agricultural Exports (Bumpers Amendment)** (FY 1993 Appropriations Act Sec. 520(b), as interpreted by conference report for original enactment): If assistance is for agricultural development activities (specifically, any testing or breeding feasibility study, variety improvement or introduction, consultancy, publication, conference, or training), are such activities: (1) specifically and principally designed to increase agricultural exports by the host country to a country other than the United States, where the export would lead to direct competition in that third country with exports of a similar commodity grown or produced in the United States, and can the activities reasonably be expected to cause substantial injury to U.S. exporters of a similar agricultural commodity; or (2) in support of research that is intended primarily to benefit U.S. producers?

N/A

2. **Tied Aid Credits** (FY 1993 Appropriations Act, Title II, under heading "Economic Support Fund"): Will DA funds be used for tied aid credits?

No

3. **Appropriate Technology** (FAA Sec. 107): Is special emphasis placed on use of appropriate technology (defined as relatively smaller, cost-saving, labor-using technologies that are generally most appropriate for the small farms, small businesses, and small incomes of the poor)?

N/A

4. Indigenous Needs and Resources (FAA Sec. 281(b)): Describe extent to which the activity recognizes the particular needs, desires, and capacities of the people of the country; utilizes the country's intellectual resources to encourage institutional development; and supports civic education and training in skills required for effective participation in governmental and political processes essential to self-government.

5. Economic Development (FAA Sec. 101(a)): Does the activity give reasonable promise of contributing to the development of economic resources, or to the increase of productive capacities and self-sustaining economic growth?

6. Special Development Emphases (FAA Secs. 102(b), 113, 281(a)): Describe extent to which activity will: (a) effectively involve the poor in development by extending access to economy at local level, increasing labor-intensive production and the use of appropriate technology, dispersing investment from cities to small towns and rural areas, and insuring wide participation of the poor in the benefits of development on a sustained basis, using appropriate U.S. institutions; (b) encourage democratic private and local governmental institutions; (c) support the self-help efforts of developing countries; (d) promote the participation of women in the national economies of developing countries and the improvement of women's status; and (e) utilize and encourage regional cooperation by developing countries.

7. Recipient Country Contribution (FAA Secs. 110, 124(d)): Will the recipient country provide at least 25 percent of the costs of the program, project, or activity with respect to which the assistance is to be furnished (or is the latter cost-sharing requirement being waived for a "relatively least developed" country)?

This project is undertaken on the premise that democratization in Malawi is and must be Malawian led if democratic institutions are to be legitimate and sustainable. Civic education will be utilized to increase political participation.

As the constitution and legislation are changed, the average Malawian will be able to participate more fully in all forms of economic activity.

See B.4 and 5 above

The country is not a party to this project.

8. **Benefit to Poor Majority** (FAA Sec. 128(b)): If the activity attempts to increase the institutional capabilities of private organizations or the government of the country, or if it attempts to stimulate scientific and technological research, has it been designed and will it be monitored to ensure that the ultimate beneficiaries are the poor majority?

Yes. Civic organizations will be strengthened to benefit the poor majority.

9. **Abortions** (FAA Sec. 104(f); FY 1993 Appropriations Act, Title II, under heading "Population, DA," and Sec. 534):

a. Are any of the funds to be used for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions?

No

b. Are any of the funds to be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations?

No

c. Are any of the funds to be made available to any organization or program which, as determined by the President, supports or participates in the management of a program of coercive abortion or involuntary sterilization?

No

d. Will funds be made available only to voluntary family planning projects which offer, either directly or through referral to, or information about access to, a broad range of family planning methods and services?

N/A

e. In awarding grants for natural family planning, will any applicant be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning?

No

f. Are any of the funds to be used to pay for any biomedical research which relates, in whole or in part, to

No

methods of, or the performance of, abortions or involuntary sterilization as a means of family planning?

g. Are any of the funds to be made available to any organization if the President certifies that the use of these funds by such organization would violate any of the above provisions related to abortions and involuntary sterilization?

No

10. **Contract Awards** (FAA Sec. 601(e)): Will the project utilize competitive selection procedures for the awarding of contracts, except where applicable procurement rules allow otherwise?

Yes

11. **Disadvantaged Enterprises** (FY 1993 Appropriations Act Sec. 563): What portion of the funds will be available only for activities of economically and socially disadvantaged enterprises, historically black colleges and universities, colleges and universities having a student body in which more than 40 percent of the students are Hispanic Americans, and private and voluntary organizations which are controlled by individuals who are black Americans, Hispanic Americans, or Native Americans, or who are economically or socially disadvantaged (including women)?

One of the three components of the project will be carried out by an HBCU.

12. **Biological Diversity** (FAA Sec. 119(g)): Will the assistance: (a) support training and education efforts which improve the capacity of recipient countries to prevent loss of biological diversity; (b) be provided under a long-term agreement in which the recipient country agrees to protect ecosystems or other wildlife habitats; (c) support efforts to identify and survey ecosystems in recipient countries worthy of protection; or (d) by any direct or indirect means significantly degrade national parks or similar protected areas or introduce exotic plants or animals into such areas?

N/A

13. **Tropical Forests** (FAA Sec. 118; FY 1991 Appropriations Act Sec. 533(c) as referenced in section 532(d) of the FY 1993 Appropriations Act):

a. **A.I.D. Regulation 16:** Does the assistance comply with the environmental procedures set forth in A.I.D. Regulation 16? Yes

b. **Conservation:** Does the assistance place a high priority on conservation and sustainable management of tropical forests? Specifically, does the assistance, to the fullest extent feasible: (1) stress the importance of conserving and sustainably managing forest resources; (2) support activities which offer employment and income alternatives to those who otherwise would cause destruction and loss of forests, and help countries identify and implement alternatives to colonizing forested areas; (3) support training programs, educational efforts, and the establishment or strengthening of institutions to improve forest management; (4) help end destructive slash-and-burn agriculture by supporting stable and productive farming practices; (5) help conserve forests which have not yet been degraded by helping to increase production on lands already cleared or degraded; (6) conserve forested watersheds and rehabilitate those which have been deforested; (7) support training, research, and other actions which lead to sustainable and more environmentally sound practices for timber harvesting, removal, and processing; (8) support research to expand knowledge of tropical forests and identify alternatives which will prevent forest destruction, loss, or degradation; (9) conserve biological diversity in forest areas by supporting efforts to identify, establish, and maintain a representative network of protected tropical forest ecosystems on a worldwide basis, by making the establishment of protected areas a condition of support for activities involving forest clearance or degradation, N/A

and by helping to identify tropical forest ecosystems and species in need of protection and establish and maintain appropriate protected areas; (10) seek to increase the awareness of U.S. Government agencies and other donors of the immediate and long-term value of tropical forests; (11) utilize the resources and abilities of all relevant U.S. government agencies; (12) be based upon careful analysis of the alternatives available to achieve the best sustainable use of the land; and (13) take full account of the environmental impacts of the proposed activities on biological diversity?

c. **Forest degradation:** Will assistance be used for: (1) the procurement or use of logging equipment, unless an environmental assessment indicates that all timber harvesting operations involved will be conducted in an environmentally sound manner and that the proposed activity will produce positive economic benefits and sustainable forest management systems; (2) actions which will significantly degrade national parks or similar protected areas which contain tropical forests, or introduce exotic plants or animals into such areas; (3) activities which would result in the conversion of forest lands to the rearing of livestock; (4) the construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) which pass through relatively undergraded forest lands; (5) the colonization of forest lands; or (6) the construction of dams or other water control structures which flood relatively undergraded forest lands, unless with respect to each such activity an environmental assessment indicates that the activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner which supports sustainable development?

N/A

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d. **Sustainable forestry:** If assistance relates to tropical forests, will project assist countries in developing a systematic analysis of the appropriate use of their total tropical forest resources, with the goal of developing a national program for sustainable forestry?

e. **Environmental impact statements:** Will funds be made available in accordance with provisions of FAA Section 117(c) and applicable A.I.D. regulations requiring an environmental impact statement for activities significantly affecting the environment?

On 9/30/93 this project was granted a categorical exclus from the requirement of an I based on the project goal an purpose.

14. **Energy** (FY 1991 Appropriations Act Sec. 533(c) as referenced in section 532(d) of the FY 1993 Appropriations Act): If assistance relates to energy, will such assistance focus on: (a) end-use energy efficiency, least-cost energy planning, and renewable energy resources, and (b) the key countries where assistance would have the greatest impact on reducing emissions from greenhouse gases?

N/A

15. **Debt-for-Nature Exchange** (FAA Sec. 463): If project will finance a debt-for-nature exchange, describe how the exchange will support protection of: (a) the world's oceans and atmosphere, (b) animal and plant species, and (c) parks and reserves; or describe how the exchange will promote: (d) natural resource management, (e) local conservation programs, (f) conservation training programs, (g) public commitment to conservation, (h) land and ecosystem management, and (i) regenerative approaches in farming, forestry, fishing, and watershed management.

N/A

16. **Deobligation/Reobligation** (FY 1993 Appropriations Act Sec. 515): If deob/reob authority is sought to be exercised in the provision of DA assistance, are the funds being obligated for the same general purpose, and for countries within the same region as

N/A

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originally obligated, and have the House and Senate Appropriations Committees been properly notified?

17. Loans

a. **Repayment capacity** (FAA Sec. 122(b)): Information and conclusion on capacity of the country to repay the loan at a reasonable rate of interest. N/A

b. **Long-range plans** (FAA Sec. 122(b)): Does the activity give reasonable promise of assisting long-range plans and programs designed to develop economic resources and increase productive capacities? N/A

c. **Interest rate** (FAA Sec. 122(b)): If development loan is repayable in dollars, is interest rate at least 2 percent per annum during a grace period which is not to exceed ten years, and at least 3 percent per annum thereafter? N/A

d. **Exports to United States** (FAA Sec. 620(d)): If assistance is for any productive enterprise which will compete with U.S. enterprises, is there an agreement by the recipient country to prevent export to the U.S. of more than 20 percent of the enterprise's annual production during the life of the loan, or has the requirement to enter into such an agreement been waived by the President because of a national security interest? N/A

18. Development Objectives (FAA Secs. 102(a), 111, 113, 281(a)): Extent to which activity will: (1) effectively involve the poor in development, by expanding access to economy at local level, increasing labor-intensive production and the use of appropriate technology, spreading investment out from cities to small towns and rural areas, and insuring wide participation of the poor in the benefits of development on a sustained basis, using the appropriate U.S. institutions; (2) help develop cooperatives, especially by technical

1. Strengthening civic organizations and assisting in legislative reforms will assist the poor in achieving greater participation in the economy.
1. The project will not directly develop cooperatives although cooperatives may participate/benefit as civic organizations.

assistance, to assist rural and urban poor to help themselves toward better life, and otherwise encourage democratic private and local governmental institutions; (3) support the self-help efforts of developing countries; (4) promote the participation of women in the national economies of developing countries and the improvement of women's status; and (5) utilize and encourage regional cooperation by developing countries?

3. This project assists Malawian led efforts in becoming a more democratic pluralistic society.
4. Yes. Special efforts will be made to incorporate women as participants and beneficiaries of DECIDE.
5. Yes

19. Agriculture, Rural Development and Nutrition, and Agricultural Research (FAA Secs. 103 and 103A):

a. Rural poor and small farmers: If assistance is being made available for agriculture, rural development or nutrition, describe extent to which activity is specifically designed to increase productivity and income of rural poor; or if assistance is being made available for agricultural research, has account been taken of the needs of small farmers, and extensive use of field testing to adapt basic research to local conditions shall be made.

N/A

b. Nutrition: Describe extent to which assistance is used in coordination with efforts carried out under FAA Section 104 (Population and Health) to help improve nutrition of the people of developing countries through encouragement of increased production of crops with greater nutritional value; improvement of planning, research, and education with respect to nutrition, particularly with reference to improvement and expanded use of indigenously produced foodstuffs; and the undertaking of pilot or demonstration programs explicitly addressing the problem of malnutrition of poor and vulnerable people.

N/A

c. Food security: Describe extent to which activity increases national food security by improving food policies and management and by strengthening national food reserves, with particular concern for the needs of the

N/A

poor, through measures encouraging domestic production, building national food reserves, expanding available storage facilities, reducing post harvest food losses, and improving food distribution.

20. **Population and Health** (FAA Secs. 104(b) and (c)): If assistance is being made available for population or health activities, describe extent to which activity emphasizes low-cost, integrated delivery systems for health, nutrition and family planning for the poorest people, with particular attention to the needs of mothers and young children, using paramedical and auxiliary medical personnel, clinics and health posts, commercial distribution systems, and other modes of community outreach.

N/A

21. **Education and Human Resources Development** (FAA Sec. 105): If assistance is being made available for education, public administration, or human resource development, describe (a) extent to which activity strengthens nonformal education, makes formal education more relevant, especially for rural families and urban poor, and strengthens management capability of institutions enabling the poor to participate in development; and (b) extent to which assistance provides advanced education and training of people of developing countries in such disciplines as are required for planning and implementation of public and private development activities.

N/A

22. **Energy, Private Voluntary Organizations, and Selected Development Activities** (FAA Sec. 106): If assistance is being made available for energy, private voluntary organizations, and selected development problems, describe extent to which activity is:

N/A

a. concerned with data collection and analysis, the training of skilled personnel, research on and development of suitable energy sources, and pilot projects to test new methods of energy production; and facilitative of

research on and development and use of small-scale, decentralized, renewable energy sources for rural areas, emphasizing development of energy resources which are environmentally acceptable and require minimum capital investment;

b. concerned with technical cooperation and development, especially with U.S. private and voluntary, or regional and international development, organizations;

c. research into, and evaluation of, economic development processes and techniques;

d. reconstruction after natural or manmade disaster and programs of disaster preparedness;

e. for special development problems, and to enable proper utilization of infrastructure and related projects funded with earlier U.S. assistance;

f. for urban development, especially small, labor-intensive enterprises, marketing systems for small producers, and financial or other institutions to help urban poor participate in economic and social development.

23. **Capital Projects** (Jobs Through Export Act of 1992, Secs. 303 and 306(d)): If assistance is being provided for a capital project, is the project developmentally sound and will the project measurably alleviate the worst manifestations of poverty or directly promote environmental safety and sustainability at the community level?

N/A

C. **CRITERIA APPLICABLE TO ECONOMIC SUPPORT FUNDS ONLY**

N/A

1. **Economic and Political Stability** (FAA Sec. 531(a)): Will this assistance promote economic and political stability?

To the maximum extent feasible, is this assistance consistent with the policy directions, purposes, and programs of Part I of the FAA?

2. **Military Purposes** (FAA Sec. 531(e)): Will this assistance be used for military or paramilitary purposes?

3. **Commodity Grants/Separate Accounts** (FAA Sec. 609): If commodities are to be granted so that sale proceeds will accrue to the recipient country, have Special Account (counterpart) arrangements been made? (For FY 1993, this provision is superseded by the separate account requirements of FY 1993 Appropriations Act Sec. 571(a), see Sec. 571(a)(5).)

4. **Generation and Use of Local Currencies** (FAA Sec. 531(d)): Will ESF funds made available for commodity import programs or other program assistance be used to generate local currencies? If so, will at least 50 percent of such local currencies be available to support activities consistent with the objectives of FAA sections 103 through 106? (For FY 1993, this provision is superseded by the separate account requirements of FY 1993 Appropriations Act Sec. 571(a), see Sec. 571(a)(5).)

5. **Cash Transfer Requirements** (FY 1993 Appropriations Act, Title II, under heading "Economic Support Fund," and Sec. 571(b)). If assistance is in the form of a cash transfer:

a. **Separate account:** Are all such cash payments to be maintained by the country in a separate account and not to be commingled with any other funds?

b. **Local currencies:** Will all local currencies that may be generated with funds provided as a cash transfer to such a country also be deposited in a special account, and has A.I.D. entered into an agreement with that government setting forth the amount of the local currencies to be generated, the terms and

conditions under which they are to be used, and the responsibilities of A.I.D. and that government to monitor and account for deposits and disbursements?

c. **U.S. Government use of local currencies:** Will all such local currencies also be made available to the U.S. government as the U.S. determines necessary for the requirements of the U.S. Government, or to carry out development assistance (including DFA) or ESF purposes?

d. **Congressional notice:** Has Congress received prior notification providing in detail how the funds will be used, including the U.S. interests that will be served by the assistance, and, as appropriate, the economic policy reforms that will be promoted by the cash transfer assistance?

6. **Capital Projects (Jobs Through Exports Act of 1992, Sec. 306, FY 1993 Appropriations Act, Sec. 595):** If assistance is being provided for a capital project, will the project be developmentally-sound and sustainable, i.e., one that is (a) environmentally sustainable, (b) within the financial capacity of the government or recipient to maintain from its own resources, and (c) responsive to a significant development priority initiated by the country to which assistance is being provided. (Please note the definition of "capital project" contained in section 595 of the FY 1993 Appropriations Act.)

5C(1) - COUNTRY CHECKLIST

Listed below are statutory criteria applicable to the eligibility of countries to receive the following categories of assistance:

(A) both Development Assistance and Economic Support Funds; (B) Development Assistance funds only; or (C) Economic Support Funds only.

A. COUNTRY ELIGIBILITY CRITERIA APPLICABLE TO BOTH DEVELOPMENT ASSISTANCE AND ECONOMIC SUPPORT FUND ASSISTANCE

1. Narcotics Certification

(FAA Sec. 490): (This provision applies to assistance provided by grant, sale, loan, lease, credit, guaranty, or insurance, except assistance relating to international narcotics control, disaster and refugee relief assistance, narcotics related assistance, or the provision of food (including the monetization of food) or medicine, and the provision of non-agricultural commodities under P.L. 480. This provision also does not apply to assistance for child survival and AIDS programs which can, under section 542 of the FY 1993 Appropriations Act, be made available notwithstanding any provision of law that restricts assistance to foreign countries.) If the recipient is a "major illicit drug producing country" (defined as a country producing during a fiscal year at least five metric tons of opium or 500 metric tons of coca or marijuana) or a "major drug-transit country" (defined as a country that is a significant direct

source of illicit drugs significantly affecting the United States, through which such drugs are transported, or through which significant sums of drug-related profits are laundered with the knowledge or complicity of the government):

(1) has the President in the April 1 International Narcotics Control Strategy Report (INSCR) determined and certified to the Congress (without Congressional enactment, within 45 calendar days, of a resolution disapproving such a certification), that (a) during the previous year the country has cooperated fully with the United States or taken adequate steps on its own to satisfy the goals and objectives established by the U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, or that (b) the vital national interests of the United States require the provision of such assistance?

Malawi is not a "major illicit drug producing country" or a "major drug transit country."

(2) with regard to a major illicit drug producing or drug-transit country for which the President has not certified on April 1, has the President determined and certified to Congress on any other date (with enactment by Congress of a resolution approving such certification) that the vital national interests of the United States require the provision of assistance, and has also certified that (a) the country has undergone a fundamental change in government, or (b) there has been a fundamental change in the conditions that were the reason why the President had not made a "fully cooperating" certification.

See A.1(1) above

2. Indebtedness to U.S. citizens
(FAA Sec. 620(c): If assistance is to a government, is the government indebted to any U.S. citizen for goods or services furnished or ordered where: (a) such citizen has exhausted available legal remedies, (b) the debt is not denied or contested by such government, or (c) the indebtedness arises under an unconditional guaranty of payment given by such government or controlled entity?

N/A

3. Seizure of U.S. Property (FAA Sec. 620(e)(1)): If assistance is to a government, has it (including any government agencies or subdivisions) taken any action which has the effect of nationalizing, expropriating, or otherwise seizing ownership or control of property of U.S. citizens or entities beneficially owned by them without taking steps to discharge its obligations toward such citizens or entities?

N/A

4. Communist countries (FAA Secs. 620(a), 620(f), 620D; FY 1993 Appropriations Act Secs. 512, 543): Is recipient country a Communist country? If so, has the President: (a) determined that assistance to the country is vital to the security of the United States, that the recipient country is not controlled by

Malawi is not a communist country.

the international Communist conspiracy, and that such assistance will further promote the independence of the recipient country from international communism, or (b) removed a country from applicable restrictions on assistance to communist countries upon a determination and report to Congress that such action is important to the national interest of the United States? Will assistance be provided either directly or indirectly to Angola, Cambodia, Cuba, Iraq, Libya, Vietnam, Iran or Syria? Will assistance be provided to Afghanistan without a certification, or will assistance be provided inside Afghanistan through the Soviet-controlled government of Afghanistan?

5. **Mob Action** (FAA Sec. 620(j)): No
Has the country permitted, or failed to take adequate measures to prevent, damage or destruction by mob action of U.S. property?

6. **OPIC Investment Guaranty** (FAA Sec. 620(l)): No
Has the country failed to enter into an investment guaranty agreement with OPIC?

7. **Seizure of U.S. Fishing Vessels** (FAA Sec. 620(o); Fishermen's Protective Act of 1967 (as amended) Sec. 5): (a) No
Has the country seized, or imposed any penalty or sanction against, any U.S. fishing vessel because of fishing activities in international waters?
(b) If so, has any deduction required by the Fishermen's Protective Act been made?

8. **Loan Default** (FAA Sec. 620(q); FY 1993 Appropriations Act Sec. 518 (Brooke Amendment)): (a) No
Has the government of the recipient country been in default for more than six months on interest or principal of any loan to the country under the FAA? (b) Has the country been in default for more than one year on interest or principal on any U.S. loan under a program for which the FY 1990 Appropriations Act appropriates funds?

9. **Military Equipment** (FAA Sec. 620(s)): If contemplated assistance is development loan or to come from Economic Support Fund, has the Administrator taken into account the percentage of the country's budget and amount of the country's foreign exchange or other resources spent on military equipment? (Reference may be made to the annual "Taking Into Consideration" memo: "Yes, taken into account by the Administrator at time of approval of Agency OYB." This approval by the Administrator of the Operational Year Budget can be the basis for an affirmative answer during the fiscal year unless significant changes in circumstances occur.)

N/A

10. **Diplomatic Relations with U.S.** (FAA Sec. 620(t)): Has the country severed diplomatic relations with the United States? If so, have relations been resumed and have new bilateral assistance agreements been negotiated and entered into since such resumption?

No

11. **U.N. Obligations** (FAA Sec. 620(u)): What is the payment status of the country's U.N. obligations? If the country is in arrears, were such arrearages taken into account by the A.I.D. Administrator in determining the current A.I.D. Operational Year Budget? (Reference may be made to the "Taking into Consideration" memo.)

As of September, 1993
Malawi was not in arrears.

12. **International Terrorism**

a. **Sanctuary and support** (FY 1993 Appropriations Act Sec. 554; FAA Sec. 620A): Has the country been determined by the President to: (a) grant sanctuary from prosecution to any individual or group which has committed an act of international terrorism, or (b) otherwise support international terrorism, unless the President has waived this restriction on grounds of national security or for humanitarian reasons?

No

b. **Airport Security** (ISDCA of 1985 Sec. 552(b)). Has the Secretary of State determined that the country is a high terrorist threat country after the Secretary of Transportation has determined, pursuant to section 1115(e) (2) of the Federal Aviation Act of 1958, that an airport in the country does not maintain and administer effective security measures?

No

13. **Discrimination** (FAA Sec. 666(b)): Does the country object, on the basis of race, religion, national origin or sex, to the presence of any officer or employee of the U.S. who is present in such country to carry out economic development programs under the FAA?

No

14. **Nuclear Technology** (FAA Secs. 669, 670): Has the country, after August 3, 1977, delivered to any other country or received nuclear enrichment or reprocessing equipment, materials, or technology, without specified arrangements or safeguards, and without special certification by the President? Has it transferred a nuclear explosive device to a non-nuclear weapon state, or if such a state, either received or detonated a nuclear explosive device? If the country is a non-nuclear weapon state, has it, on or after August 8, 1985, exported (or attempted to export) illegally from the United States any material, equipment, or technology which would contribute significantly to the ability of a country to manufacture a nuclear explosive device? (FAA Sec. 620E permits a special waiver of Sec. 669 for Pakistan.)

No

No

No

15. **Algiers Meeting** (ISDCA of 1981, Sec. 720): Was the country represented at the Meeting of Ministers of Foreign Affairs and Heads of Delegations of the Non-Aligned Countries to the 36th General Assembly of the U.N. on Sept. 25 and 28, 1981, and did it fail to disassociate itself from the

Malawi was not represented at the meeting.

16. **Military Coup (FY 1993 Appropriations Act Sec. 513):** Has the duly elected Head of Government of the country been deposed by military coup or decree? If assistance has been terminated, has the President notified Congress that a democratically elected government has taken office prior to the resumption of assistance? No

17. **Refugee Cooperation (FY 1993 Appropriations Act Sec. 538):** Does the recipient country fully cooperate with the international refugee assistance organizations, the United States, and other governments in facilitating lasting solutions to refugee situations, including resettlement without respect to race, sex, religion, or national origin? Yes

18. **Exploitation of Children (FAA Sec. 116(b)):** Does the recipient government fail to take appropriate and adequate measures, within its means, to protect children from exploitation, abuse or forced conscription into military or paramilitary services? No

B. COUNTRY ELIGIBILITY CRITERIA APPLICABLE ONLY TO DEVELOPMENT ASSISTANCE ("DA")

1. **Human Rights Violations (FAA Sec. 116):** Has the Department of State determined that this government has engaged in a consistent pattern of gross violations of internationally recognized human rights? If so, can it be demonstrated that contemplated assistance will directly benefit the needy? No

2. **Abortions (FY 1993 Appropriations Act Sec. 534):** Has the President certified that use of DA funds by this country would violate any of the prohibitions against use of funds to pay for the performance of abortions as a method of family planning, to motivate or coerce any person to practice abortions, to pay for the performance of involuntary No

sterilization as a method of family planning, to coerce or provide any financial incentive to any person to undergo sterilizations, to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning?

C. COUNTRY ELIGIBILITY CRITERIA APPLICABLE ONLY TO ECONOMIC SUPPORT FUNDS ("ESF")

Human Rights Violations (FAA Sec. 502B): Has it been determined that the country has engaged in a consistent pattern of gross violations of internationally recognized human rights? If so, has the President found that the country made such significant improvement in its human rights record that furnishing such assistance is in the U.S. national interest?

No

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**STATUTORY CHECKLIST SUPPLEMENTS
FOR AFRICA FY 1993**

The following checklist supplements 5C(2) - ASSISTANCE CHECKLIST:

**D. CRITERIA APPLICABLE TO DEVELOPMENT FUND
FOR AFRICA ASSISTANCE ONLY**

1. (FAA Sec. 496): If assistance will come from the Sub-Saharan Africa DA account (the DFA), is it--

(1) to be used to help the poor majority in Sub-Saharan Africa through a process of long-term development and economic growth that is equitable, participatory, environmentally sustainable, and self-reliant; Yes

(2) to be used to promote sustained economic growth, encourage private sector development, promote individual initiatives, and help to reduce the role of central governments in areas more appropriate for the private sector; Yes

(3) to be provided in a manner that takes into account, during the planning process, the local-level perspectives of the rural and urban poor, including women, through close consultation with African, United States and other PVOs that have demonstrated effectiveness in the promotion of local grassroots activities on behalf of long-term development in Sub-Saharan Africa; Yes

(4) to be implemented in a manner that requires local people, including women, to be closely consulted and involved, if the assistance has a local focus; Yes

(5) being used primarily to promote reform of critical sectoral economic policies or to support the critical sector priorities of agricultural production and natural resources, health, voluntary family planning services education, and income generating opportunities; and Yes

(6) to be provided in a manner that, if policy reforms are to be effected, contains provisions to protect vulnerable groups and the environment from possible negative consequences of the reforms? Yes

2. (FY 1993 Appropriations Act): Have measures been taken to assure that DFA funds will not be used for tied-aid credits? Yes

E. CRITERIA APPLICABLE TO DFA AND DFA ASSISTANCE TO ETHIOPIA, SOMALIA AND SUDAN

(Horn of Africa Recovery and Food Security Act, P.L. 102-274 April 21, 1992):
If DA or DFA assistance is provided to Ethiopia, Somalia or Sudan other than through--

N/A

- (1) U.S., international or indigenous PVOs, as defined in FAA §496(e); or
- (2) international organizations that have demonstrated effectiveness in working in partnership with local NGOs and are committed to the promotion of local grassroots activities on behalf of development and self-reliance in the Horn of Africa--

has a certification been made with respect to that country by the President to the appropriate congressional committees that the government of the specified country--

- (1) has begun to implement peace agreements, national reconciliation agreements, or both;
- (2) has demonstrated a commitment to human rights within the meaning of FAA §§116 and 502B;
- (3) has manifested a commitment to democracy, has held or established a timetable for free and fair elections, and has agreed to implement the results of those elections; and
- (4) has agreed to distribute developmental assistance on the basis of need without regard to political affiliation, geographic location, or the ethnic, tribal, or religious identity of the recipient.

F. CRITERIA APPLICABLE TO DA AND DFA ASSISTANCE TO ZAIRE

(FY 1993 Appropriations Act): Have measures been taken to prohibit transfer of DA or DFA funds to the Government of Zaire, recognizing however that this does not prohibit NGOs from working with appropriate ministries or departments of the Government of Zaire.

N/A

G. CRITERIA APPLICABLE TO ESF ASSISTANCE TO KENYA

(FY 1993 Appropriations Act Sec 577):

N/A

If ESF funds are made available for Kenya, has the President of the United States determined and certified to Congress that the Government of Kenya--

(1) has released all political detainees and has ended the prosecution of individuals for the peaceful expression of their political beliefs;

(2) has ceased the physical abuse or mistreatment of prisoners;

(3) has restored judicial independence;

(4) has taken significant steps toward respecting human rights and fundamental freedoms, including the freedom of thought, conscience, belief, expression, and the freedom to advocate the establishment of political parties and organizations; and

(5) has set and published an elections schedule or timetable for the holding of multi-party elections.

H. CRITERIA APPLICABLE TO ASSISTANCE TO LIBERIA

Democratic and Electoral Assistance (P.L. 102-270, April 16, 1992): is assistance being provided to Liberia notwithstanding FAA Section 620(q) or any similar provision and solely for nonpartisan election and democracy building assistance to support democratic institutions in Liberia or for assistance for the resettlement of refugees, the demobilization and retraining of troops and the provision of other appropriate assistance to implement the Yamoussoukro peace accord. If so, has the President determined and certified to the Committee on Foreign Relations and the Committees on Appropriations of the Senate and the Common Foreign Affairs and the Committee on Appropriations of the House of Representatives -

N/A

(1) that Liberia has made significant progress toward democratization,

(2) that the provision of such Assistance will assist Liberia in making further progress and

(3) that the assistance in the U.S. national interest?

ANNEX C

ATTN: AID INFO: AMB DOY/PCOM

Annex C

VZCZCIGOR11
 OO RUEHLE
 DE RUEHLE #0501 268242P
 ZNY UUUUU ZZF
 O P 232410Z SEP 93
 FM SECSTATE WASHDC
 TO RUEHLE/AMEMBASSY Lilongwe IMMEDIATE 1827
 INFO RUEHNR/AMEMBASSY NAIROBI PRIORITY 3130
 BT
 UNCLAS STATE 290501

LOC: 287 774
 23 SEP 93 0500
 CN: 35560
 SERG: AID
 DIST: AID

ORIGINAL COPY

DATE: 09/23/93

ACTION TO:	
SARAHAN	AFB
INFO:	
DIR	
DD	
AFS	
COIT	
EXD	
GSO	
HPII	
HRDO	
PAE	
PID	
DUE DATE:	
09/29/93	

AIDAC

F.O. 12356: N/A

PAGE:
 SUBJECT: DEMOCRATIC AND CIVIL INSTITUTION DEVELOPMENT
 PROJECT (DFCIDE, 512-2243) - NPD APPROVAL AND AD HOC
 DELEGATION OF AUTHORITY

REF: FAXED NPD/CN

1. REPRESENTATIVES OF AFR/SA, AFR/DP, AFR/O&I AND GC/AFR
 HAVE REVIEWED THE NEW PROJECT DESCRIPTION (NPD) FOR THE
 SUBJECT PROJECT. NPD CONCURRING TO PROCEED WITH
 DEVELOPMENT OF THE SUBJECT PROJECT IS HEREBY PROVIDED.

2. THE ACTING DEPUTY ASSISTANT ADMINISTRATOR FOR AFRICA,
 ACTING ON BEHALF OF THE ACTING ASSISTANT ADMINISTRATOR FOR
 AFRICA USING HIS ALTER EGO AUTHORITY, HEREBY DELEGATES
 AUTHORITY TO THE MISSION DIRECTOR, USAID/MALAWI, OR THE
 PERSON ACTING IN THAT CAPACITY, TO APPROVE THE PID FOR
 THIS PROJECT IN AN AMOUNT NOT TO EXCEED DOLS 4.5 MILLION.
 THIS AD HOC DOA SHALL BE EXERCISED IN ACCORDANCE WITH ALL
 THE TERMS AND CONDITIONS OF DOA 551, EXCEPT FOR THE DOLLAR
 AMOUNT LIMITATION, AND IN ACCORDANCE WITH THE GUIDANCE
 CONTAINED IN THIS CABLE. BASED ON THIS PID APPROVAL DOA,
 THE MISSION MAY EXERCISE ITS DOA 551 AUTHORITY TO APPROVE
 THE PP. THIS AD HOC DOA FOR PID APPROVAL IS PROVIDED

ACTION TAKEN: S.F. Low
 DATE: 9/23/93

BECAUSE OF AID/W'S CONFIDENCE IN THE MISSION'S ABILITY TO
 DEVELOP ADEQUATE CRITERIA FOR ELECTORAL ASSISTANCE AND DG
 ACTIVITIES AND BECAUSE OF THE SHORT TIME REMAINING IN THIS
 FISCAL YEAR.

3. IT APPEARS THAT MOST OF THE PROPOSED ACTIVITIES UNDER
 THIS PROJECT MAY MORE APPROPRIATELY BE AUTHORIZED UNDER
 FAA SECTION 116(I), RATHER THAN DFA (SECTION 496),
 AUTHORITY. FROM THE CN SUCH ACTIVITIES APPEAR, WITHOUT
 LIMITATION, TO INCLUDE SUPPORT FOR ELECTIONS AND POLITICAL
 PARTIES, HUMAN RIGHTS AND CIVIL LIBERTIES ACTIVITIES, AND
 GENERAL CONSTITUTIONAL REFORMS. TO ENABLE THE PROJECT TO
 BE AT LEAST PARTIALLY AUTHORIZED UNDER SECTION 116(I), AFR
 HAS CONSULTED WITH STATE/HA, WHICH HAS CLEARED THIS CABLE.
 TO INCLUDE SECTION 496 IN A JOINT AUTHORIZATION, WHICH
 WOULD INVOKE THE DFA'S PROCUREMENT FLEXIBILITY, THE PP

NEEDS TO ANALYTICALLY DEMONSTRATE THE LINKAGE OF SOME ACTIVITIES TO ECONOMIC DEVELOPMENT RESULTS.

4. SECTION 611(A). TO MEET SECTION 611(A) ADEQUATE PLANNING REQUIREMENTS, THE PP SHOULD ESTABLISH CRITERIA AND PROCEDURES FOR SUBACTIVITY SELECTION, EXPLAIN THE ANALYTICAL BASIS FOR SELECTING THE CRITERIA, AND (TO JUSTIFY THE AMOUNT OF FUNDING) CONTAIN AN ILLUSTRATIVE LIST OF SUBACTIVITIES, COSTED OUT, AT LEAST EQUALLYING THE AUTHORIZED AMOUNT.

5. POLITICAL PARTIES. THE PP SHOULD ENSURE THAT ANY SUPPORT FOR POLITICAL PARTIES IS CONSISTENT WITH THE GUIDELINES CONTAINED IN 92 STATE 396029 (9 DECEMBER 1992), AS WELL AS THE AID D/G POLICY PAPER. WITHOUT LIMITATION, SUPPORT FOR POLITICAL PARTIES SHOULD BE ON AN EXCEPTIONAL BASIS, LIMITED TO TRAINING ACTIVITIES CONDUCTED BY NON-PARTISAN NGOS. THE GRANTS TO THE NGOS SHOULD EMPHASIZE THE IMPORTANCE OF THE APPEARANCE, AS WELL AS THE ACTUALITY, OF FAIRNESS. TRAINING MUST BE AVAILABLE TO ALL POLITICAL PARTIES COMMITTED TO THE DEMOCRATIC PROCESS. WHILE IT IS PREFERABLE THAT TRAINING BE PROVIDED TO THEM AS A GROUP, IN SOME CASES THIS WILL NOT MEET THEIR NEEDS. THUS, WHILE IN SOME CASES TRAINING MAY BE PROVIDED INDIVIDUALLY, IT IS CRITICAL THAT THERE IS EQUALITY OF ACCESS TO IT, AND THAT ALL GROUPS BE MADE EQUALLY AWARE OF ITS AVAILABILITY.

6. ELECTORAL SUPPORT. USE OF DEA FUNDS FOR COMMODITIES IN CONNECTION WITH ELECTORAL SUPPORT IS CONSISTENT WITH AFR POLICY SO LONG AS IT IS IN CONNECTION WITH CAPACITY BUILDING, PREFERABLY IN CONJUNCTION WITH TA, BUT NOT ON A ONE-SHOT BASIS SUCH AS BALLOT BOXES.

7. IEE. AS PART OF THE PID PROCESS, THE MISSION SHOULD SUBMIT AN IEE TO THE BUREAU ENVIRONMENTAL OFFICER.

8. THE BUREAU LOOKS FORWARD TO SEEING THE RESULTS OF THE DESIGN AND IMPLEMENTATION OF THIS PROJECT.

CHRISTOPHER

BT

#0501

NNNN

ANNEX D

Annex D

INITIAL ENVIRONMENTAL EXAMINATION

I. PROJECT DATA

Project Location : MalaWi

Project Title and Number : Democratic and Civic
Development (DECIDE
612-0243)

Recipient : USAID/MalaWi, Government of
MalaWi and Non-Government
Organizations

Funding : US\$4.5 million

Life of Project : 5 years

IEE Prepared by : Benson Phiri
Agricultural Economist
USAID/MalaWi

Environmental Action Recommended : Categorical exclusion

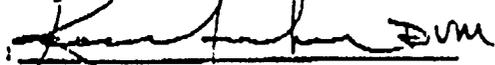
Approval

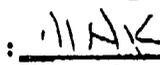

: Cynthia Rozell
Director
USAID/MalaWi
Date 9/93

Date IEE Prepared

: September 16, 1993

Clearances


for John Gaudet, AFR/ARTS/FARA
Washington DC


: Mary A. Kleinjan, GC/AFR
Washington DC

I. PROJECT GOAL AND PURPOSE

The goal of the Democratic and Civic Development Project is to promote sustained economic development. The purpose is to establish and consolidate democratic and civic institutions which will be accomplished through three components: election support, judicial and legal reform, and civic institution development.

II. PROJECT PROBLEM

Since independence in 1965, Malaŵi citizens have been subjected to authoritarian rule, inability to participate in politics except within the single Malaŵi Congress Party, harassment and imprisonment for daring to speak out or organize to advance their interests, capricious judgement at the hands of government and traditional courts, insecure guarantees of property rights, meaningless elections controlled by the MCP, lack of access to legal services, and heavy-handed civil and criminal codes. The economy has suffered because the government has failed to make full use of human resources resulting in poor social services in agriculture, education and health.

Within the last year, as a consequence of sustained domestic and international pressure, the Government acceded to a referendum on the issue of permitting more than one political party. It agreed to modifications in the election procedures to increase their fairness, and it accepted the referendum results which overwhelmingly favored multi-party democracy. Since the referendum, the Government established a President's Commission on Dialogue (PCD) to work with a coalition advocating transition to full-scale, multi-party democracy - the Public Affairs Committee (PAC). In less than three months after the referendum, negotiations between PCD and PAC have produced broad areas of agreement on constitutional and legal changes and the creation of a "shadow government" to work with the Government on implementing the transition in the form of a National Consultative Council (NCC) and a National Executive Committee (NEC) paralleling the existing parliament and cabinet, respectively.

The progress achieved in 1993 justifies some confidence that the transition is irreversible and will be completed within a reasonable period. Many of the basic, agreed-upon constitutional and legal changes, however, must still be made. Democratic institutions and laws cannot survive in a hostile culture and socio-economic environment. A vibrant democratic culture is required to sustain democratic institutions, and democracy must be seen by ordinary Malawians to contribute to improving their livelihood if that democratic culture is to take root. A crucial moment in the transition will be the first multi-party general elections in thirty years, tentatively scheduled for May 1994. The DECIDE project will help Malawians make the transition to political

pluralism through support for general elections, political party training, legal reforms, and development of civic institutions.

IV. PROJECT OUTLINE, STRATEGY, AND IMPACTS

Project Description:

The DECIDE project has three components designed to achieve the project's purpose to establish and consolidate democratic and civic institutions: election support, judicial and legal reform, and civic and institution development.

1. **Election Support.** The project will support free and fair elections in 1994 through activities that mirror successful activities USAID funded during the referendum, but on a slightly expanded basis. This will be implemented by a grants to the International Foundation for Electoral Systems (IFES), National Democratic Institute (NDI), and the United Nations (UN). The IFES grant will provide expertise to the Malawi election commission in developing rules and procedures consistent with the new election laws and other logistical and technical support. IFES will provide a consultant to the commission to design and implement voter registration and identification systems, and train registration personnel. The commission will also be assisted by IFES with the establishment of a public information system for election purposes.

A second grant will be made to the NDI to work on a nonpartisan basis with all parties in areas of voter education, grassroots organizations, message development, use of the media, voter mobilization, election monitoring, and a code of conduct.

The mission also plans to provide grant money to fund a small number of election observers and to defray logistics costs of the election to the UN Electoral Assistance Office in Lilongwe.

2. **Judicial/Legal Reform.** DECIDE will support the processes of reforming the constitution, and civil and criminal codes. It will also encourage the development of existing and new legal aid societies and human rights groups which empower Malawians to assert and realize their new legal freedoms and opportunities. This will be implemented by two mechanisms: Under AID's indefinite quantity contract (IQC) with Checchi and Company and Howard University and through a grant to the Christian Council of Malawi (CCM).

The IQC will provide legal assistance to the National Consultative Council, the Malawi judiciary and other bodies constituted to implement legal reforms. It will also provide consultants to work with organizations that will be active in conducting civil education activities related to the changed legal environment in Malawi.

he grant to CCM will strengthen the Human Rights Desk of the CCM which offers legal advice, intervention and referral services, litigation assistance and mediation facilities to average Malawians.

. **Civic Institutional Development.** DECIDE will nurture and strengthen non-governmental civic institutions committed to democracy. One such institution which A.I.D. has identified for potential support is the PAC which has proposed a program of education for Participatory Democracy (EPD) to educate voters prior to the next general elections. PAC is also developing a longer range program of civic education for Malawians at the grassroots level. As other institutions emerge, USAID will also review them for support.

PROJECT ENVIRONMENTAL CONCERNS, MITIGATION AND MONITORING

Environmental concerns:

There are no environmental concerns from DECIDE as all three components of the project have no impact on the environment. DECIDE will provide training and awareness, institution building and technical assistance. Events in Malawi, however, have indicated that the transition to pluralism may mean disobedience of the governing laws and regulations. In some instances, this has resulted in negative environmental impacts such as the encroachment into forested areas in the City of Lilongwe by human habitation ("multiparty plots"); the alleged fishing in Lake Malawi during the closed season; and rampant cutting down of trees for fuel wood and charcoal especially along the Zalewa portion in Mwanza of the M1 road. These are three examples which have occurred during the last year where citizens have disobeyed the laws which govern them.

Litigation:

Civic and political institutions will be encouraged to adopt responsible positions on the economic, social, political and environmental situations in the country.

VI. RECOMMENDED ENVIRONMENTAL ACTION

Based on 22 CFR 216.2 (C) (2) (i) a proposed categorical exclusion is recommended for all the three components of DECIDE.

ANNEXES 1 - 6

Annex E (1)

POLITICAL PARTY TRAINING IN MALAWI

U.S. Grantee:	National Democratic Institute for International Affairs
Date of Project:	Fall 1993
Amount Requested:	\$590,830

I. SUMMARY

The National Democratic Institute for International Affairs (NDI) proposes to conduct a political party training program and civic education program in support of the first multiparty elections in Malawi. The program's goal is to equip all Malawian political parties and emerging Malawian non-governmental organizations (NGOs) with the knowledge and skills necessary to compete and participate effectively in multiparty, democratic elections. Drawing upon resources and techniques developed in its programs around the world, NDI will provide Malawi's political parties and NGOs extended consultation services, technical assistance and training to achieve the goal of the program. The time frame for the program extends from October 1, 1993 through the elections expected in mid-1994. NDI requests a multi-year grant of \$590,830 from USAID/Malawi to implement this project.

Political parties and NGOs provide diverse elements of society a voice and facilitate participation in the system of representative government. As institutions that compete to govern, democratic parties must develop the capacity to promote public awareness and respond to the will of the electorate. As non-partisan organizations that encourage voter participation, NGOs must have the capability to conduct national and regional civic education campaigns and increase confidence in the electoral process. The ability of political parties and NGOs to perform these roles before and during transitional elections vitally affects the pace and stability of a country's future political development.

Consequently, NDI's proposal focuses on supporting the role of the political parties and NGOs in Malawi as they prepare for their first electoral competition. NDI will conduct training and consultations for parties and NGOs on the following topics: building a grassroots organization; conducting voter education activities; identifying and communicating issues of concern to the electorate; recognizing and adhering to a code of conduct; encouraging and mobilizing voter participation in elections; understanding the law and administration of the election; and planning for the responsibilities of political parties and NGOs on election day. The program is intended to strengthen the institutional development of democratic political parties and to civic groups and to build public confidence in a multiparty democracy in Malawi.

II. BACKGROUND

Malawi

For over thirty years, Malawi has been a one-party state ruled by President for Life Hastings Banda. Under the Banda regime, all citizens of Malawi were required to be members of the Malawi Congress Party (MCP), and no political opposition was tolerated. Malawi has had a poor human rights record. The arrest, detainment, torture and assassination of political opponents -- both inside and outside of the country -- was commonplace.

Nevertheless, political opposition to the government by dissidents in exile continued over the years. In March 1992, the Malawi Roman Catholic Bishops issued an open letter calling for fundamental change and denouncing the government's poor record on human rights and freedom of expression. The letter's release precipitated demonstrations and calls for multiparty democracy.

This unrest, accompanied by the international donor community's withdrawal of all but humanitarian aid to Malawi, forced the government to allow a referendum on one-party versus multiparty rule. On June 14, 1993, the citizens of Malawi voted by more than a two-to-one margin in favor of instituting multiparty democracy.

Bolstered by the referendum's results, the Public Affairs Committee (PAC) -- a broad-based alliance of opposition groups including the emerging political parties, religious associations, and various human rights organizations -- urged the government to repeal the constitutional clauses declaring the country a one-party state and to legalize political parties. Both the government-led President's Committee on Dialogue (PCD) and the PAC agreed to form a National Consultative Council and a National Election Council that would propose legislative reforms to promote human rights, freedom of the press and multiparty elections. The committees continue to meet on these issues, and elections are anticipated by mid-1994.

Before elections can be held, however, the legal framework for political parties and the electoral process must be established. At the same time, political parties and NGOs need to establish an organizational basis from which to contest the elections as well as an understanding of the electoral law and administrative procedures. Parties and NGOs which have an understanding of the rules and a confidence in their own capacity to compete and participate are more likely to make a meaningful contribution to the foundation on which a democratic government can be built.

NDI Activities in Malawi and the Region

NDI has been active in the southern Africa region since 1987 and has gained considerable experience in election related programs in South Africa, Zambia, Mozambique, Botswana, Namibia and Angola. In July 1993, NDI established a full time long-range regional presence by opening of an office in Johannesburg. Patricia Keefer, NDI Senior Associate for Political

Education and Program Manager for the Southern Africa Region, directs NDI's regional programs from this office.

NDI has been involved in Malawi since March 1993 when Senior Associate for Electoral Processes Larry Garber traveled to Lilongwe and Blantyre for preliminary discussions with the Secretary of the Referendum Commission, government representatives, civic and pressure group leaders, as well as lawyers; clergy, journalists, and members of the international donor community.

Based on these consultations, NDI developed and implemented a plan to train domestic election monitors in Malawi in preparation for the June 14, 1993 Referendum. NDI established a field presence in Malawi for six weeks to provide technical assistance to both the MCP and the PAC. Tom Kevorkian, NDI's in-country project officer with expertise in grassroots organizing, conducted a total of six workshops on election monitoring in Lilongwe, Blantyre and Mzuzu -- three of which were attended by members of the PAC and the then-pressure groups AFORD and UDF, and another three which were attended by members of the MCP. The workshops sought to provide the interested parties with the capability to monitor the referendum effectively, to identify potential problems and questions and to encourage the groups to remain active after the referendum period in order to promote long-term democratic development. In addition, NDI developed and disseminated 24,000 domestic monitoring training manuals and checklists to the pressure groups and the MCP. The manuals covered such topics as: the role of the monitor, why monitoring is useful, the rights and duties of a monitor, voting and counting procedures, irregularities, and appeal procedures. NDI successfully coordinated these efforts with the UN and other NGOs working in Malawi during the referendum period.

Prior to the referendum, in May of 1993, NDI had invited PAC Chairman Phiri to observe elections in Paraguay as part of a 32-member international delegation. This trip afforded Reverend Phiri an opportunity to witness the most competitive election in that country's history which was the culmination of a five-year transition to democracy. He also met with leaders of SAKA, a consortium of local nongovernmental organizations, who demonstrated firsthand to Reverend Phiri how SAKA, an organization similar in mission and structure to the PAC, conducted itself in a multiparty election.

Most recently, NDI Assistant Counsel for Electoral Processes Michael Stoddard visited Malawi in July 1993. He met with representatives from the U.S. Embassy, USAID mission and PAC to discuss the political environment and the prospects for future NDI programs to support Malawi's transition to multiparty democracy. These meetings and subsequent discussions with observers of the Malawian situation have confirmed the need for assistance in developing the newly legalized political parties and aiding emerging NGOs.

III. OBJECTIVES

NDI anticipates that its project will:

1. strengthen the political parties as institutions in a multiparty democracy;
2. enable the parties to conduct organizational activities to promote participation and political choice for the citizenry of Malawi;
3. provide a framework by which political parties can engage in a voter education program;
4. inform voters of the distinctions among the parties and what they stand for;
5. enable the parties to monitor the voting and count the ballots on election day, thus enhancing their capacity to build public confidence in the electoral process.
6. strengthen the ability of local NGOs to participate in the election process through monitoring and civic education efforts.

IV. PROJECT ACTIVITIES

In consultation with the existing and emerging political parties and NGOs of Malawi, NDI will design a program to strengthen their organizational capabilities. By providing practical advice and technical assistance, NDI hopes to enhance the parties' and NGOs' readiness to participate in the elections and to promote informed voter turnout through education programs conducted by the political parties and NGOs. The structure of this program, as outlined below, is deliberately fashioned to allow for maximum flexibility and constant refinement to adapt to changes as the election plans proceed. In order to guarantee that it is indeed truly responsive to the needs of Malawi's political parties and NGOs and is a sensible and useful vehicle in Malawi's political environment, the program's implementation plan mandates formal, periodic evaluations as to the prospect of revisions. This will be done in collaboration with the USAID and others in Malawi.

Field Representatives

In early October, NDI will deploy at least two representatives in Malawi with expertise in grassroots and political organizing and electoral processes. This will be followed by the addition of two other in-country project personnel. These field representatives will serve as in-country trainers for the duration of the project. Ultimately, NDI intends to establish an in-country presence of four field representatives: a senior project director, a project trainer for political parties, a project trainer for NGOs and a program assistant.

Consultations

The staff's immediate task will be to schedule and facilitate a series of in-depth, individual consultations with all officially registered political parties and certain NGOs with interest in elections in Malawi, as well as other international and domestic organizations that will play a role in the elections. These consultations will serve two purposes: (1) the design of party and NGO specific training; and (2) information gathering. These consultations also will bring

the parties and NGOs together with one or more members of an international delegation comprising six experts -- four from the United States and two from an African multiparty state. This team will meet with the PAC and PCD leaders, political party leaders, NGOs, government officials and representatives from the international donor community. The consultations will occur over a period of seven to ten days in late October. They will enable NDI to establish working relations with the political parties, to enhance the authority and reputation of the field representatives, to scrutinize the specific needs of the parties and NGOs, and to assess the overall current political climate. The team will work with the USAID mission during the course of the consultations.

It is the information acquired from these individual consultations that will allow the NDI in-country staff to design a project implementation plan and refine the program described in this proposal. The implementation plan will serve as a guide to the staff for conducting a program for each political party/organization based on its stage of development. The end product of the October consultations will be an agenda of issues to be addressed at a national conference.

All-Party National Conference

The national conference will be held in Blantyre in early December for all major political organizations and NGOs which intend to participate in the elections. The agenda of the conference will address a variety of critical institutional, political and administrative questions associated with the role of political parties in a multiparty democracy and the building of effective political party organizations. It also will accommodate discussion of legal and administrative preparations and the role of the United Nations in Malawi's electoral process.

In addition to the resident program trainers, NDI will send a five-member international delegation with expertise in the areas of voter education, grassroots organizing, issue development, use of the media and voter communication. The conference will include a series of workshops led by delegation members and Malawians with relevant expertise on these topics. There will be a mix of plenary sessions, workshops and individual party consultations.

NDI expects that one session of the conference will be aimed at helping the parties translate their policy positions into a platform that can be effectively communicated to the general electorate. For example, public policy issues concerning Malawi's economic situation, human rights practices and refugee problems might be analyzed to determine how these realities are reflected in the political environment.

For the first all-party conference and for all regional workshops and conferences to follow, NDI in-country staff will make a concerted effort to solicit the participation of representatives of other international non-governmental organizations. These groups include the International Federation of Election Systems (IFES) and the German party foundations, such as the Friedrich Ebert Stiftung, who may reside in or visit Malawi often. Furthermore, NDI in-country staff will actively pursue the sponsorship of other donor country organizations and

agencies, such as the Westminster Foundation. These resources may provide a cost effective supplement to the program's pool of international experts and will maximize the efficient use of extant political development resources working to support Malawi's transition process.

Follow-up Training and Consultations

After the all-party conference, NDI's field representatives will embark upon a three-month series of training and consultative sessions at the national, regional and local levels. The staff will travel throughout the country providing technical assistance to the parties and NGOs on an individual basis. These consultations will take into account the dynamics of political competition, the political parties' organization and operations, the design of voter education activities and election monitoring, as well as their preparations for the elections. The data accumulated from these local consultations will shape the agenda and composition of the multiparty, regional workshops to be held in early 1994.

Regional Workshops

In February 1994, NDI plans to sponsor its first series of regional workshops in three regions in locations determined by the in-country staff. The workshops will draw upon the expertise of small international delegations. The subject matter of the workshops will be determined by the in-country staff, but in general will focus on issues and activities specific to party and NGO participation in the upcoming elections. The agenda probably will include topics such as: the promotion of multiparty consensus in the implementation of the electoral law; party building issues in the electoral process; and voter mobilization and election monitoring techniques. The international delegation will be on the ground for 10 days and will comprise at least five experts -- two from the United States and three from African countries. The intention is to organize one workshop for parties and one workshop for NGOs in each region.

In April 1994, NDI plans to deploy, if possible, the same international delegation used in February for a second series of three regional workshops on pre-election party preparation, specifically focused on getting out the vote and party poll watching. Once again, location and subject matter will be determined by the in-country staff and will be configured to reflect specific regional and party concerns at that stage of the electoral process.

In both the February and April regional workshop series, NDI in-country staff will actively seek out the assistance and participation of other international NGOs and IGOs and experts residing in Malawi.

In addition, if in the course of evaluating emerging Malawian NGOs, NDI determines that one or more could be of assistance with civic education efforts, then NDI would seek to involve them directly in the process, including joint sponsorship of training workshops. Such a partnership would greatly benefit the NGO(s) by increasing their institutional experience and strengthening their ability to conduct far-reaching voter participation campaigns.

Evaluation

The evaluation process will be in accordance with NDI's established self-evaluation procedures. In the short-term, NDI will request written critiques from the international participants on different elements of the program. There will be an in-progress and final review of the program by NDI staff. This will be achieved through on-site interviews of a number of the Malawian participants to assess the utility of the material presented. Following all the training sessions, NDI will consult with the parties and local NGOs, seeking their opinions on objectivity, program content and frequency. NDI's in-country staff will conduct periodic evaluation sessions with the USAID mission.

In the long-term, through questionnaires sent to the parties and NGOs and individual interviews, NDI will assess the program based on the following considerations:

- * Have the parties and NGOs utilized the information and materials provided in the training sessions to organize subsequent training sessions within their respective party organizations?
- * Have the parties and NGOs been successful in designing and implementing a voter education program?
- * Have NGOs been able to effectively gather and disseminate accurate information to voters?
- * Have the parties and NGOs, subsequent to the NDI sessions, initiated or improved their organizational planning, including the preparation of written plans?
- * Have the parties improved the development and communication of programs and policy messages to the public?
- * Have parties and NGOs remained engaged in the election process?
- * Has the electorate demonstrated a confidence in the democratic process by exercising their voting rights?

VI. NDI INSTITUTIONAL BACKGROUND

NDI has gained significant experience and expertise in political party development and civic education around the world and is in a unique position to assist Malawi's democratic political parties and NGOs as they prepare for elections. The Institute has conducted multiparty training seminars in southern Africa as well as other countries in transition on the continent, Asia, Eastern Europe, Latin America and the former Soviet Union. NDI draws upon expert

trainers from around the world to participate in forums where members of developing parties can learn first-hand the techniques of organization, communication, education and advocacy.

Since 1986, NDI has conducted more than 60 election-related programs in over 30 countries, and has developed a reputation as a leading international nongovernmental organization in the field. One aspect of NDI's comprehensive, integrated approach, involves training indigenous organizations how to monitor their own elections. NDI also is capable of providing long-term support to political parties through legislative training programs to help strengthen democratic governance in the post-election consolidation.

CAMBODIA AND SOUTH AFRICA

As current examples of similar program initiatives, Cambodia and South Africa are two countries where NDI is conducting party building programs. In Cambodia, a five-member NDI field team and a team sponsored by the International Republican Institute (IRI) worked with political parties to teach effective electoral organization techniques during the five months preceding the May 1993 elections. The program, launched with a two-day conference in Phnom Penh, was attended by 238 representatives from 18 political parties. The conference included presentations by a member of the Chilean Congress and a member of the Palang Dharma party in Thailand. Participants discussed specific techniques for party organization and election planning, and examined the integral role that broad based, well-organized political parties can play in a democracy.

Following the conference, the NDI field staff members assessed the organizational capabilities and needs of each registered political party. The field staff conducted a series of provincial training workshops where members of new parties learned first-hand some techniques of organization, communications and constituent contact. During the final month of the electoral campaign, NDI worked with the parties to train poll watchers, conduct voter education activities and develop reporting mechanisms for party activists on the conduct of the elections working in coordination with the United Nations. Overall, the intensive 5-month program included more than 50 workshops in 16 of Cambodia's 21 provinces.

In May 1993, NDI began a political party training program in South Africa in preparation for the April 1994 elections. The project is designed to respond to the unique needs of the South African political environment. The South African program features the involvement of bipartisan teams of U.S. political party trainers with professional expertise on a wide range of issues, including grassroots organization, policy formation, voter contact, polling and research, mass media, fund raising and budgeting, and management and internal communication systems. In addition to participating in multi-party forums, the teams are providing one-on-one consultations to parties. In order to foster the trust and confidence needed to maximize the effectiveness of the experts' time and effort, the teams work exclusively with one organization, party or alliance when they are assigned to assist. The trainers' activities are organized and supported by an in-country secretariat based in Johannesburg.

VIII. QUALIFICATIONS

The long-term professional field staff under these activities will have experience in political party training, political party development, or civic institution development. Prior to the beginning of the project, NDI will send resumes and/or curriculum vitae of prospective team members to USAID/Malawi for review and comment.

VIV. BUDGET

For this program, NDI requests \$590,830.

**POLITICAL PARTY BUILDING PROGRAM
MALAWI
SEPTEMBER, 1993**

		BUDGET
I.	SALARIES AND BENEFITS	167,369
A.	Salaries	120,064
	1. Senior Associate x 20% x 8 months	
	2. Program Officer x 30% x 8 months	
	3. In-country Program Assistant x 100% x 8	
	4. Regional Assistant x 20% x 8	
	5. Logistics Coordinator x 10% x 8	
	6. In-country Trainer x 100% x 8	
	7. In-country Project Director x 100% x 8 months	
	8. Program Assistant x 80% x 8	
B.	Benefits @ 39.4%	47,305
II.	OFFICE SPACE AND UTILITIES	5,000
	1. Rent \$500/month x 8 months	4,000
	2. Utilities	1,000
III.	OFFICE SUPPLIES	16,000
A.	Office Supplies	5,500
B.	Equipment Rental	3,500
C.	Equipment Purchase	7,000
IV.	COMMUNICATIONS	20,000
A.	Telephone & Fax	15,000
B.	Postage	4,500
V.	TRAVEL AND PER DIEM	209,277
A.	Airfare	86,352
	1. Field Staff	
	4 RT U.S./Malawi @ 4,100 X 2	32,800

2. Consultations

4 RT United States/Malawi @ 4,100	16,400
1 RT Kenya/Malawi @ 550	550
1 RT South Africa/U.S. @ 550	550

3. Political Party Leadership

3 RT United States/Malawi @ 4100	12,300
1 RT United Kingdom/Malawi @	2,302
1 RT Zambia/Malawi @ 300	300
1 RT South Africa/Malawi @ 550	550
1 RT Kenya/Malawi @ 550	550

4. Regional Workshop Delegation - February

2 RT United States/Malawi @ 4100	8,200
1 RT Zambia/Malawi @ 300	300
1 RT Namibia/Malawi @ 700	700
2 RT South Africa/Malawi @ 550	1,100

5. Regional Workshop Delegation - April 1994

2 RT United States/Malawi @ 4100	8,200
1 RT Zambia/Malawi @ 300	300
1 RT Namibia/Malawi @ 700	700
1 RT South Africa/Malawi @ 550	550

B. Per Diem 81,175

1. Consultations

6 person x 10 days x \$163	9,780
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2. Political Party Leadership

7 person x 5 days x \$151	5,285
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3. Regional Workshop - February

6 person x 10 days x \$151	9,060
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4. Regional Workshop - April 1994

167

	5 person x 10 days x \$151	7,550	
	5. Malawian Workshop Participants		
	1500 person x \$25 per person	37,500	
	6. In-country Staff Housing	12,000	
	8 months x \$1500/month		
C.	Local Travel		36,750
	1. In-country Staff/Consultation	18,000	
	2. Malawian Workshop Participants	18,750	
	750 participants x \$25/per person		
D.	Other Travel Costs		5,000
VI.	CONTRACTUAL SERVICES		26,840
A.	Temporary Help	6,000	
B.	Printing	17,000	
C.	Interns		
	(2 x 320 hours x \$6)	3,840	
VII.	CONSULTANT'S FEES		4,000
	1 person x \$200/day x 20 days	4,000	
VIII.	OTHER DIRECT COSTS		17,500
A.	Workshops/Meetings/Conferences	13,000	
B.	Public Information Costs	2,000	
C.	Misc. Charges	1,500	
D.	Bank Charges	1,000	
	TOTAL DIRECT COSTS		465,986
IX.	INDIRECT COSTS		124,844
	(27.2% of direct costs less equipment purchases)		

TOTAL

590,830

Annex E (2)

INTERNATIONAL FOUNDATION OF ELECTORAL SYSTEMS MALAWI PROJECT

I. Title

The title of this project is Program Development and Support. The activity title is Malawi General Election Support.

II. Objectives: The objectives of this activity are

- (a) to increase the administrative and training capabilities of the Malawi Electoral Commission and staff;
- (b) to assist the Malawi Electoral Commission to implement a new system of voter registration and recording; and
- (c) to develop a capacity within the Commission and Malawi's journalist community to provide ongoing information about the transition and election processes.

III. Background

The June 14 referendum in Malawi created, for the first time since its independence, an atmosphere which enabled several elements of the democratic process (popular opportunity to make informed decisions; respecting the wishes of the victor; resolving conflict in a peaceful manner) to manifest themselves. The transparency of the dialogue, debate and resolution prior to the referendum marked an unprecedented effort to enable citizens outside the Malawi Government and the Malawi Congress Party to participate in the shaping of their electoral process.

The Malawian people will again have the chance to institutionalize the democratic process in their country through general elections, which are expected during the middle of May, 1994. The international community has offered to assist in providing assistance to the Malawian people as they prepare to participate in this historic electoral exercise. With coordinating assistance from the United Nations, bilateral donors will provide technical assistance to facilitate the transition from a closed to an open electoral system.

The experience of the referendum process identified numerous areas of possible future assistance in Malawi: the state of the voter registry; the method of election organizing, conduct and personnel training; and the development of the state-owned media and Malawi's journalist community as objective, critical elements of a democracy. All such assistance has as its ultimate goal the transfer and exchange of skills, ideas and knowledge necessary for the Malawian people to efficiently administer future elections on their own as well as to examine and develop a more democratic society.

A body charged with election administration need not be composed of life members to perform its duties professionally. Sufficient guidelines for the efficient administration of elections can provide a process that is managed by a small group of trained individuals who work periodically with recruited or appointed election staff.

A voter registry is essential to the participation of a democratic country's electorate in the exercise of its fundamental freedom: the right to make decisions regarding the country's policies and leaders. The registration process, being voluntary on the part of citizens and by nature susceptible to becoming out-of-date, must lend itself to quick review, timely update and easy access by the country's potential voters and political leaders. Accuracy in the voter rolls improves the quality of administrative divisions, election conduct and popular representation.

The concept of the mass communications media as loyal critic of the government is probably not unique to the United States, but it is new in Malawi. As political institutions become more open and pluralistic, the media must make a complementary transition from government mouthpiece to government watchdog. In a democratic Malawi, the media must grow into its new role as a responsible outlet for public information as well as a responsible critic of government actions. This new role will require new attitudes and behaviors on the part of governmental bodies, such as the Election Commission, as well as journalists and news organizations.

IFES proposes to develop and strengthen the Electoral Commission's ability in the three areas above by providing advisors in election administration, voter registration and mass communications. IFES will provide some funding for materials related to all three areas. IFES advisors will work with the Electoral Commission and in close collaboration with the UN Electoral Assistance Secretariat. The level and type of activities to be undertaken by the UN Secretariat will be further determined in the coming months with the execution of a needs assessment mission in Malawi. This IFES proposal has been developed in close communication with UN personnel in New York, and the IFES project will be implemented in close cooperation with the UN Secretariat to be established in Malawi. IFES is confident that all elements of its proposed project fall within the larger objectives of the UN Electoral Assistance Unit's project.

IV. Statement of Work

Election Administration Assistance and Training

The Election Administration Assistance and Training component of this project will equip the Election Commission with the technical knowledge and training skills which will enable the Commission and its staff to efficiently conduct the coming general elections and train election workers. Preparing the Commission to work with the new laws and procedures for the elections will result in a smooth election process that can be replicated, legitimized and institutionalized by Malawian officials.

IFES will provide an advisor who is expert in election administration and training to work closely with the Election Commission as it prepares for the Malawian general elections. Following the nomination and initial meetings of the Commission, the advisor would offer

assistance in two general areas: the development of rules and procedures in accordance with the new election laws; and the planning of a realistic election calendar to set priority tasks and deadlines as well as to determine physical and logistical needs in connection with the registration and election processes.

Prior to the elections, the advisor would assist in the recruitment and training of Election Commission staff, demonstrating training techniques and preparing the staff to train pollworkers. The advisor will also address the various roles that women can play in the election administration process at all levels in order to increase their membership among election officials.

The advisor will have project funds at his or her disposal to be used for items including, but not limited to, election procedures manuals, training space rental, supplies, food and transport costs.

The advisor will travel to Malawi in early December, or on an appropriate date after the Election Commission has been named, to directly assist the design and implementation of the new election laws, procedures and regulations. The advisor would return to Malawi in mid-to-late March to assist with pollworker training sessions. His or her total time in Malawi would be approximately fourteen weeks.

The advisor provided by IFES for this project will have considerable experience in election administration in developing world settings. The advisor will be supported in Washington by IFES' Program Officer for Africa. IFES will make available to the advisor its accumulated experience in election administration and training around the world, in addition to information gathered from the previous project in Malawi.

Voter Registration

The Voter Registration component of this project will assist the Election Commission in designing and implementing a voter registration system that will facilitate the registration, recordkeeping and election processes and which can be efficiently and easily updated on a timely basis. This project component will result in a voters' register that will serve as a definitive profile of the Malawian electorate, providing a sound basis for drawing of district boundaries. In addition, an updated voter registry will enable the Commission to make prompt determinations regarding physical and logistical election equipment and supply needs.

IFES will send a consultant to advise the Election Commission on the design and implementation of a voter registration process. The advisor and the Commission will explore different styles of registration, voter identification and recordkeeping to determine the most appropriate system for Malawi. The consultant will assist the Commission in the recruitment and training of registrars and data-entry personnel. The consultant will be present to observe the registration and data entry processes, making suggestions for improvement as appropriate. The project budget for this component will be available to the advisor and will be directed at items including voter registration cards, photographs, allowances for data-entry personnel, and computer hardware/software rental.

The voter registration advisor will travel to Malawi in early 1994, on the recommendation of the election administration advisor, the Election Commission and the UN Secretariat, remaining there for approximately twelve weeks.

The IFES consultant will be experienced in voter registration processes in countries with advanced as well as developing registration systems. He or she will be supported in Washington by the IFES Program Officer for Africa as well as by the information on registration systems that IFES has gathered from its experience around the world.

Public Information

The Public Information component of this project will assist the Election Commission with increasing the transparency of its activities during the transition and election periods in an interactive process with Malawi's news organizations. One project output will be the regular publication of a press release or newsletter, written by those commissioners charged with public information duties, to all of the major news outlets in Malawi. The activities of the Commission, including the establishment of new election rules, the compilation of registration figures, and the distribution of information regarding the registration of political parties, shall be produced as public information, to be disseminated by the local and international media representatives.

A second project output will be the regular meeting of the Malawian journalists who receive this information to discuss topics related to journalism in a democratic society. Using a comparative approach, the journalists will explore the ways in which a country's media sources work with the government of the day by critically, objectively reporting the government's activities to the citizens, as well as how standards and ethics are developed within this relationship.

IFES will provide an advisor to work directly with the Election Commission's officers charged with public information to design, develop and disseminate a source of news from the Commission. The advisor will conduct periodic seminars open to journalists and government officials to discuss topics related to those listed above.

Funds will be provided to this advisor for the production of the outputs and seminars described above. The budget for this component includes, but is not limited to, information publication and production costs and seminar organizing.

The public information advisor will arrive in Malawi in late February. His or her stay in Malawi will be approximately twelve weeks.

The IFES advisor will be a mass communications expert who combines solid international journalism experience with training and writing for the media.

PARTICIPATION IN INTERNATIONAL EFFORTS

If the UN Electoral Assistance Unit decides to organize a joint observer group for the elections, IFES would provide personnel to be part of the international team.

IFES would furthermore be prepared to facilitate the provision of financial or commodity support to the Election Commission and to provide background information on appropriate types of commodities, should USAID/Malawi offer assistance in these areas.

V. Level of Effort

These activities will require twelve weeks (up to six days per week) for the voter registration and public information advisors and fourteen weeks for the election administration advisor over approximately a six month period (early December to late May), plus the support from home office and locally hired staff.

VI. Qualifications

All individuals under these activities will have experience in election administration and training, voter registration and mass communications.

Prior to the beginning of the project, IFES will send resumes and/or curriculum vitae of prospective team members to USAID/Malawi for review and comment.

VII. Payment

Payment will be made by AID/W.

VIII. Timing and Reports

Work will begin on or about September 30, 1993 and be completed on or about June 30, 1994. IFES will prepare a report which summarizes its election administration, voter registration and public information activities in Malawi and provides recommendations for possible future democracy/governance activities.

IX. Relationships and Responsibilities

IFES Advisors will function as part of the UN Electoral Assistance Secretariat and coordinate all activities with the UN Chief Electoral Advisor. IFES will report periodically and at the completion of activities to USAID.

X. Evaluation of Project Activities

IFES will solicit evaluations from local project participants, the UN Electoral Assistance Secretariat, USAID/Malawi personnel and its own team members. Evaluations may take the form of written questionnaires or interviews. IFES will solicit written comments wherever appropriate. The project final activity report will include summaries and excerpts from the evaluations.

Budget Notes

Home Office Support

1. Salaries

The Chief of Staff will devote approximately 50 hours to the Malawi project, reviewing and approving major project activities. The remainder of his time is spent overseeing operations of all IFES projects.

The Director of Programs for Africa and the Near East (Program Director) will devote 160 hours to the Malawi project, attending briefings with the Program Officer, assisting in the selection of consultants, and serving as a final authority on major project initiatives and/or any project amendments. The remainder of his time is spent overseeing the operations of the entire IFES Africa and Near East program.

Program Officer. Laurie Cooper, IFES Program Officer for Africa and the Near East, will function as the Project Manager for this project. She will therefore be spending most of her time on Malawi project work during this period.

The Finance/Administrative/Accounting group consists of four individuals who coordinate travel and per diem logistics, review expenses, negotiate contracts and perform other administrative tasks associated with the project. They will collectively spend 160 hours on the project.

2. Other Direct Costs

The \$100/month Local Transportation budgeted for the life of the project is an average of the transportation expenses incurred including taxis for program staff and intern to deliver project documents to, pick up materials from, or attend briefings on Malawi at: embassies, USAID, or the Department of State.

Communication, Postage and Supplies rates are based on IFES previous experience in Technical Assistance projects.

On-Site Activities

3. Consulting/Report Writing. IFES has budgeted 90 days of consulting fees for the election administration advisor (14 weeks x 6 days a week plus 6 days for travel and report writing) and 78 days each for the voter registration advisor and public information specialist (12 weeks x 6 days a week plus 6 days for travel and report writing) at the maximum consulting fee allowed by AID.

4. Air fare. IFES has budgeted for one roundtrip ticket each for the Voter Registration Advisor and Public Information Specialist, plus two tickets for the Election Administration Advisor and two for the Project Manager.

5. Per diem. The per diem rate of \$163 is referenced to August 1993 "Maximum

Travel Per Diem Allowances for Foreign Areas, Section 925."

6. Election Administration/Training Program Expenses: The amount budgeted for Program Expenses reflects cost estimates for materials that IFES has used in previous similar projects. Estimates are based in part on the total cost of the IFES Referendum Assistance Project. Such elements include the design of printed material and in-country technical personnel services, as well as appropriate transportation costs.

7. Voter Registration Program Expenses: The amount budgeted for voter registration expenses reflects estimates for materials and program activities that IFES has expended funds for on previous similar projects. These elements include the design and production of voter cards, photographs, allowances for data entry personnel, computer hardware and software rental, and food and transportation allowances for Commission personnel assigned to this project.

8. Public Information Program Expenses: The amount budgeted for the public information program reflects estimates for materials and activities from IFES similar projects and previous experience in Malawi. The elements include publication and production costs associated with press conferences, releases or newsletters as well as seminar organization and food and transportation allowances for Commission personnel assigned to this project.

These estimates are the most accurate ones available at this time and reflect previous experience with these expenses incurred by IFES and USAID/Malawi. Upon arrival in country and initial project implementation activities, IFES will revise the budget for the expenses named above as appropriate, forwarding the information to AID/W for review and approval.

9. Other Direct Costs. IFES has budgeted for items that will be procured or arranged by the UN secretariat, including 4WD vehicles and drivers, office rent, office supplies, photocopies and an administrative assistant. It is expected that IFES will disburse money to the UNDP, in the budgeted amounts, to pay for the above services and materials.

Vehicles: According to an agreement negotiated between IFES and UNDP, and pending authorization to incur expenses from AID, IFES will use the funds allocated in its budget for three vehicles from the UNDP motor pool, including drivers (paid daily, Sunday and overtime), gasoline, repairs etc for the entire project period. The vehicles will be used by the entire IFES team, either individually or in smaller teams, to travel throughout Malawi as necessary to fulfill the project objectives.

General and Administrative Expenses

10. IFES' approved G/A rate is 42%.

Technical Assistance Project: Malawi

Grant :
 Period : November 1 - June 1, 1994
 Prepared as of: 22-Sep-93

Line Item	Quantity/Unit	Rate	Subtotal	Total	N O T E
HOME OFFICE SUPPORT					
Salaries				\$16,200	1
Chief of Staff	1 person	50 /hours	34	1,700	
Program Director	1 person	180 /hours	25	4,500	
Program Officer/Proj Mgr	1 person	550 /hours	14	7,700	
Finance/Acct/Admin	1 group	160 /hours	25	4,000	
Other Direct Costs				4,000	2
Local Transportation	1 unit	4 /months	100	400	
Communications	1 unit	4 /months	500	2,000	
Postage	1 unit	4 /months	175	700	
Supplies	1 unit	4 /months	200	800	
Bank Charges	1 unit	1 /project	100	100	
Total Home Office Support				<u>\$20,200</u>	
ON-SITE ACTIVITIES				\$81,672	3
Consulting/Report Writing					
Election Administration Advisor	1 person	90 /days	332	29,860	
Voter Registration Advisor	1 person	78 /days	332	25,896	
Public Information Specialist	1 person	78 /days	332	25,896	
Travel/Airfare				27,834	4
Project Manager	1 person	2 /trip	4,639	9,278	
Election Administration Advisor	1 person	2 /trip	4,639	9,278	
Voter Registration Advisor	1 person	1 /trip	4,639	4,639	
Public Information Specialist	1 person	1 /trip	4,639	4,639	
Visas/Inoculations	4 people	1 /trip	160	640	
SOS Coverage	3 person	4 /months	40	480	
SOS Coverage	1 person	3 /months	40	120	
DBA (Elec. Adm)	1 person	1 /contract		1,778	
DBA (Voter Reg.)	1 person	1 /contract		1,541	
DBA (Public Info)	1 person	1 /contract		1,541	
DBA (Project Manager)	1 person	3 /months		458	
Excess Baggage	1 unit	1 /trip	500	500	
Per-diem				58,371	5
Washington	3 people	2 /days	141	846	
Amsterdam	4 people	2 /days	202	1,616	
Lilongwe (Proj Mgr)	1 person	77 /days	163	12,551	
Lilongwe (Elec Adm)	1 person	96 /days	163	15,974	
Lilongwe (Voter Reg/Public Info)	2 people	64 /days	163	27,384	
Election Adm Advice/Training				25,000	6
Program Costs (e.g., election procedures manuals, training space rental, supplies, food/transport costs)					
Voter Registration Program Costs (e.g., voter's cards, photographs, data-entry personnel, computer hardware/software rental)				35,000	7
Public Information Program Costs (e.g., publication/production costs, seminar space rental)				30,000	8
Other Direct Costs				54,800	9
Vehicle and Driver	3 units	4 /months	3,000	36,000	
Office supplies	1 unit	4 /months	2,000	8,000	
Computer Expenses	4 unit	4 /months	350	5,800	
Copying (office)	1 unit	4 /months	500	2,000	
FAX/telephone	1 unit	4 /months	200	800	
Postage	1 unit	4 /months	600	2,400	
Total On-Site Technical Assistance				<u>\$312,677</u>	
Total Direct Project Costs				<u>\$332,677</u>	
General and Administrative Expenses					
0.42 on project activities and support				\$139,808	10
TOTAL PROJECT COSTS				<u>\$472,685</u>	

Program Officer Approval: [Signature] Date: 9/22/93
 Program Director Approval: [Signature] Date: 9/22/93
 Finance Director Approval: [Signature] Date: 9/22/93

Annex E (3)

THE MALAWI HUMAN RIGHTS MOVEMENT

DRAFT PROPOSAL

PREAMBLE

There is an urgent need for a full-time Human Rights body to actively engage in the development of a Human Rights culture in Malawi.

This need, so apparent after many instances of Human Rights abuse in the past, is no less important during a period of political and social change, such as Malawi is experiencing at present, or thereafter.

In response to this need, the Christian Council of Malawi has launched a Human Rights desk, with assistance from USAID. The rev. Chande Mhone has been appointed to co-ordinate the initiative and he is presently in the process of setting up an office in the CCM headquarters in Lilongwe. It is this desk which can be expanded into the Human Rights movement of Malawi as described below.

BASIC CHARACTERISTICS OF THE ORGANISATION

In order to be an effective Human Rights organisation, the Malawi Human Rights movement must be broadly based, without allegiance to any particular political, church, social or regional grouping. In addition, the style of the organisation must be consultative at all levels.

These qualities must be reflected in the structure and functioning of the organisation.

Such basic requirements do not in any way detract from the role which CCM is playing at present. The reality is that CCM has taken the initiative, found seed-funding, seconded a member to co-ordinate the work and provided premises at which to begin. The active role of CCM at this stage need not be a problem as long as other groupings are also drawn into the process; this is in fact already happening.

AIM

The aim of the organisation is the development of a Human Rights culture throughout Malawi.

PUTTING THE AIM INTO PRACTICE

This can be achieved constructively by:-

1. Education about Human Rights
2. Education about basic legal rights ("street law")
3. Monitoring Human Rights abuses
4. Lobbying for Human Rights protection and legal reform.

This can be achieved reactively by:-

1. Legal advice work
2. Legal assistance and intervention and referral

3. Litigation (civil and criminal court work)
4. Mediation/facilitation/negotiation.

All stages of the organisation's work should be preceded by and carried out with extensive consultation at all levels. The work of the organisation, in order to be effective, should be accepted and 'owned' by the people whom it affects.

ORGANISATIONAL STRUCTURE

What follows here is a suggested prototype structure. The organisational principles and priorities will inevitably have to be adapted to prevailing circumstances and resources.

NATIONAL HR FORUM

NATIONAL HR CO-ORDINATOR

REGIONAL HR FORUMS

REGIONAL HR FIELDWORKERS

1. NATIONAL HR FORUM

This is a body consisting of persons of influence and status in the country who actively support the promotion of a human rights culture. These persons may be drawn from any part of society but are usually legal professionals, church representatives, socially concerned persons - not persons with high political profiles which may endanger the impartiality of the organisation.

This body may be elected from and by the regional HR forums on an annual basis.

The function of the National HR Forum is to encourage by its influence the growth of a Human Rights culture, to raise the profile of Human Rights issues, to lobby and debate Human Rights issues, to be active on behalf of Human Rights in matters of constitutional and legal reform, to support and monitor the national co-ordinator, to promote and keep an eye on the organisation as a whole.

2. NATIONAL HR CO-ORDINATOR

The work of this person is to co-ordinate and supervise all the activities of the organisation. He/she must see to it that the organisation is functioning effectively in the achievement of its aim.

More specifically, he/she will initiate national activities and programmes and campaigns and see to their execution, supervise and assist the work of the regional organisers and forums, liaise with the National HR forum, co-ordinate all aspects of the organisation's work.

The National Co-ordinator should have a thorough understanding of Human Rights issues and must embody in himself/herself the marks of a Human Rights culture - in particular the awareness of the importance of grass-roots activity; in addition he/she will need paralegal, educational, public relations and administrative skills.

To do the above the National co-ordinator will need a secretary/assistant.

3. REGIONAL HR FORUMS

These are regional counterparts of the National HR Forum. Their work is to promote a Human Rights culture in their region and to support and monitor the work of the regional organiser. The persons serving on these forums should be elected (probably informally) by various communities in the region and provide a broad representation of regional community interests. Persons with legal skills should be included on the regional forums if possible. Members of the National HR Forum will be elected annually by and from the regional forums.

4. REGIONAL HR FIELDWORKERS

The work of these persons is to develop a Human Rights culture on a regional level, assisted by the regional HR forums.

More specifically, they will carry out all activities of the organisation in the regions, liase with the National Co-ordinator, liase with the Regional HR Forum.

Such persons should have paralegal training, educational and basic administrative skills.

5. THE COMMUNITY LEVEL

If funds and other circumstances permit, the above national and regional structures may be duplicated at community level - i.e. With community HR forums and community HR organisers.

6. LEGAL ASSISTENCE

It is also proposed that a group of legal practitioners be identified who have a commitment to public interest law. The developmental aspects of the organisation's work need to be backed up by legal muscle and such practitioners can assist the organisation with legal advice and miscellaneous legal interventions as well as litigation.

In this respect it is envisaged that a litigation fund be established to fund certain human rights cases and that, in addition, such practitioners donate their services on a pro-bono basis to deal with cases not covered by the litigation fund.

DETAILS OF THE ORGANISATIONAL ACTIVITIES

The heading above entitled 'Putting the aim into practice' can now be dealt with in more detail:-

1. HUMAN RIGHTS EDUCATION

Human rights education involves teaching people what their inherent human rights are and how these are expressed and enforced within a healthy, democratic environment. It will introduce various international human rights charters and analyse the state of the human rights culture in Malawi. Various issues presently being debated in human rights

circles can also be dealt with, such as the status of second and third generation human rights.

In the light of possible elections in the near future, it is likely that particular emphasis will be placed on voter education, political tolerance, free and fair elections and similar issues.

Human Rights education can be carried out by courses, workshops, seminars etc. at national, regional and community levels. Teaching materials can be developed.

The work will primarily be the responsibility of the national HR co-ordinator and the regional HR fieldworkers but can be carried out by a variety of persons with the necessary skills.

In order to do Human Rights education effectively, the training of staff is of utmost importance. In addition, basic educational tools such as the supply of teaching materials and transport and advertising facilities must be available.

2. STREET LAW EDUCATION

This work involves empowering people by giving them an awareness of their basic legal rights which in turn enables them to assert such rights when they are threatened.

Most of what is set out above in connection with the teaching of Human Rights education is applicable to street law education as well.

3. MONITORING HUMAN RIGHTS ABUSES

This involves training people to recognize Human Rights abuses (primarily by education as in 1 & 2 above); it further involves setting up observing and reporting mechanisms. Channels of communication are important as is the ability to make contact with legal practitioners who can challenge any such abuses by representations and/or litigation.

The information will be collected by the national co-ordinator and regional fieldworkers but provision of the information in the first instance will need watchful eyes at all levels; local churchworkers and teachers are particularly well placed in this regard.

4. LOBBYING

Here we are speaking about influencing public opinion and persuading legislators and other authorities to promote Human Rights and protect against abuses. Although this activity is carried on at all levels, it most obviously involves strategies by highly-placed influential citizens - often legal practitioners and academics - to monitor and lobby legislative bodies in favour of Human Rights.

5 & 6. LEGAL ADVICE, ASSISTENCE, INTERVENTION, REFERRAL

Legal advice is the supplying of advice in respect of individual and community problems, usually by the national co-ordinator or the regional fieldworkers.

Where the problems do not involve Human Rights issues the person or community concerned can be referred to the appropriate agency which can deal with the problem.

Where Human Rights issues are involved and simple advice is

insufficient then the advice worker can follow up the matter himself/herself or, where necessary, refer the matter to a legal practitioner.

Training in basic legal rights is important for the advice worker. So also is having appropriate paralegal skills such as statement-taking, communication, networking and the basic material resources like an office, stationary, telephone etc.

7. LITIGATION

This will involve the legal practitioners referred to above under the heading of 'Organisational Structure - 6.'

Access to the legal profession and the ability to provide adequate instructions for the practitioner concerned is necessary for the proper carrying out of this task.

8. MEDIATION ETC.

These are alternative methods of dispute resolution which are often cheaper and more effective than litigation.

This work can be done by the national HR co-ordinator or the regional HR fieldworkers if they have the skill and training. If not, other community members (such as church workers) or members of the legal profession should become involved.

THE FOCUS OF HUMAN RIGHTS WORK

Human rights work covers a vast field. Essentially it means becoming involved whenever there is an abuse of a person's basic rights.

It may be appropriate, however, to identify certain areas where abuses are common and to target organisational activities into those areas. Thus, in light of Malawi's past experience, it may be appropriate to focus on arbitrary arrest and detention, torture in custody, prison conditions, police brutality, disappearances, land allocation etc.; in the light of Malawi's present situation it may be necessary to focus on free and fair elections, voter education, constitutional issues and a bill of rights. Examples of other possible relevant issues include women's rights, children's rights, rights of the disabled, legal representation, law reform etc.

The particular focus of activity will depend on the prevailing circumstances and the organisation's resources.

RESOURCES

Optimally the organisation should have whatever is necessary for it to function effectively. The better the resources, the more effective the work can be, the greater the area covered and the number of people reached. But human rights work is not dependant on sophisticated equipment. It must be acknowledged that funds and other resources are likely to be limited, at least temporarily, and priorities should be established.

Basic ingredients for this work are human resources such as committed HR workers, training, communication and networking. Also necessary are premises, basic office equipment, telephone,

fax, copier and transport. After that one can think in terms of other specialised equipment and extra specialised staff such as educators, community paralegals, research personnel etc.

BUILDING UP THE ORGANISATION: THE INITIAL STAGES

At present the organisation consists of one National HR co-ordinator, his secretary and an empty office - all available for one year.

It is necessary to use and add to this infrastructure to build up the organisation's capacity and structure in a solid and democratic way.

1. A beginning is already being made with consultations at various levels. Legal practitioners, churchfolk, academics, trade unionists and community workers are being canvassed about the work of the organisation. It is crucial that the organisation continue to consult thoroughly throughout its existence as such consultation is the inevitable style of any Human Rights body.
2. Consultants have been brought in from Lawyers for Human Rights, a South African Human Rights organisation with considerable relevant experience, in order to advise on the setting up of the organisation. This was with the generous help of USIS in Malawi.
The consultants and the national HR co-ordinator consulted extensively in the three main regions of the country with legal, religious and political figures and this informed the strategy set out below.
- 3(a) In the initial stages it is likely that much of what is envisaged in the early parts of this document will simply not be practical - mainly because of the time needed to obtain proper funding. It is important that in the meantime the national HR co-ordinator continue with his work in building up the organisation with whatever resources he has at hand. It is better that the organisation limits the scope of its activities than be too ambitious and spread itself too thinly.
- (b) The co-ordinator can begin by formalizing his already extensive network of contacts.
At a legal professional level more practitioners are to be informed of the organisation's work and drawn into advisory and lobbying work as well as litigation in so far as funds permit. Academics and students should also become involved, especially in educational aspects of the work and constitutional issues.
At a regional and community level priests and other church workers provide a very thorough network of available resources.
The co-ordinator can select appropriate persons from the above to serve on a HR Forum to assist and advise him in his work.
- (c) The co-ordinator can embark on an extensive information

drive to all the abovementioned contacts - primarily by means of regular newsletters backed up with occasional personal visits. In this way he will begin the process of educating the community about the organisation and about Human Rights issues; he will thus also formalise the organisation's reporting and monitoring base in an effective way and begin the process of identifying and training local paralegals, some of whom may eventually work as regional or community fieldworkers in the organisation.

- (d) In addition to the above the co-ordinator can run occasional workshops and seminars on Human Rights education, street law, paralegal skills etc. He may also initiate campaigns and other strategies for the development of a Human Rights awareness.
It is particularly important that emerging political parties be encouraged to place Human Rights issues on their public agenda.
 - (e) Other aspects of the work such as lobbying, litigation, research etc can be dealt with as time and funds permit.
 - (f) It would be a good idea if the organisation could be launched with a high-profile campaign and conference in order to publicize its presence and its work.
4. Training of the national HR co-ordinator is essential. In addition to teaching himself and obtaining materials from the abovementioned consultants and other sources, the co-ordinator could benefit greatly from attending courses - possibly outside the country - and he should try to secure assistance from outside sources if possible.
5. Funding for at least the basic operational needs referred to above (see 'Resources') is urgent and any assistance in this respect should be welcomed and pursued.
A budget proposal is attached to this document and is organised into two sections, namely funding required for the initial stage and funding required for the full operation of the organisation (as set out in the early parts of this document). Actual funding may occur at any stage along the range from basic requirements (initial stage) to full operational needs, depending on the capacity of the funders.

POSTSCRIPT

Human Rights work takes patience, courage, resilience and perseverance. These human qualities are present in abundance in Malawi. It will be a great service to the country to use these qualities to provide a voice for the voiceless, a shield for the unprotected and a conscience for those in authority.

With appropriate human and financial support there is no reason why this organisation should not play such a role.

MALAWI HUMAN RIGHTS MOVEMENT
BUDGET PROPOSAL

A. INITIAL STAGE

CAPITAL EXPENDITURE

Office desk & chair }
Reception desk & chair }
Visitors chairs (6) }
Filing cabinet
Bookshelf
Notice board
Teaching whiteboard
Electric fan
Heater
Word processor & printer -
Photocopier
Fax machine
Sundry office equipment
Vehicle
Launch of organisation

RECURRING EXPENDITURE

Travel expenses (fuel)
Vehicle maintenance
Vehicle insurance, license etc.
Office insurance
Stationary
Postage
Telephone, fax, electricity
Literature & subscriptions
Hospitality/compassion allowance
Litigation fund
Training/conferences/workshops
Housing allowance (co-ordinator)
Housing allowance (secretary)
Administration charge (5%)

B. FULL OPERATIONAL STAGE

Should the organisation expand into full operation as envisaged in the draft proposal, there will be regional offices as well as the office of the national HR co-ordinator. The number of regional offices depends on the need and availability of funds.

Optimally, there should be a regional office in each of the country's three main regions, thus making four offices in all. It should be borne in mind, however, that the National office and the office of the central region could share certain resources such as copier and fax.

ECM Annex E (4)

PUBLIC AFFAIRS COMMITTEE (PAC)

P.O. Box 30738
Capital City
Lilongwe 3
Malawi

Tel: (265) 743 485 / 743 398
Fax: (265) 743 051

1st July, 1993

PROPOSAL FOR EDUCATION FOR PARTICIPATORY DEMOCRACY (EPD) AND PAC GENERAL ELECTIONS MONITORING (PACGEM) PROGRAMMES

1. BACKGROUND TO PROJECT

1.1 THE PUBLIC AFFAIRS COMMITTEE

The Public Affairs Committee is a powerful broad based alliance that represents the oppressed people in Malawi at the negotiating table and is spear-headed by the Religious Community in Malawi. It is comprised of influential pro-democracy organisations and Churches that include the Roman Catholic Church (the Episcopal Conference of Malawi - ECM), the Protestant Churches (the Christian Council of Malawi - CCM) the General Synod of the Church of Central Africa Presbyterian, Muslim Association of Malawi, the Associated Chambers of Commerce, the Malawi Law Society and other interested political parties.

- 1.2 PAC takes cognisance of previous incessant struggles for democracy spear-headed by its members in the referendum for multipartism and affirms that these struggles must continue until they are concretized.
- 1.3 PAC intends to draw and implement civic education program to promote contemporary democratic process in Malawi using all available platforms channels of all its constituents.

- 1.4 To achieve these goals, the PAC and its donor partners decided to establish a secretariat to facilitate a cohesive implementation of the program during the referendum. The secretariat will play a vital role during the peak activity period preceding the General Elections and continuing activities thereafter, for an initial program period of twelve months, from 1st October 1993.
- 1.5 PAC continues to appeal to all its members to avail their existing structures (whenever necessary) in order to assist the implementation of the anticipated goals.
- 1.6 To concretize its ideas PAC has compiled a project proposal setting out guidelines towards understanding specifics and logistics of the civic education and election monitoring programs.

2. II. PROJECT SUMMARY

The program will reach and teach Malawi people about multiparty elections and sustainability of a democratic culture thereafter. The program will play a key catalytic role in the democratization of Malawi by developing National, Regional and grassroot institutional structures for dealing with issues of democracy, human rights and justice. Many individuals, organisations, external and internal, have constantly called for the education of the rural and urban electoral and the entire society. The Malawi Catholic Bishops, the Presbyterian Church, Christian Council of Malawi, the Muslim Community and Malawi Law Society, activists, NGOs and many other advocacy groups in the period before the repealing of the notorious "section 4" placed a strong emphasis on an organized civic education on participatory democracy. In the aftermath of the referendum his call has been resoundingly and unanimously repeated.

3. III. PROBLEM STATEMENT

3.1 ANALYSIS

After years of acrimonious and risky struggle for a more accountable, transparent and just government in Malawi led by Christian Churches, the

Muslim Community, the Malawi Law Society, individual citizens and external forces opposed to corruption and economic disintegration, the ruling party (Malawi Congress Party) and its government succumbed reluctantly to the reintroduction of a multiparty political system in Malawi on June 14, 1993. The first multiparty elections in nearly 30 years will be held within the next six to nine months, perhaps earlier.

There are only a few Malawians, most of them in their 60s, who have ever participated in multiparty elections. There are even fewer who have any useful memory of how a multiparty election is organized and conducted. This is presently the most serious threat to the process of democratization in Malawi as unscrupulous politicians are exploiting public ignorance about membership of political parties, voting for a particular party, individual etc. There are therefore dangerous possibilities that a multiparty election could lead to an even more undemocratic government elected through petty bribery, opportunism and intimidation of ignorant citizens.

The viability and strength of our democratic process will depend on an electorate that knows the value of the vote and is able to use it to promote their socio-economic goals. The EPD program was formed in 1992 to prevent perversion of democracy and to accelerate the development of a democratic environment.

3.2. THE COUNTRY

Malawi is divided into 24 Administrative Districts and about 140 political constituencies each represented in Parliament by one member. More than 90 per cent of members represent rural constituencies as the main cities (Lilongwe, Blantyre and Mzuzu) account for only 12 constituencies. The rulers of Malawi are therefore elected by rural voters.

3.3 THE RELIGIOUS COMMUNITY IN MALAWI

The country is largely (over 70 per cent) Christian represented by the Roman Catholic and Protestant Churches. Muslims form a substantial religious community in Malawi especially along the southern shore of Lake Malawi and also in urban areas.

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In that sense, therefore, Malawi rulers are elected mainly by christians and Muslims. The religious community has responsibility in ensuring that its members create an accountable and just government and, indeed, corruption in Malawi politics is partly evidence of failure of the churches' influence on political morality.

IV. PROJECT DESCRIPTION

4.1 PROJECT GOALS

The goal of this project is an expression of solidarity with the poor ,the oppressed and marginalized persons in their struggle for meaningful participation in decision making processes in their families, micro-communities, and upwards to the social macro level. The program aims at enabling the electorate to play its part in working towards the vision of a just and cohesive society: to reduce the ever increasing gap between the rich and the poor, the vocal and voiceless the powerful and the powerless. The PAC recognizes that the Malawi people should be conscientized as to their rights to political self expression and be protected from manipulation by unscrupulous politicians.

In the past political manipulation has been cheaply bought with money by those who obtained it corruptly from government and private institutions. Now the religious community should play an active role in educating the people on how to protect their rights at this transitional period to break the vicious cycle of immoral economic slavery and bribery.

An immediate goal of the programme will be to provide adequate awareness and constitutional skills in order to expose and highlight the abuse of the democratization process e.g. dishing out money and favours and possible manipulation and rigging of elections, intimidation of the opposition, harassment, misuse and monopoly of public media by MCP Government.

4.2 OBJECTIVES

4.2.1 The specific objectives of the EPD program shall continue to be:

1. To raise awareness about justice, freedom, participation, human dignity, moral order, unity, love, responsible accountability, transparency, leadership and critical political thinking in the people of Malawi.
2. To build a critical culture of democracy - by familiarising people with the constitution and methods of proper governance.
3. To provide political empowerment of rural electorate (the majority of whom are women and the youth) through civic education.
4. To educate Malawians on how multi-party elections are conducted so that voters know what to encounter on an election day.
5. To restore confidence in the ballot box as a method of recruiting leaders.
6. To educate the general public on how to relate to their basic needs (food, water, health and education) to politics, political representation and elections.
7. To educate the electorate on the role of a democratic Parliament and the value of democratic freedoms.
8. To promote the democratization of socio-political-economic life after years of dictatorship, exploitation and manipulation.
9. To critically re-examine the constitution and institute necessary reform so as to accommodate Democratic political Pluralism.
10. To act as an inter-parties forum for the general development of our political system.

4.2.2 **THE SPECIFIC OBJECTIVES OF ELECTIONS MONITORING PROGRAM**

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A. DOMESTIC MONITORING

1. To co-ordinate the training of all the participants in the monitoring process.
2. To liaise with the other international organisations interested in the monitoring of elections in Malawi.
3. To spearhead the mobilization of human and material resources required to undertake the monitoring exercise.
4. To register and give identification of volunteers responsible for various elections monitoring and civic education activities.
5. To promote and facilitate a peaceful atmosphere leading to free and fair elections.
6. To address issues that may hinder or frustrate the freeness and fairness of elections.
7. To keep records of all communications, data and lists of individuals involved in the election monitoring exercise.
8. To educate voters about the Electoral Act, the Electoral Regulations and procedures and help confidence in the secrecy of the ballot.
9. To act as a central Clearing house for the monitoring exercise.
10. To declare the Committee's opinion on whether the elections were free and fair.

**B. INTERNATIONAL VISITORS PROGRAMME /ELECTION OBSERVER
MISSION**

The importance of this component was made evident in the referendum. This

component shall fulfil the following :

1. To ensure that an independent, impartial and objective report evaluating the electoral process is prepared.
2. To encourage participation in the electoral process by undertaking to report any significant manipulation of the electoral process.
3. Assist in ensuring the integrity of the electoral process.
4. Evaluate the general human rights situation which may bear upon the legitimacy of the electoral process.

4.2.3 **ACTIVITIES**

PAC is envisioning a training program for participatory democracy similar to current existing development education programs like Development Education for Leadership Teams in Action (DELTA), Women in National Development of Women (WINDOW), Achieving Balanced Community Development, Training of Trainers (TOT) etc. These programs employ psycho-social approach whereby facilitators stimulate a discussion rather than provide ready made answers. The formation program for training trainers and animators will have three phases, spaced within three months, each a three day course. Workshop participants will review the proposed content which includes sections on law, constitution, social analysis and Theology. Every training session will be accompanied by printed materials for distribution and followed by the publication of the proceedings. In addition it is expected that the coordinators will establish their own priorities and agenda relevant to felt needs of their respective constituencies. Grassroot groups are expected to organize mock elections, film shows thematic discussions and dramatizations, distribution of pamphlets, posters, leaflets, tapes etc. At other levels civic education animators will facilitate debates on constituent and electoral issues both locally and at National levels, radio programme and maintain a concerted training of opinion leaders.

PROJECT JUSTIFICATION

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PAC notes with satisfaction the strong demands the Malawi people are making towards the establishment of genuine and effective democracy. Many positive developments can be observed; the emerging of political parties to compete in the forthcoming elections; the return of political exiles, nonpartisan civic organizations have begun to address the need for civic education; government agencies are contemplating operational changes to adjust to the new circumstances i.e. accountability, transparency and dialogue. Yet the committee is concerned that the political and social environment remains tense and polarized. There seems to be little if any dialogue among upcoming opposing political parties, and between the parties and the incumbent government.

On another level this project represents an important opportunity for the religious community to harness their enormous influence and unleash it for the benefit of the society. The religious community have always been on sentry guard for human rights. They have been partners in human development in Malawi. It is only fair now that they exploit the contemporary opportunity to address the retrogressive causes of underdevelopment, oppression, exploitation and depowerment.

6. TARGET POPULATION AND INSTITUTIONS

The direct beneficiaries of the program will be participants of workshops, seminars, symposia, villagers, constituents, civic-education co-ordinators, churches, institutions, professional groups etc. In the long run, the entire country will benefit from a more increased role of participatory democracy brought about by the PAC. The religious community wield enormous influence in Malawi and this program will help them to be more effective advocates for democracy, justice, harmony, human dignity and freedom. Moreover multiparty general elections are expected very soon. Therefore it is urgent to embark on civic education immediately.

Specifically the civic-education program will target the following groups:

a) The Rural Electorate, Women and Youth

These are the population sectors most affected by ignorance about multiparty electoral systems and, most vulnerable to poor representation. They form over 75% of the electorate in Malawi.

b) Urban Poor

They are the most vulnerable targets for petty bribery and misinformation.

c) Upcoming Political Parties

They have to be educated in the art of political contest without which political pluralism may degenerate into political conflicts.

d) Advocacy Groups

Advocacy Groups for various community and professional interests which are essential players in a democratic society and need education on how to promote their causes in a democratic environment.

7. ACTION PLAN

7.1 PROJECT ACTIVITIES

The PAC objectives will be promoted through the following programmatic activities:

- a) Mobilization of human and material resources required to undertake education and motivation of target population.
- b) To identify suitable experts both locally and abroad on multiparty election organization and procedures as resource persons at seminars, workshops, etc.
- e) To publish and distribute posters, pamphlets, brochures and leaflets etc

for the purpose of education and information.

- f) To develop films for public education through mobile cinemas.
- g) To hire radio time to educate the public on election issues.
- h) To train local chiefs who will ensure fairness and justice during the general elections.

8. PROJECT MONITORING

8.1 PERIODIC ASSESSMENT

The secretariat will submit to PACa monthly financial report followed by a quarterly narrative report on the program. Each report will assess:

- Workshop programming, and material development and distribution, their utilization level and distribution of experts.
- Level of attendance at the training sessions by leaders, professionals, the poor, institutional representatives, activists, party members, community members and others.
- Evaluation by the participants about what they learned and new awareness created as a result of workshops, seminars, symposia, drama, pamphlets, posters and other learning events.
- Specific resolutions arrived at during the learning events related to institutional structures for human rights and democratic praxis.
- New issues identified which PAC or justice and peace commissions should address.

~~Emergence and sustenance of communal dissent as a nurture to democracy.~~

9. EVALUATION

PAC should hold a major evaluation event after six months to reassess and revitalize the program. Donors and external participants should be encouraged to attend this evaluation. Financial reports should be made available to the donor agencies every three months. Due to the big size of the project a formal evaluation should be planned and facilitated by trained personnel and consultants. PAC will within a month from the expire of the programme present one final financial and narrative report. Individual participants who will excel in the program should be identified for future needs and should be recommended to assist in other African countries involved in democratization.

9.1 ORGANIZATION

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The PAC Executive Committee

PAC, EPD AND PACGEM
National Coordinating Committee

Education Development
Committee

Secretariat

Education
Material Dev.

Civic Education
Co-ordinators

Administration
and Finance

Deanery
Committees

Constituency
Forum

Workshops
Seminars

Parish
Centre

- | | | |
|---|--|---|
| <ul style="list-style-type: none"> - To organise mock elections, - To distribute pamphlets, posters, leaflets, etc. - To organise film shows, etc. | <ul style="list-style-type: none"> - To debate Constituency and electoral issues both locally and at National level - Radio Programs | <ul style="list-style-type: none"> - To train trainers and opinion leaders - To train election monitors |
|---|--|---|

10. REQUIRED RESOURCES

a) Human Resources

- | - | Full Time Employees | Contract duration |
|---|-------------------------------|-------------------|
| - | National Co-ordinator | (1 year) |
| - | Deputy National Co-ordinator | (1 year) |
| - | Regional Co-ordinators (3) | (1 year) |
| - | Accountant | (1 year) |
| - | Editor | (1 year) |
| - | Co-ordinators (25) | (6 months) |
| - | Secretary (1) | (1 year) |
| - | Drivers (4) | (1 year) |
| - | Messenger and Cleaner (2) | (1 year) |
| - | Hired for specific Assignment | |
| - | Artists/ Cartoonists | |
| - | Development Economists | |
| - | Lawyers | |
| - | Elections experts | |
| - | Educationists | |
| - | Doctors | |
| - | Theologians | |

Voluntary

- Civic education animators

b) Physical Resources (PACGEM offices)-

- Office space 200 Sq. ft. (Rent)
- Furniture:
- Office Equipment:

c) Facilities and services to be hired

- It will be necessary to augment transportation capacity during election day to be able to visit as many polling stations as possible by hiring 6-10 vehicles;
- Radio time
- Halls for workshops, symposia
- Facilitators
- Teaching aids e.g. Video sets - Provide line in budget
- Mobile cinema time
- Accommodation for facilitators and participants in workshops

d) Other Items

- Refreshments
- Travel and meals for facilitators and participants in training workshops
- Expenses of Executive Committee meetings
- General Recurrent Expenses

e) Financial Resources

Secretariat Personnel

Personnel salaries are calculated based on salary scales of church organizations currently. They include: Basic Salary, House allowance, Medical (individual hospitalization and surgery) and Gratuity at the end of the contract.

SUBMITTED BY;

REV. E. CHINKWITA
ACTING CHAIRMAN PAC

FINANCIAL BREAKDOWN**1. a) Salaries 6 months - Voter Education**

	<u>Basic Salary</u>	<u>House all.</u>	<u>15% Insurance</u>
Editor	\$2,250.00	\$1,125.00	\$338.00
Accountant	2,625.00	1,313.00	394.00
Receptionist/Typist	600.00	225.00	68.00
General Duties Clerks (2)	1,200.00	300.00	90.00
Messenger/cleaner (2)	600.00	300.00	90.00
Security Guards (2)	<u>1,875.00</u>	<u>938.00</u>	<u>281.00</u>
Sub Total	US \$9,150.00	\$4,201.00	\$1,261.00

b) Salaries 6 months unless stated - Electoral Monitoring and civic education animator

	<u>Basic Salary</u>	<u>House All.</u>	<u>15% Insurance</u>
Consultant (s)	\$ 3,000.00	\$500.00	\$450.00
National Coordinators (2)*	4,500.00	2,250.00	675.00
Regional Coordinators (3) **	1,800.00	900.00	270.00
District Coordinators (25)**	11,000.00	5,500.00	-
Secretary	1,500.00	750.00	225.00
Civic			
Ed. Animators (3000)***	150,000.00	-	-
Drivers (5)	<u>1,875.00</u>	<u>938.00</u>	<u>281.00</u>
Sub Total	US \$173,675.00	US \$10,838.00	US \$1,901.00

* 1 visitor & voter education programme, ** 3 months, *** 1 month: lunch allowance to volunteers.

2. Subsistence Allowance

Designated officers 84 nights @ \$50.00 4,200.00

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Other officers 50 nights @ \$18 per night	900.00
Junior Officers, drivers etc. 30 nights @ \$15 per night	<u>450.00</u>
Sub Total	US \$5,550.00

3. **Books and Periodicals**

Reference Books	US \$3,000.00
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4. **Printing and Stationery**

Computer paper	US \$2,000.00
Photocopying Paper	500.00
Duplicating Paper	800.00
Typing Paper	800.00
Stencils	1,000.00
Duplicating ink	90.00
Toner tubes	2,050.00
Draft pads	40.00
Pens and pencils	80.00
Envelopes	650.00
Paper clips	120.00
Typewriter ribbons	80.00
Staples	30.00
Flat files	<u>450.00</u>
Sub Total	US \$8,690.00

5. **Publications (Printing Costs) (4 million voters)**

A Guide to election monitoring handbook	US \$10,000.00
Voters handbook	40,000.00
African Human Rights Charter	15,000.00
Brochures (What is the Election etc)	10,000.00
Posters	10,000.00

Forum Magazine	5,000.00
Media Adverts	5,000.00
Art work	<u>2,000.00</u>
Sub Total	US \$97,000.00

* All Africa Conference of Churches funded

6. **General Re-Current Expenditure**

Rent of premises	US \$12,000.00
Vehicle running	US \$25,000.00
Vehicle maintenance	5,000.00
Insurance	5,000.00
Telecoms	3,300.00
Halls for meetings	5,000.00
Local air travel	3,000.00
General equipment - service/maintenance	<u>950.00</u>
Sub Total	US \$59,250.00

7. **Meeting Expenses**

Conferences, seminars (Training for Trainers),
Co-ordinating Committee meetings, allowances (facilitators)
hotel accommodation (facilitators, consultants) US \$80,000.00

8. **Contingencies**

Total budget evaluation exercise, emergency meetings
service charges etc.

9. **Total Project Cost**

1. a) Salaries: Basic Salary	9,150.00
House Allowance	4,201.00
15% Insurance	1,261.00
b) Salaries: Basic Salary	173,675.00
House Allowance	10,838.00
15% Insurance	1,901.00

3.	Subsistence Allowance	5,550.00
4.	Books and Periodicals	3,000.00
5.	Printing and Stationery	8,690.00
6.	Publications	97,000.00
7.	General Re-Current Expenditure	59,250.00
8.	Meeting Expenses	80,000.00
9.	Contingencies	<u>20,000.00</u>
	Total Cost	US \$474,516.00

PUBLIC AFFAIRS COMMITTEE (PAC)

P.O. Box 30738
Capital City
Lilongwe 3
Malawi

Tel: (265) 743 485/ 743 398
Fax: (265) 743 051

PROPOSAL FOR WORKSHOP ON MULTIPARTY SYSTEMS : WORKSHOP 1.

BACKGRO UND TO PAC

1. The Public Affairs Committee is a broad based alliance that represents the oppressed people in Malawi at the negotiating table with the government and is spearheaded by the churches. It is comprised of influential pro-democracy organisations and churches that include the Roman Catholic and the protestant churches. The christian churches, commanding a following of about 80% of the country's population, wield enormous influence in Malawi and are well placed for the dissemination of civic education. The PAC also includes the Muslim Association of Malawi (MAM), the Associated Chambers of Commerce and Industry, the Malawi Law Society and the new political parties: the United Democratic Front (UDF) , Alliance for Democracy (AFORD) , United Front for Multi-party Democracy (UFMD), Malawi National Democratic party (MNDP) and the Malawi Democratic party (MDP).

PROJECT PLAN AND SUGGESTED ACTIVITIES

2. PAC is drawing up and intends to implement a civic education program to promote the contemporary democratic process in Malawi using all available platforms and channels of all its constituents. One aspect of this is for PAC to act as an inter-parties forum for the general development of our political system. The basic and most effective approach towards this end is through training or orientation workshops for dynamic leaders in society i.e political, church and professional leaders. In the long term the civic education training would cover targets at a more grassroots level.

3. As an umbrella organisation for the political parties PAC has a duty to promote the culture of democracy through these parties. Basic training in internal democratic organisation (inner-party-democracy) , inter-party relations and financial organisation are areas that PAC feels should be adressed soon to ensure a conducive environment for a successful democratic transition and consolidation. Having been under a one-party sysyem for so long the workshops would be the most comprehensive and practical fora in which participants would learn political party processes. The ideal time for the first workshop would be the end of October or early November.

4. Through the parties and other advocacy groups related to it , and which are listed as participants for the proposed training workshops, PAC aims at reaching the masses. These include The rural electorate, women and youth who are the population sectors most affected by ignorance about multi-party electoral systems and most vulnerable to poor representation. They form over 75% of the electorate in Malawi. Another group is the urban poor who are vulnerable to petty bribery and misinformation.

5. There will be need to identify suitable experts both locally and abroad on the multiparty systems and organisation to serve as facilitators at the training workshops.

6. There will be need to include the media in future workshops because of the important role they play in promoting awareness and education.

7. After the workshop, financial and possibly narrative reports will be compiled by the PAC secretariat as according to the requirements of donors. PAC should hold a major revaluation event after a year to re-asses and revitalize all the programmes in its overall project proposal.

SUBMITTED BY:


REV. E. CHINKWITA PHIRI
PAC CHAIRMAN.

PROPOSAL FOR WORKSHOP ON MULTIPARTY SYSTEMS: WORKSHOP 1

A) Participants:

<u>NAME</u>	<u>NO.</u>
1. United Democratic Front (UDF)	3
2. Alliance for Democracy (Aford)	3
3. Malawi Congress Party (MCP)	3
4. Malawi National Democratic Party (MNDP)	3
5. Malawi Democratic Party (MDP)	3
6. United Front for Multi-party Democracy (UFMD)	3
7. Episcopal Conference of Malawi (ECM)	3
8. Christian Council of Malawi (CCM)	3
9. Muslim Association of Malawi (MAM)	3
10. Law Society of Malawi (LSM)	3
11. Chambers of Commerce and Industry	3
12. Christian Health Association of Malawi (CHAM)	2
13. Christian Service Committee (CSC)	2
14. PACREM National Co-ordinators	2
15. PACREM regional Co-ordinators	3
16. Administrative staff	7
17. Public Affairs Committee (PAC)	<u>3</u>
TOTAL	<u>54</u>

B) Venue and suggested date:

- Kalikuti Hotel, Lilongwe; 20-22 October, 1993.

C) Costs:

1. Charges for hiring Auditorium, 2 days @ K300.00 per day K 600.00
2. Accomodation plus breakfast
54 x K250.00 per night x 3 nights plus 10% govt tax,
10% service charge K48,600.000

3. Meals- K25 per meal x 54 x 5 meals	K 6,750.00
4. Transport costs:	
a) Blantyre - Lilongwe, 30 people x K70 x 2 (return)	K 4,200.00
b) Lilongwe (local), 20 people x K25	K 500.00
c) Mzuzu - Lilongwe , 14 people x K85 x 2	K 2,380.00
5. Per Diem, 54 x K200.00	K 21,600.00
6. Administrative costs:	
a) stationery	K 6,000.00
b) phones, faxes	K 3,000.00
c) fuels	K 2,000.00
7. Beverages (teas etc), 54 x K10 per day x 2 days	K 1,080.00
8. Planning ;Secretarial and Final Report costs	K 1,500.00
9. Facilitators' allowances, 3 x K600.00	K 1,800.00
	<hr/>
TOTAL	K 89,210.00
10% contingency	
	<u>K 8,921.00</u>
GRAND TOTAL:	K 98,131.00
NOTE: (MK4.00 = US \$1)	US \$22,302.50

Annex E (S)

CIVIL LIBERTIES COMMITTEE

Kandodo Building
 Top Floor
 Victoria Avenue
 P/Bag 55 or P. O. Box 2074
 Blantyre, Malawi
 Tel: 636 190
 Fax: (265) 623 494

DATE: 08/16/93
 ACTION TO: []
 INFO: PDD
 Your Ref: []
 Date: 12TH AUGUST 1993
 DUE DATE: 08/20/93
 ACTION TAKEN: []
 INITIALS: []
 DATE: []

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CONT
LYO
LSO
MPN
MRDD
PAE
PID

Our Ref:

RE: FINANCIAL ASSISTANCE

Attached to this letter is our outline project proposal. We are seeking financial support for institutional building. As per budget estimates we require MK 319,400 to get ourselves established as a viable office. Of this we are seeking MK 319,400.00 (US\$ 70847) while MK 60000.00 (US\$ 13309) will be our local contributions.

We are a new lobbying group committed to the issues of basic human rights and civil liberties. We have planned to mount educational campaigns - educating the masses about their human rights and civil liberties. We believe that the majority of the Malawians are ignorant of their rights and that the Government has in the past "deliberately" allowed that ignorant to persist. We are of the view that the checking of abuses of human rights can only be done with the concerted efforts of all citizens. However, ignorant citizens can not check any abuses. Hence our planned educational campaign.

Specifically we would like to hold seminars, workshops, public lectures and print pamphlets on various laws as well as make press releases.

We will also in genuine cases lobby for compensation of those who have been or will be victims of abuses. We will further lobby for either amendment or repealing of laws that do not create a conducive environment.

To achieve all we need an office, manned by a competent person who can be able to do the work outlined on a day to day basis. This work load is enormous and we feel it can not be effectively done by voluntary services of members which is the case at the moment. Secondly, because we want to be documenting a lot of data collected we need a computer for the work. We also need a person who can do all the secretarial services accruing.

Your assistance to enable us get established as an institution will be highly appreciated. We hope therefore that our proposal will be considered. Looking forward to hearing from you.

Yours faithfully

CIVIL LIBERTIES COMMITTEE

Kandodo Building
Top Floor
Victoria Avenue
P/Bag 55 or P. O. Box 2074
Blantyre, Malawi
Tel: 636 190
Fax: (265) 623 494

Our Ref:

Your Ref:

Date: 10TH AUGUST 1993

OUTLINE PROJECT PROPOSAL

INTRODUCTION

This proposed project is for setting up and carrying out a Civil Liberties Programme by the Civil Liberties Committee. The Programme is to be primarily educational - informing the country's general public about the national and international basic human rights; informing the national and international community about the abuses of the same. It is also intended that where abuses have genuinely occurred the Committee should lobby for compensation. The person responsible will be the Secretary of the Committee, P.O. Box 2074, Blantyre to whom all communications should be addressed.

BACK GROUND

1. Throughout Malawi, since last year, there has been strong evidence of abuse and violation of citizens' human rights and civil liberties. The evidence last year resulted in the donor community suspending development aid pending the government doing something about its poor record in ensuring basic respect of human rights, e.g. freedom of speech and press and freedom of association, release or trial of detainees, better conditions in the prisons. The abuses also accounted for the springing up of political opposition (to the Government) within the country for the first time. In nearly thirty years both the suspension of (2) (External Pressure) and the growing opposition (internal pressure) culminated in the government amending some of the sections in the constitution that provided a climate of human rights abuses. The Government also called for referendum the results of which has meant that Malawi can now have a multi-party system of Government since the 14th of June 1993.

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2. There is strong evidence (General consensus) that the majority of Malawians remain ignorant about their basic rights and civil liberties. The ignorance has largely been due to the 29 years of repressive rule by the government. For 29 years Malawians continued to live in an atmosphere of fear and apprehension, hatred and suspicion; unable to speak out on matters that affected their daily lives. This fear and apprehension and stifled freedom of speech was not only among the ruled (the masses). It was also in the civil service, the press, the judiciary, the police, indeed the very people who are supposed to execute justice.
3. However, now the Malawians are beginning to re-assert their fundamental basic rights. There is growing evidence of the mushrooming of freedom of the press especially among non-Government controlled media. Citizens have started to take the Government to court of law claiming compensation for their violated rights, the lawyers (especially those in private practice) facilitating these claims. This re-assertion is nevertheless limited to the urban (elite) sector, who either have the awareness or the money or both. The majority (the lowly paid, the unemployed and the rural masses) are yet to re-assert in a big way their fundamental basic rights.
4. The task of facilitating the need for the re-assertion of people's basic freedom has been carried out by persons of various professions. These have included theologians (the Catholic Bishops), lawyers, businessmen, human rights activists, politicians and development workers. These persons have certainly achieved a lot for the country especially in making the Government amend some sections of the constitution and in calling for a referendum on multi-party politics.
5. However, the task of facilitating this re-assertion remains far from either reaching the climax or being finished. With the change of the country's political climate (i.e. the majority of Malawians voting for a multi-party system of government) it is the conviction of the (newly formed) Civil Liberties Committee that this is the good time

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for the Committee to promote the rule of law and respect of human rights (i.e. the civil liberties) with concerted efforts from citizens of Malawi and groups (Organisations) who wish and are willing to uphold the fundamental rights and freedom of individuals. This proposed programme is one such way of promoting people's civil liberties.

SPECIFIC OBJECTIVES

Two stages are envisaged for the Programme.

First Stage

The Committee will aim at setting up an office (the Secretariat) and hire a full time Administrative Secretary who will be responsible for carrying out the tasks assigned to him/her by the Committee.

Second Stage

Following the setting up of the Office the committee will embark on its proposed Civil Liberties Programme. This stage will have the following on-going objectives:

1. To promote public legal education and research on human rights.
2. To disseminate information on Civil Liberties to the citizens of Malawi.
3. To document, publicize and disseminate information on abuses of human rights.
4. To lobby in genuine cases for compensation on behalf of victims of human rights abuses or for reform following such abuses or before they occur.
5. To initiate and support activities that are designed to promote respect for and protection of individual liberties.

LOCAL CONTRIBUTIONS

1. The Committee will use services of its members in such areas as gathering information, representing victims of human rights abuses in courts of law and in all of its educational programmes which will include organising public lectures, production of pamphlets on various subjects and organising seminars and workshops.
2. The Committee will meet some of the costs of travels of persons assigned duties.

SPECIFIC NEEDS

1. Funding for setting up an office of the Committee.
2. Funding for salary of the Administrative Secretary and his travels in organising and following up contact persons, issues.
3. Funding for organising a library.

PROPOSED BUDGET

REQUESTED FUNDING

1. Personnel			
	<u>Salaries / Wages</u>		
(1) Director		MK 5,000	MK 60 000
(1) Administrative Secretary		MK 1,000/M	MK 21,000.00
(1) Messenger		200/M	2,400.00
(1) <u> fringe benefits</u>			
Medical insurances		150/M	1,800.00
2. Non Personnel			
(1) <u>Space costs</u>			
Lease of office		MK 3,000/M	MK 36,000.00

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(b) Purchase of equipment

(i)	Desktop computer		MK 50,000.00
(ii)	Photocopier		25,000.00
(iii)	Fax machine		10,000.00
(iv)	Type writer		15,000.00
(v)	Furniture		15,000.00

(c) Travel

Local travels	MK 1 500/M	18,000.00
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(d) Others

(i)	Litigation and lobbying expenses	2,000/M	30,000.00
(ii)	Library acquisitions including subscriptions to periodicals	2,000/M	6,000.00
(iii)	Electricity	100/M	1,200.00
(iv)	Telephone	1,000/M	<u>12,000.00</u>

Total of funds requested MK319,400.00

LOCAL CONTRIBUTIONS

(i)	Services of various members	MK 4,000/M	MK 48,000.00
(ii)	Local transport	1,000/M	<u>12,000.00</u>

Total of local contribution MK 60,000.00

Annex E (6)

LEGAL RESOURCES CENTRE

CONCEPT PAPER

SEPTEMBER 1993

INTRODUCTION

This Concept paper is intended to seek financial and technical support from interested donors to cover a period of 5 years for the establishment and development of the Legal Resources Centre (L.R.C). The assistance will enable the L.R.C. to get established and offer its various services to the Malawi Nation in the promotion of human rights and the rule of law; through legal representation of indigent and low income groups and legal education to all Malawians.

2 PROJECT RATIONALE

It is common knowledge that recently the Malawi Government has been the target of tremendous pressure from both within and outside the country because of its abuse of human rights. A lot of people have suffered in various ways due to the following :-

- repressive laws which have disregarded the various international declarations on human rights such as the African Charter on Human Rights as well as the United Nations Universal Declaration on Human Rights;
- lack of access to legal representation by low income group since the service is expensive;
- lack of knowledge of human rights by the Malawi populace.

For the emerging democracy it is the view of the ~~Law~~ Legal Resource Centre that there is need for the setting up of a structure like the LRC to ensure that the violations of human rights are prevented and the rule of law is observed by government and/or any other organisation/institution in this country.

3 THE LEGAL RESOURCES' CENTRE

This is a project which was initiated by the Law Society of Malawi with the purpose of providing legal assistance to indigent and low income Malawians as well as providing education to all Malawians about their legal system and rights. Priority in the legal resources centre is on the advancement of knowledge on basic human rights. The LRC will be a non-profit making and Non Governmental Organisation (NGO) incorporated under the Trustees incorporation Act of the Laws of Malawi.

It will have its Board of Trustees with representation from a Cross-Section of the Malawian Society. The Board of Trustees of the Legal Resources Centre will have representatives from the following :-

- The Law Society of Malawi
- The Christian Council of Malawi
- The Business Community (Associated Chambers of Commerce and Industry)
- The Muslim Association of Malawi
- Women Organisations
- Government
- Independent

It intends to provide its services through collaboration with all individuals and organisations concerned with the protection of human rights and the rule of law on the local and the international scene.

4 PROJECT GOALS

The LRCs aim is to promote understanding and observation of human rights and the rule of law so that Malawians of all races live in a free environment that is conducive to socio-economic development through :-

- (a) The provision of Legal Representation for indigent and low income Malawians who can not afford the cost of legal services.
- (b) Provision of legal and human rights education to all Malawians.
- (c) Influencing legal reforms through research which will help to identify areas in the Laws of Malawi i.e. Acts of Parliament, Bye Laws etc. which violate Human Rights.
- (d) Proposing amendments and legislation in such areas as mentioned in 4 (c) above to those responsible for making such laws.

5 STRATEGIES FOR ACHIEVEMENT OF PROJECT GOALS

(a) LEGAL REPRESENTATION OF INDIGENT AND LOW INCOME GROUPS :-

- Collaborate with the Law Society of Malawi in the creation of the Pro Bono Panel composed of lawyers from the LRC and members of the Law Society of Malawi and any other interested lawyers who will provide legal representation to indigent and low income groups.

The LRC will provide the Pro Bono Panel with clerical, investigation and research support.

- LRC will establish a Trust Fund to cover costs.

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(D) LEGAL EDUCATION AND TRAINING

Training

The LRC will participate in both public legal education and continuing legal education for legal practitioners, the general public including young people (Street Law). The LRC will organise legal education programs, especially in the area of human rights for Malawians. It will make efforts to train law students and legal practitioners and members of the public regarding their responsibilities to the community. This will be done through the following strategy :-

- (1) - identify training needs of the public organisations, as well as legal practitioners, particularly in the area of human rights law,
- develop training materials, and
- disseminate training material through training programmes as well as through other educators.

(11) Library

The LRC will establish a library which will cater for the members of the public, organisations and legal practitioners. The library will stock books, research bulletins, video tapes and other forms of media with particular emphasis on matters related to human rights. The library will also document a referral list of other resources and organisations which may be of service to clients in appropriate cases.

(iii) Publications

A half yearly magazine will be published. It will contain articles on the activities of the LRC as well as contributions from the general public, organisations, as well as legal practitioners on legal and human rights issues.

(c) LEGAL REFORMS

The LRC will seek to reform laws which on impinge or violate human rights in Malawi. These efforts will take the form of educating members of parliament and the public on the need for law reform, as well as drafting proposed legislation.

(d) RESEARCH DEVELOPMENT

The LRC will conduct research on human rights issues and document as well as publish findings whenever necessary for the benefit of their clientele.

6 EXPECTED PROJECT OUTPUTS

(1) Establishment of the Legal Resources Centre

- * Recruitment of personnel in addition to the Director and Secretary who are already in place by June, 1994. the staffing position will be as follows :-

1 Director
4 Lawyers
1 Finance Officer
1 Secretary
1 Law Secretary
1 Clerk
2 Drivers
2 Messengers

- * Incorporation of the Legal Resources Centre by November 1993.

(11) Staff Development

This will include induction and functional training through local (Malawi) and international workshops, courses and study tours based on the identified needs. This will be on a continuous basis throughout the 5 year project period.

(11:1) Technical Assistance

(a) Personnel

12 man months service of an advisor to the Director utilised on a break-basis by the end of 1996. The advisor will provide guidance to the Director on the establishment process of the LPC, as well as its operations and staff development.

(b) Commodities

The following commodities will have been procured and being utilised by June 1994 :-

- * 4 Computers with printers and software package (Accounting, Lawyers, (Research), Secretary and Library).
- * 3 Photocopiers (Administration, Lawyers and Library) SF 7500 and SF 3300 (Sharp Plain paper copier)
- * 1 Type electronic typewriters (with memory).
- * 1 Laptop computer with a printer

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- * 2 Four wheel drive motor vehicles (1 station wagon and 1 double cabin pick-up).
- * 1 guillotine (paper cutter)
- * 1 Video deck and TV Screen
- * 1 Video Camera
- * 2 Flip chart stands
- * 1 Overhead projector
- * 1 Fax machine
- * 1 Book binder (Manual)
- * 10 Filing cabinets
- * 25 Bookshelves
- * 6 Tables for the Library
- * 10 Office desks
- * 40 Chairs for the Office and training
- * 2 Coffee tables
- * 6 Single sofa chairs for Director's office and reception
- * 2 Heavy duty staplers
- * 2 Heavy duty paper punching machines

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- * 6 Staplers
- * 6 Punching machines
- * Books for the Library including Laws of Malawi
- * Stationery (paper, files folders, clips etc).

(iv) Administrative costs

- Office accommodation acquired on rental basis by November 1993 (K109,650)
- All staff accommodation in rented premises by June 1994.
- Construction of offices and information centre (Library) completed by June 1995. (K1,000,000) including land and buildings plus landscaping.

(v) Operating expenses

(a) Legal representation

- * 1040 cases of indigent and low income Malawians legally represented by end of 1997
- * Trust fund will be in place by end of June 1994

(b) * 10 Workshops courses and tours conducted for staff within Malawi

- * 15 personnel participated in workshops courses and study tours outside Malawi by end of 1997.
- * 100,000 members of the public trained on human rights issues by end of 1997.

- * 24 TOT workshops legal practitioners and educators trained (TOTs on legal education) in human rights law by end of 1997.

(c) Library

- * The library will have served 100 pa clients from the public by end of 1997.
- * The library will have served 100 for 5 years corporate clients by end of 1997.

(d) Quarterly Magazine

- * 10 editions will have been published by end of 1997.

(e) Research

- * 15 Research projects will have been conducted, documented and published by end of 1997.

(f) Legal reforms

- * 10 Courses, workshops conducted for members of parliament on legal reforms and human rights by end of 1997.
- * Appropriate legal reform proposals developed for parliamentary consideration.

ANNEX F

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MSF, 2085-08

Annex F

BY FACSIMILE

To: MR. MICHAEL HEYN
Resident Representative
UNDP - Malawi
Fax: (265) 783 637

From: James O.C. Jonah
Under-Secretary-General
Department of Political

Dear Mr. Heyn,

Enclosed please find a copy of the JIOG report on the Malawi National Referendum. As promised at the national debriefing on 17 June, we will incorporate the comments of JIOG observers in Section VII of the report. Please note that we have not included the annexes with this text, but they will be provided with the final report.

We would appreciate it if you would provide copies to the donor group for their review and comments and ask them if they might transmit the report to those observers which they sponsored, for their review. We would appreciate receiving all comments by 15 September 1993.

Best regards.

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1993

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SIGNATURE *James O.C. Jonah* DATE: 17/8/93

James O.C. Jonah, USG/DPA

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MSE 2085-08

REPORT OF THE JOINT INTERNATIONAL OBSERVER GROUP
ON THE MALAWI NATIONAL REFERENDUM
(14 JUNE 1993)

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IV. Quick Count Results
V. Official Summary of the 1993 Referendum Results
VI. Legal Framework

**REPORT OF THE
JOINT INTERNATIONAL OBSERVER GROUP
MALAWI NATIONAL REFERENDUM**

I. INTRODUCTION

1. On 14 June 1993, 210 observers from over 11 countries gathered under the umbrella of the Joint International Observer Group (JIOG) to observe the National Referendum in Malawi. This was the last phase of a three month operation which also included technical assistance to the Referendum Commission and observation of registration and the referendum campaign.
2. Over 3.1 million Malawians voted, representing 78% of the adult population. The referendum served as an opportunity to choose between movement to a multi-party system or a continuation of the single party system of government under the Malawi Congress Party. The multi-party option won with some 63% of the vote.
3. The JIOG issued two brief statements (Annex II), the first concerning the registration process and the second on the conduct of the 14 June poll. The vote was considered an accurate expression of the wishes of the Malawi people, although concern was expressed that conditions in the pre-referendum period were not always conducive to a fair and open debate. Several groups of observers within the JIOG issued individual statements (Annex III).
4. The complexity and richness of an entire referendum process cannot, however, be encapsulated in a brief statement or qualified with a simple scale of freedom and fairness. As a result, the JIOG established a small drafting committee in order to prepare a more detailed report which would address the many significant components of the referendum process. Members of the Drafting Committee were: Mr. Horacio Boneo, Director, United Nations Electoral Assistance Unit, Ms. Robin Ludwig, Co-ordinator, United Nations Electoral Assistance Secretariat-Malawi, Mr. Joe Hanlon, Association of European Parliamentarians for Southern

Africa (AWIPA) and Mr. Christian Nadeau, International Foundation for Electoral Systems (IFES).

5. This report was circulated among the Governments and organizations which sponsored observers. Their comments and further opinions are provided in Section VII of the report.
6. This report is divided into seven major sections. The Introduction is followed by a section which outlines the various options for international observation and details the particular methodology used in the observation of the Malawi National Referendum. Section III describes the unfolding of the referendum process, followed by Sections IV and V which detail the events of referendum day and the final results. Section VI outlines the first discussions of transitional arrangements and mechanisms which will be instrumental to further democratic development within Malawi. The final section provides the comments and reactions of JIOG participants to this report. Several annexes are also provided: a) a list of JIOG participants, b) statements issued by the JIOG on the conduct of registration and the referendum, c) statements issued by various observer groups on the referendum, d) quick count results, e) official summary of the 1993 referendum results, and d) a review of the legal framework which governed the conduct of the referendum.
7. The JIOG would like to express appreciation to the National Referendum Commission, the Office of the Referendum Supervisor and the Office of the President and Cabinet for their cooperation and assistance in the conduct of the international observation of the Malawi National Referendum.

II. OBSERVATION METHODOLOGY

8. Over the past decade, the United Nations and other international organizations have received increasing requests from governments for electoral assistance. Such assistance must be tailored to suit the particular needs of a country and the electoral process envisioned; these needs range from the organization and conduct of elections to the provision of specific and limited technical assistance or training. Based on recent experience, effective electoral assistance frequently requires the allocation of financial and material resources which exceed the means available to any individual country or organization. As a result, efforts are being made to develop greater international cooperation in the planning and conduct of such missions.

9. A variety of observation formats has been utilized, each providing a different type of coverage. Most extensive is the organization and conduct of an election as undertaken by the United Nations in Namibia and more recently in Cambodia. Such coverage provides an international presence throughout the electoral process; however, it is prohibitively expensive, difficult to organize and extremely time-consuming. Alternatives to the organization and conduct of elections are supervision or verification missions as were conducted by the United Nations together with the Organization of American States (OAS) in Nicaragua and more recently by the United Nations in Angola. Although such missions require somewhat less time and preparation, they, too, are expensive and difficult to organize. All three of these types of United Nations electoral assistance require a formal mandate from the Security Council or General Assembly.

A. Coordination and support

10. A more recent and less formal option for electoral observation is the provision of coordination and support for international observers sponsored by a variety of governments and organizations. This observation approach is relatively economical, requires less lead-time than other types of operations and distributes financial and personnel costs across all participating sponsors. This approach was first used by the United Nations in Ethiopia in 1992 and later in Kenya and Lesotho. In each case, the United Nations provided a small secretariat which served as the coordinating centre of international observers for election day. Such an approach does not require a formal mandate from the General Assembly or Security Council.

11. Coordination and support was defined by the Secretary-General in his report to the 47th General Assembly on Enhancing the effectiveness of the principle of periodic and genuine elections (A/47/668, Add. 1). In most cases, donor countries and non-governmental organizations (NGOs) send a small number of observers in response to a government invitation. Their motives vary; some send observers to show support for a process which is generally seen as democratic, while others send observers due to a lack of confidence in the freedom and fairness of the process and in the expectation that observers will provide an objective evaluation of the election. From the perspective of the host country, an important consequence of the international observer presence is the building of voter confidence in the electoral process.

12. Observer delegations are usually small, arrive shortly before polling day with little or no preparation and generally have no logistical support except that which may be provided by their respective embassies. There have, however, been a few cases in which groups have established long-term observation missions which included several early visits in order to follow the evolution of the situation such as Hemispheric Initiatives in Nicaragua. These missions were

large enough to allow satisfactory coverage of electoral events and had adequate resources to be self-sufficient. In Kenya, for example, the Commonwealth Secretariat and the International Republican Institute fielded observer teams as large as that coordinated by the United Nations. In that case, the three groups operated independently. However, such missions are an exception to the general practice.

13. A primary purpose of a coordination and support operation is to create an effective and integrated observer network out of a number of small delegations from abroad. In some cases, the observer group can be supplemented with locally-based international volunteers who have an affiliation with the United Nations, embassies, bilateral aid missions or NGOs. Locally-based volunteers were first used in Nicaragua; these were limited to UNDP staff and families. In Haiti the volunteers were expanded to include some NGOs. In Ethiopia and Eritrea, embassy staff and their families were included. There are several advantages in utilizing resident volunteers: a) they allow the creation of larger observer teams and greater observation coverage; b) their knowledge of the country is very helpful when they are paired with short-term observers arriving from abroad, and c) their participation helps to minimize costs.

14. A central component in the coordination and support approach is the existence of United Nations Development Programme (UNDP) offices in most countries undergoing democratization. In general, the most successful experiences in utilizing the coordination and support approach are those in which the Resident Representative and his staff are willing to support the electoral process under the overall supervision of the Focal Point in electoral matters. There are several reasons for the interest of the Resident Representatives in a successful outcome of the electoral process. First, it is often difficult to implement the regular UNDP work programme in the context of political instability; as a result, the solution of political problems becomes a precondition for the conduct of regular UNDP programme activities within the country. Second, the government will attach high priority to the solution of political/electoral problems, which may be numerous in the case of a first time experience with an electoral process. United Nations assistance may be very welcome to both government and opposition and negotiations may develop at a very high level. Third, donor countries normally share an interest similar to UNDP and are usually well disposed towards financing the operation.

15. There are three basic elements to the coordination and support approach. First, a sufficient number of countries and NGOs must indicate their intention to send observers and it must be evident that the observer activities would benefit from the establishment of a coordination and support mechanism. If this is the case, the second element in this approach is the establishment of a small Secretariat to serve as the nucleus of the joint observation effort. The Secretariat should normally include at least one officer from the UN Electoral Assistance

Unit, contract personnel as necessary, and representatives of the countries or organizations most interested in the observation. Finally, resources must be made available in order to organize the necessary support for observers. Even when the travel and living expenses of observers are covered by sponsoring governments or organizations, certain common costs such as Secretariat costs, transport rental and preparation and purchase of observer materials will be incurred on behalf of the entire observation.

16. Two additional elements are important to facilitate the coordination and support approach: a) the creation of a consultative group of countries and organizations sponsoring observers, and b) agreement on reporting mechanisms. The consultative group may meet on a regular basis or designate a smaller executive committee to meet more frequently. With regard to reporting, each observer or group of observers can prepare and issue reports in accordance with their established reporting procedures. The only restrictions associated with participation in the observer group are that no reports be released prior to polling day which might affect its conduct or result and that statements should not be attributed to the larger group. The joint observer group may issue an agreed statement after the poll, but this is not essential.

B. The National Referendum in Malawi: More than just polling day

17. Despite the many financial and organizational advantages of the coordination and support approach, one disadvantage has been the almost exclusive focus of observers on the events of a single election day. Based on the observation of only the immediate electoral period, it is very difficult to assess, based on secondary sources, the general climate and conditions which have preceded that time and which exercise considerable influence over the campaign and actual conduct of the poll. Past experience with coordination and support missions had suggested that a longer-term observation could prove beneficial both to the electoral process as it occurred and to a more realistic assessment of progress toward greater democratization.

18. In Malawi, the coordination and support methodology was adapted and applied for the first time to create an extended electoral mission. A United Nations Electoral Assistance Secretariat (UNEAS) was established almost three months prior to referendum day and observer coverage began with registration, continued through the campaign and concluded with the conduct of the referendum. The longer-term observation allowed more realistic assessment of the electoral process as well as offering an opportunity for technical advice and assistance at various stages. The Malawi experience provides a useful precedent for future electoral support by the United Nations Electoral Assistance Unit.

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19. The UNEAS opened its headquarters in late March 1993 at the UNDP office in Lilongwe. Its initial staff consisted of a Coordinator from the U.N. Electoral Assistance Unit, Department of Political Affairs, and a Logistics Consultant. Five additional professional staff arrived at end-April and beginning May. These experts, provided by the Foundation for Electoral Systems (IFES), were responsible for civic education and poll worker training. The Secretariat had five basic tasks: coordination of international observers, technical advice and assistance to the National Referendum Commission, poll worker training and civic education. In late May the Secretariat also assumed responsibility for the procurement of referendum materials.
20. The international observation was based on the establishment of three regional observer offices in Blantyre, Lilongwe and Mzuzu. The first observers arrived 12 April in order to observe the registration process. As additional observers arrived and departed over the next two months, deployments were made to the three regions as required. The number of observers present varied from 16 during the April registration period to over 210 on 14 June. Based on observer reports during the registration and campaign periods, the UNEAS Coordinator monitored the process of referendum preparations, noting particular concerns and considerations based on international practice and consulting the Chairman of the Referendum Commission, the Referendum Supervisor and other relevant officials as appropriate.
21. Regular briefings on UNEAS activities were provided to the Malawi and Lusaka-based international donor community beginning with the establishment of the Secretariat at end-March. Based on consultations with them, it was agreed in early April to establish the Joint International Observer Group (JIOG). The JIOG would be composed of all international observers, regardless of sponsoring government or organization, and would be coordinated and supported by the UNEAS. The JIOG would carry out its observation beginning with registration through the final conduct of referendum day.
22. Together with the United Nations Resident Coordinator, the UNEAS served an occasional facilitation or mediating role, discussing particular aspects of referendum preparations with both sides. This role was particularly significant with regard to the crucial question of the ballot box system to used. In order to assist in resolving this question, the Focal Point transmitted to the Government the United Nations position on the ballot box issue and sponsored the visit of Mr. Adama Dieng, Secretary-General of the International Commission of Jurists, to provide advice to the two sides on the issue. Through his efforts, a solution was achieved which allowed the use of a single ballot box voting system.
23. The UNEAS provided a wide range of assistance to the Referendum Commission, serving a particular role in highlighting common international standards and practice for various aspects

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of the electoral process. The Civic Education expert worked with the Civic Education Sub-Committee of the Referendum Commission, assisting with and initiating a variety of informational activities which formed a comprehensive civic education programme. In addition to poll worker training, the training experts worked closely with the referendum supervisor in defining specific voting procedures which would be used consistently throughout the country. They prepared and distributed the "Official Presiding Officer's Manual" and conducted a series of 25 district level training courses. At various stages prior to the referendum, visiting United Nations experts were invited to advise on various aspects of referendum preparations.

24. Based on the decision in late May to use a single ballot box rather than a two ballot box voting system, questions arose regarding logistics and material requirements. The UNEAS was asked to provide assistance. In this context the UNEAS assumed responsibility for the procurement of over \$500,000 of referendum materials, including 5 million envelopes, 5000 litres of indelible ink, 35,000 identification badges for polling staff and other essential items. All items were delivered to the Referendum Supervisor on 10 June for their further distribution to all districts and polling stations.

25. The UNEAS briefed and deployed some 210 international observers throughout Malawi for the national referendum on 14 June. Regional debriefings and a national debriefing on 17 June provided a country-wide basis on which to assess the conduct of polling day. The JIOG issued a brief statement regarding their observations on referendum day (Annex I). Most observers departed from Malawi by 20 June and the UN Electoral Assistance Secretariat was closed on Friday, 25 June.

III. UNFOLDING OF THE ELECTORAL PROCESS

A. March - October 1992

26. Malawi became a one-party state in 1966 under Dr. H. Kamuzu Banda; in 1971 he became Life President of the country and of the Malawi Congress Party (MCP), and today retains both posts. For many years, little dissent was allowed and no effective opposition emerged. Although there was continued international concern about human rights violations -- notably lack of freedom of expression, detention without trial, and the deaths of opposition figures -- Malawi was generally viewed as stable, peaceful, pro-western and open to foreign investment. By 1991, however, there was a small but growing opposition within the country. International organizations such as Amnesty International and Africa Watch expressed concerns

about human rights violations and, with the end of the cold war, international donors began to pressure the government to improve its record on human rights.

27. An important catalyst of change was the reading, on Sunday, 8 March 1992, of a pastoral letter by the Roman Catholic Bishops in which they said that Malawians lived in "a climate of mistrust and fear. This fear of harassment and mutual suspicion generates a society in which the talents of many lie unused and in which there is little room for initiative." The letter listed a number of concerns: "Academic freedom is seriously restricted; exposing injustices can be considered a betrayal; revealing some evils of our society is seen as slandering the country; monopoly of mass media and censorship prevent the expression of dissenting views; some people have paid dearly for their political opinions."
28. Sixteen thousand copies of the letter were printed and distributed. The statement was declared seditious, making its possession a criminal offense. The Bishops were summoned to talk to the police and an Irish bishop was expelled from the country. A taped discussion, attributed to a meeting of senior MCP officials, was broadcast internationally which revealed their consideration of the possibility of murdering the Bishops. There was an arson attack on the Montfort Fathers' press where the letter was printed. This was the first time that prominent individuals had signed a public criticism of the Government, and the arrests were not enough to stop the growing dissent; anti-government leaflets began to appear more frequently. Government reaction led to the detainment of over 2000 people between March and July 1992.
29. In June a delegation of the World Alliance of Reformed Churches met His Excellency the Life President and appealed for greater respect for human rights. Other Christian churches in Malawi expressed public support for the Bishops' letter.
30. Among those who responded to the recent events was Chakufwa Chihana, Secretary-General of the Malawi-based Southern Africa Trade Union Coordination Council. At the time the bishops' letter was issued, he was attending meetings in Zambia. On his return to Malawi on 6 April, he tried to read a speech in favor of multi-party democracy. He was arrested, and later charged with sedition. He was released on bail on 8 September, but was convicted and jailed on 14 December.
31. Industrial and civil unrest occurred in Blantyre and Limbe for several days in early May and resulted in the deaths of 38 people. Western donors meeting in Paris 11-13 May suspended non-humanitarian assistance because of "the lack of progress in the area of basic freedoms and human rights" and the need for "early implementation of appropriate reforms". They added that

"donors are seeking tangible and irreversible evidence of a basic transformation in the way Malawi approaches these matters, so that there is a fundamental shift in the way human rights in Malawi are viewed."

32. On 25-26 June the government conducted single-party elections for parliament, but registration and voter turn-out were low.
33. The first responses to donor and church appeals for change came in June and July, when at least 19 political prisoners were released. Among them were Matchipisa Munthali, jailed for 26 years, and Aleke Banda, detained for 11 years. His Excellency the Life President agreed to allow representatives of the International Committee for the Red Cross (ICRC) to visit prisons. In August and September many people detained earlier in the year were released. Some changes were made to repressive legislation.
34. In August the Public Affairs Committee (PAC) was formed as an umbrella organisation to press the Government on human rights and social issues. PAC represented a wide range of religious groups (Anglican Church, Muslim Community, Evangelical Baptists, the Episcopal Conference, the Christian Council, and the CCAP general synod) as well as lawyers and business people. A mechanism for discussion was created when the Government established the President's Committee on Dialogue (PCD).
35. Two pressure groups were formed in September: the Alliance for Democracy (AFORD), chaired by Chikufwa Chihana, and the United Democratic Front (UDF), chaired by Bakili Muluzi. Both pressure groups became members of PAC.
36. The first non-partisan newspaper, the "Financial Post", had begun publication in February as a fortnightly business publication. A second, more clearly defined opposition paper, the "Michiru Sun", began in August. The only high quality newspaper printer is the semi-official Blautyre Print, which would not print opposition papers. As a result, opposition papers were printed at Mountfort Press, which had only limited capacity.

B. Plans for a Referendum (October 1992 - March 1993)

37. On 18 October, His Excellency the Life President announced plans to hold a referendum on the issue of a single versus multi-party system of government. The announcement was unexpected. Although international donors had expressed concern for improvement in human

rights, they had not directly opposed the existing single party system. PAC announced its opposition to the referendum and asserted the need for a multi-party election.

38. Four days after the referendum announcement, the Government submitted a request for electoral assistance to the United Nations. A preliminary mission headed by Mr. Horacio Boneo, Director of the UN Electoral Assistance Unit, visited Malawi 15-21 November and submitted a report to the Government on 1 December. Among the recommendations made in the report was the need to establish an independent referendum commission whose composition and mandate would be agreed in advance by both sides. The report noted the importance of freedom of organization, movement, assembly and expression for all groups. The report further noted that PAC and others needed immediate legal recognition as legitimate entities and to be accorded the rights normally reserved for legally recognized associations. It was suggested that the organization of registration and the conduct of civic education would require at least six months. As a result, it was recommended that the referendum be held in mid-June.

39. At that time, Malawi was the only country which continued to use a voting system based on the British colonial practice of a separate box for each option or candidate. With such a system, the voter, rather than marking a ballot, places a ballot in whichever box represents the desired choice. Many Malawians argued that this system was the best for illiterate voters. But if voting is done in secret, ballot boxes may be easily stuffed with extra ballots or tampered with in other ways. As a result, the United Nations mission recommended the use of a single ballot box.

40. Although PAC, AFORD and UDF expressed their support for the recommendations contained in the United Nations report, the Government response was less favorable. In his New Year message of 31 December, His Excellency the Life President announced a referendum date of 15 March, noting that the decision to hold the referendum was taken in direct response to the decision of donors to cut aid. He did not agree with the United Nations suggestion to use a single ballot box and stated that he would personally choose the members of the referendum commission. Both the Malawi Congress Party and "the dissident groups" would be required to obtain prior permission for all meetings. The only national radio station, the Malawi Broadcasting Corporation (MBC), would report news and events on both sides, but would not be allowed to carry partisan political broadcasts or accept paid political advertising.

41. The creation and composition of the Referendum Commission was formally announced on 11 January. Its composition was criticized by PAC as biased for the single party side. PAC

threatened to boycott the referendum unless a variety of changes were made in the conditions for holding the referendum.

42. The United Nations was invited to send two additional advisory missions in January, one by the Director of the Electoral Assistance Unit and the second by a Legal Advisor from the Centre for Human Rights (CHR). Reports from both missions were submitted to the Government on 27 January. The Electoral Assistance report reiterated that the 15 March referendum date was premature; that a single ballot box system should be used; that the police should not unfairly block opposition meetings; that the referendum commission must include members nominated by PAC; that rules governing the use of MBC "would seem to directly contradict the requirements for a free and fair campaign"; that laws remained in force restricting free assembly and expression.

43. The report prepared by the UNCHR stressed that the Referendum Commission must be independent of Government, noting that "it is axiomatic that, to be truly independent, such a commission must be effectively insulated, during the campaign and referendum period, from all potential avenues of government influence and should not be required to answer to the president". The report also argued that the requirement for prior written permission for public meetings needed to specify precisely on what grounds meetings could be prohibited. Various security laws should be repealed or suspended during the campaign, because they contradicted "the conduct of free and fair referenda" and were "inconsistent with the carrying out of a free and robust public debate during the campaign period" The report stressed that a single ballot box voting system should be used.

44. The reports generated discussion on a variety of issues. A primary concern was the 15 March date which had been set for the referendum. On 29 January United Nations Secretary-General Boutros Boutros-Ghali, in a letter to His Excellency the Life President, urged the postponement of the referendum. On 8 February an announcement was made that the referendum would be postponed to 14 June and the Government suggested that the composition of the Referendum Commission would be modified.

45. Draft referendum regulations had been in circulation since early January and were formally published 8 February. Although they failed to take into account many of the concerns raised in the three United Nations reports, they did acknowledge the existence of four "special interest groups" -- MCP, PAC, AFORD and UDF -- and gave them some limited immunities

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and rights, including the right to have monitors inside polling stations and registration offices.¹

46. On 9 February PCD and PAC met for the first time in over two months. PAC was invited to submit additional candidates for appointment to the Referendum Commission, and on 24 February it submitted eight UDF names and eight AFORD names. On 23 March His Excellency the Life President announced his selection of eight candidates to be added to the Commission (thus not giving the opposition the parity they wanted). However, it was decided to establish an Executive Committee which would be composed of eight members, four from each side. His Excellency the Life President also announced that registration would take place from 3-24 April.

C. Registration

47. Registration originally began on 3 February, but was suspended with the postponement of the referendum. Registration resumed on 3 April and continued through 8 May. The Referendum Commission established 671 new registration centres in order to accommodate the large number of voters, resulting in a total of 2,066 registration and hence, polling centres for the referendum.

48. During the second registration period, JIOG teams visited 275 centres throughout the 25 districts in Malawi. Based on their observations, the registration process was judged by the international observers generally to comply with the relevant articles of the Referendum Regulations. Although inconsistencies and irregularities were noted, these were not attributed to intentional or systematic efforts to influence the result. Observers posted in all three regions confirmed that individuals who were eligible to register were aware of that possibility and knew where and how to do so.

49. Registration took place in schools and, in a few cases, in traditional courts of law. The registration process was straightforward. A person wishing to register would present or state his/her credentials, have his/her name recorded in the register and be issued a registration certificate. Registration clerks were perceived to act in a neutral manner, and, with minor exceptions, no pins, ties or posters were seen which identified registration officials as partisan. Domestic monitors were present at registration centres throughout the registration period.

¹ However, a delegation from the British Overseas Bar Council and other British legal bodies expressed concern with the regulations, stating: "These regulations cannot guarantee a free and fair referendum. The principal problem is to guarantee freedom of expression during the referendum campaign."

Observers frequently commented on the cooperative attitude among registration clerks, domestic monitors and registrants.

50. All registration clerks were civil servants, a majority being teachers. Clerks received one day's training from their district commissioner (DC) prior to registration. The JIOG was impressed by the quality of their work. Centres opened on time and were clearly identified. In most cases, registration books were well maintained and the necessary stationery supplies available. In most instances, international observers were welcomed by the registration staff and domestic monitors without apprehension.

51. Malawians were informed of registration through various means. Radio and campaign activities by the special interest groups were the primary sources of information. Village headmen often played an active role in encouraging registration, and information was provided at church meetings, funerals and other public events. The highest registration numbers were recorded during the third week of the second registration period.

1. How many people registered?

52. The major difficulty encountered with the registration process was the lack of a clear policy regarding the validity of 1992 registration certificates. During the initial registration period, the policy was that a person holding a registration certificate from a previous registration could vote on 14 June "without further procedure" (Section 23 of the regulations), and thus in theory did not need to register again. However, with the resumption of registration in April, it was announced that everyone should visit a registration centre in order to register as a new voter or to validate an earlier registration by checking that their names were still on the list. Questions arose as to whether all people would learn about the change in policy and visit a registration centre. In addition, many people on the 1992 register did visit a centre and were registered again in 1993. Registration officers differed as to the procedure to be followed; some re-validated 1992 certificates while others replaced them with 1993 ones. In some cases 1992 certificates were retained by the registration officials; in other cases the 1992 certificate was returned to the registrant together with a new 1993 certificate. The JIOG concluded that the inconsistent policy resulted from a lack of training regarding the procedure to be followed and when questioned, many registration officers stated that the policy regarding the validity of older certificates had not been explained. Confusion on this issue suggested the importance of consistent and comprehensive polling worker training prior to the referendum.

53. Because of the confusion in the registration process, no definitive statement could be made as to the actual number of people registered to vote. The Referendum Commission gave approximate figures of 2.2 million registered in 1992 and 2.9 million in 1993. In the final result announced by the Referendum Commission on 16 June, the total number of registered voters was given as 4,699,527; this should be the sum of 1992 and 1993 registers. However, the Referendum Commission Secretary, Mr. MacDonald Banda, told a meeting of international observers before polling day that "the correct figure should have been around 3.5 million." This seems the best estimate, because an extrapolation of the 1987 census shows 4 million Malawians age 21 and over in 1992. (The final voter turnout on 14 June was over 3.1 million.)

2. Additional Registration Concerns

54. Other registration issues which caused concern were the determination of eligibility (S.14), duty of the Referendum Commission to promote registration (S.16), single registration (S.17) and the validity of previous registration certificates (S.23). However, none of these issues was of a significance that jeopardized the validity of the process or raised questions as to intentional or systemic efforts to influence the registration result.

55. With regard to eligibility, Malawi nationals over the age of twenty-one were eligible to register at their normal places of residence. Rigorous application of the age criteria was unprecedented and at times problematic; local teachers acting as clerks were helpful in that respect. Registration clerks often relied on their personal knowledge of applicants, advice of domestic monitors and testimonials to assess eligibility. Official forms of identification were more frequently presented in urban areas while in rural areas personal testimonials were common. Despite concerns regarding the possible registration of non-Malawian refugees, the JIOG did not find this a significant issue. In border area centres, nationality was appraised by asking the place of birth and observers noted instances in which Mozambican refugees were turned away. In some centres non-Malawians who had been living in Malawi for over three years were allowed to register. Young mothers were not treated consistently, as some centres considered all mothers eligible adults, regardless of age.

56. A rejection rate of 5-10 individuals per 1,000 registered voters was consistent across all three regions, suggesting that most centres applied the same guidelines. In exceptional cases centres were observed to reject more than 50/1,000.

57. The Referendum Commission was responsible for promoting registration and civic education about the Referendum. Although the number of people registered in 1993 was

significantly higher than in the past, JIOG observers noted that in rural areas, many people did not understand the purpose of registration. When asked, replies included "voting for Kamuzu" and "I come for the census". Since information sources in rural areas are limited, the JIOG concluded that the Commission had not sufficiently informed prospective voters of the purpose of the referendum. An effective civic education programme was to be essential in the remaining weeks prior to the referendum.

58. The Referendum Regulations specified that eligible voters should register only once. Although the JIOG encountered no direct evidence and received few complaints of deliberate double registration, the potential for multiple registrations was evident. Given the lack of consistency in the format and maintenance of registration books, it was often impossible to cross-check registrations between centres. Indeed, many people had both 1992 and 1993 registration certificates. The use of indelible ink on referendum day would be crucial for the prevention of multiple voting.

59. The Referendum Regulations granted the four special interest groups the right to monitor voter registration. Most monitors expressed no difficulty in obtaining certification. The JIOG noted that at most centres there were 2 MCP monitors, and 2-4 monitors representing AFORD, PAC and UDF. The monitors were not observed to be interfering with the process of registration nor was there notable dissension or tension among them. Domestic monitors indicated that they felt able to challenge registration officials' procedures (the determination of eligibility, for instance), but in practice they rarely did, preferring to acquiesce with the officials' decision. Monitors for AFORD, PAC and UDF were trained in a 2 hour session by representatives of PAC. MCP monitors were normally trained by MCP representatives, although some indicated that they had received no training. Monitors kept their own tallies of the numbers registered and, for the most part, had no complaints about the registration process itself.

60. Some international observers received complaints, however, that the presence of MCP monitors (especially if they held relatively senior positions in the party) made some registrants feel that they were being watched, and that their presence was intimidating to some. Monitors cited instances of pressure and intimidation towards people in the villages, but there was little evidence of such at registration centres. Some monitors reported receiving verbal threats and efforts at intimidation. Claims of such activity were received primarily from districts in the the Central and Southern regions.

61. The most common complaint of monitors from all groups was that they had been promised pay for their work and had received nothing. They were frustrated by what they

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viewed as unfulfilled promises; they were also aware that the registration officials were receiving MKW 35 (US\$ 8) a day for their work. However, no hostility towards the officials was discerned. Monitors were on duty between 9 am and 4 pm seven days a week. Some walked long distances; many went without lunch. Whatever their motivation, their dedication was remarkable. Indeed, it should be stressed that the presence of the monitors and their participation in the registration phase granted a high degree of credibility to the entire process.

62. In a statement issued on 24 May (See Annex II), the JIOG concluded that registration was generally conducted in an efficient and orderly manner; people were aware of the registration dates and technically, the registration process was carried out, for the most part, in accordance with the Referendum Regulations. Although inconsistencies and irregularities were noted, these were not attributed to intentional or systematic efforts to influence the result. Registration was only one phase in the entire referendum process; this phase was considered to have been conducted in a satisfactory manner.

D. The Referendum Campaign (April-June 1993)

63. With the announcement of the 14 June referendum date, campaigning began in earnest. Rallies often drew large crowds and were almost always peaceful. However, particularly in the first months of the campaign, multi-party advocates found themselves at a disadvantage compared to the Government and MCP. There were a number of arrests and short detentions of opposition figures, some beatings and two deaths, rallies were banned, and a general climate of intimidation which eased slowly only in April and May.

64. In some areas, opposition figures had considerable difficulty holding meetings. In the Northern Region in February, all opposition meetings were banned during an 11-day presidential tour. A number of meetings were banned or canceled after having been approved. For example, on 30 January in Chiradzulu, several thousand people turned up for a UDF rally authorized by the police to find that the police had withdrawn the permit. In some cases, meetings were approved only if key opposition figures were not allowed on the platform. In contrast, police officials admitted privately to the JIOG that they did not require the MCP to apply for meetings permits.

65. There were also a number of arrests and detentions. In Blantyre, 270 people were detained for five days for participating in a march protesting the sentence passed on Chakufwa Chihana on 20 December. In Blantyre on 1 April, 61 UDF supporters were arrested and held

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for four days for an unauthorized march. Until March, UDF and AFORD members in the Northern Region were arrested simply for wearing multi-party T-shirts; police often called in speakers at multi-party rallies and asked them to explain themselves.

66. Opposition leaders were sometimes detained. In addition to the imprisonment of AFORD Chairman Chihana, UDF Chairman Bakili Muluzi was accused by the Government of stealing MCP money ten years earlier when he was MCP Secretary-General; he was arrested and held for four days prior to his release on bail. Several other leaders in the opposition were arrested and released at various times.

67. Although the JIOG received reports of assaults and threats from all special interest groups, particular concern was registered concerning the activities of the Malawi Young Pioneers (MYPs). The UDF, for example, complained of 10 incidents in March, some involving more than one person, such as MYPs beating several students at Blantyre Polytechnic on 9 March.

68. Reports of intimidation were more widespread. The MCP reported several assaults by opposition supporters, and it is clear that some people were attacked for wearing MCP T-shirts or clothes with pictures of President Banda. The MCP did not, however, suffer the same generalized harassment as the multi-party forces.

69. Although there were general complaints by the opposition that police failed to intervene or investigate incidents, this was not always the case. On 10 December the MCP Dedza District Chairman, Mlombwa Phiri, shot dead Harry Chiteteze, the head of Dedza police, because he refused to arrest multi-party advocates as Phiri demanded. Phiri was later convicted and sentenced to death. The courts began to take a more independent stand; on 29 March the Supreme Court upheld Chihana's conviction but reduced his imprisonment to nine months. And in the northern region, AFORD brought a successful court challenge against the officer-in-charge in Rumphu district to stop him from arresting anyone wearing multi-party materials and refusing multi-party rallies. More political prisoners were also released, including Vera Chirwa in January. She and her husband Orton had been kidnapped from Zambia in 1981; Orton died in prison in October 1992.

70. Media coverage remained problematic. Most Malawians receive their information from the MBC and the only daily newspaper, the government-owned "Daily Times". The referendum regulations stated that on the radio, "no person shall be reported or be heard by his own voice" except the life president; "the content of the news shall be professionally determined by the Malawi Broadcasting Corporation". MBC gave extensive live coverage to presidential speeches

throughout the country in which His Excellency the Life President advocated the continuation of the one-party system, and virtually no coverage was given to multi-party advocates. Opposition newspapers simply could not compete with the much wider circulation of the "Daily Times"; there is no opposition radio.

71. Opposition newspapers also faced problems. One of them, "New Express", tried to beat the printing bottleneck by printing in Zambia. However, its editor, Felix Mpenda Phiri, was arrested when he arrived with the first issue of the new paper on 2 January. He was held for 17 days and then released; the Government never released the newspapers. Subsequent issues were printed in Malawi. On 19 March the AFORD and UDF newspapers "UDF News" and "Malawi Democrat" were banned by the Government; the ban was lifted after a court order. Several other newspapers were launched and there were no reported censorship problems after March.

72. Progress was being made, but several issues continued to affect the conduct of the campaign. On 24 March the European Community issued a statement welcoming "encouraging signs of improvements in Malawi regarding political freedom and respect for human rights and urge(d) the government to continue the democratization process."

73. With the change in the referendum date and the reopening of registration, two key disputes remained between the Government and the multi-party pressure groups: the ballot box system to be used and continued inequity in the treatment of the pressure groups.

1. Solution of the Ballot Box Issue

74. As the campaign progressed, the pressure groups continued to insist on the use of a single ballot box. The single box system had been identified earlier by United Nations experts as the international standard. On 7 May, PAC informed PCD that it would boycott the referendum if two ballot boxes were used, although in an effort to continue dialogue, PAC said no public announcement would be made until the following week. In an effort to assist in reaching a solution, the United Nations offered to sponsor the visit of an international expert to Malawi who would meet and discuss this issue with both sides. This suggestion was accepted by both Government and PAC. The Secretary-General of the International Commission of Jurists, Mr. Adama Dieng, visited Malawi 11-14 May. After intensive discussions with both sides, he proposed the use of one ballot box and two ballot papers, the papers representing the two choices of single or multi-party. This system had been used successfully in Mali, Guinea and Senegal,

as well as in the recent referendum in Eritrea. After further discussion, this proposal was accepted by both sides.

2. Campaigning by Special Interest Groups

75. Campaigning by both sides had started early, and a number of rallies were held prior to registration. Most campaigning occurred between late April (during registration) and 11 June; no campaigning was allowed in the two days prior to the vote. During this phase members of the JIOG were based permanently in each region to observe campaign activities, assess the level of civic education, monitor radio broadcasts and follow-up on a variety of issues and complaints. The JIOG attended over 130 rallies, met with local leaders of special interest groups, public administrators, police, members of parliament and influential community leaders. Villages in rural and remote areas were also visited.
76. Only limited campaigning was carried out through leafletting and posters; there was no paid advertising on the radio or in newspapers. PAC did not hold any public meetings during this period; all their campaigning was carried out through posters advocating multi-partyism.
77. Crowds ranging from 50 to 30,000 attended rallies, which usually lasted several hours. Police were present at the majority of rallies, usually unarmed but in uniform. UDF and AFORD rallies were usually well attended and enthusiastic, even when advertised at short notice. Pressure groups generally lacked the necessary transport facilities and organizational experience to conduct all the scheduled rallies in a timely manner. As a result, some rallies never took place and others began only after a delay of several hours. Generally no or few disturbances by other groups occurred at rallies allowed by the competent authorities; a UDF employee responsible for security at UDF rallies confirmed that at 100 rallies he worked for, only 5 had been disturbed by other partisan groups -- mainly in March.
78. The Malawi Congress Party held rallies regularly, the largest being addressed by His Excellency the Life President. MCP rallies were generally well attended although extremely orderly: the Youth League of the party was commonly used to ensure that no disturbances occurred.
79. Speeches included the arguments in favor of each system of government, regular political messages and civic education on the voting procedure. UDF, AFORD and the MCP were all in violation, to some degree, of the Referendum Regulations which prohibit use of language which is "inflammatory, defamatory, or insulting" (S. 37). Each side accused the other of being

liars or of organizing guerrilla armies. Pressure groups at times ridiculed the Life President and MCP rallies featured songs which included references to multi-party leaders "who will be dealt with" after 14 June. MCP speeches frequently equated multi-partyism with war.

80. Although the campaign in May and June generally proceeded in a peaceful and orderly manner, there were continued problems in three areas: authorization to hold rallies, access to radio and intimidation.

3. Rallies Restricted

81. The Referendum Regulations call for "freedom of assembly" (S. 32, 36) and "equality of treatment" (S. 32, 34). Special interest groups were required by law to obtain a police permit to hold a public meeting. UDF and AFORD faced serious difficulties in obtaining the permits; they were often refused for no valid reason or granted permission only a day before the date of the rally. No rally could be announced without this prior approval. The MCP rarely had to obtain permits for any of its events.

82. There was also a problem of canceled permits. For example, IIOG observers witnessed an incident in which a UDF rally scheduled to take place in Mayani on Saturday 8 May was approved by the police on 30 April, then canceled on the evening of 7 May after it had already been announced on MBC. Participants were not informed and several thousand people turned up.

83. A further source of campaign inequity, particularly during the early stages of the campaign, was the policy that no pressure group rallies could be held anywhere in the country when the Life President was addressing a public meeting. This measure was later modified to prohibit any simultaneous pressure group rallies in the same region where Dr. Banda speaking. This measure was particularly disruptive because the locations of Dr. Banda's rallies were usually withheld until the day prior to the event. As a result, pressure groups could never be sure that rallies scheduled would actually occur.

84. During May, the permit issue was largely resolved. There were usually several rallies of each group held in each District on any given day. The exception was the Northern Region, where the regional prohibition for competing groups to hold rallies during rallies of Dr. Banda remained.

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85. An inequity which remained throughout the campaign was the priority given to the local MCP rallies when dates conflicted. This violated the Referendum Regulations, which stated that a first come, first served principle should be followed for the allocation of rallies (S. 32).

86. There was also a difference between pressure groups and the MCP with respect to the rental of the necessary public address system for rallies. Pressure groups had to pay MKW 200 to rent public address systems from the Ministry of Information and Tourism while the MCP obtained them at no cost. In a few cases, rental of the equipment was totally denied to pressure groups. This created another advantage for one-party system advocates during the campaign.

4. Media Restrictions

87. The JIOG monitored radio broadcasts and newspapers on a regular basis. The Referendum Regulations granted the right to every special interest group to "have the substance of its campaign propaganda reported on radio news broadcasts of the MBC and in any newspaper in circulation in Malawi". The print media was widely circulated in urban areas throughout the whole referendum exercise; at least 15 independent newspapers were being published in early 1993. But according to official figures, 60% of the population of Malawi is illiterate and 75% is rural, so radio rather than newspapers is key.

88. Based largely on the observations of the JIOG, the UN Coordinator communicated periodically with the Chairman of the Referendum Commission in order to raise issues of particular concern. Among these were the lack of balance in MBC programming. The MBC did not "maintain neutrality in the manner of reporting the news of the campaign period" as prescribed by the Referendum Regulations (S. 40.) Only in late April were pressure groups' meetings announced, without mention of their agenda ("UDF will hold public meetings in ... at 13:00"). MCP meetings were regularly announced in advance, and their content was reported on the following news broadcast.

89. In May, MBC coverage of pressure group activities improved, and by June, reporting of arguments in favor of multiparty options became a standard part of news broadcasts ("In a rally in Mangochi Saturday, the Vice-Chairman for AFORD in the Southern Region ... said that voting multiparty means the introduction of transparency and accountability in government"). A limited sampling of news broadcasts in June showed that multi-party advocates received two-thirds of the air time of the single-party advocates.

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90. All of the Life President's rallies were transmitted live on MBC; no pressure group rallies were broadcast. MCP rally broadcasts lasted up to seven hours with dances, songs and speeches by MCP members - all praising the MCP and its leader and condemning multi-party advocates. Excerpts of the speeches were normally re-broadcast later in the evening. These broadcasts preempted any other programme, including civic education programmes of the Referendum Commission. This violated the equality of treatment prescribed by the Referendum Regulations as well as the provision to the effect that no one should be reported or heard in their own voice on the radio (S. 34, 40).

91. Despite the inequality, progress was made in creating a new climate of openness as the referendum day approached. In early June MBC broadcast a debate between the PCD and the PAC on the pros and cons of the Referendum issue. Civic education programmes were also aired regularly. Announcements and other information related to rallies of all the special interest groups were included on a more frequent basis.

5. Intimidation

92. During the campaign period the JIOG invited all victims of harassment or intimidation to submit formal complaints in writing; special forms were provided by observers. This way of proceeding was necessary to obtain verifiable, accurate evidence on the incidents and avoid pure hearsay. The JIOG received over a hundred complaints and reports of intimidation and harassment, originating primarily from the Central and Southern regions. The UDF and the MCP compiled extensive reports on abuses to their supporters and submitted them to the JIOG.

93. A number of cases were very serious and were verified. The most serious were the beating to death of an AFORD supporter, the stoning of an MCP supporter and the dismissal of approximately 30 civil servants for involvement in multi-party political activities.

94. A majority of the dismissed people were teachers who served as domestic monitors for the pressure groups. The political nature of these dismissals was without doubt as some dismissal letters stated that their political activities were a just cause for termination of employment. This was substantiated by administrators on the basis that civil servants have been required by the Government to remain neutral; they have no legal obligation to be so.

95. Other incidents reported included beatings, crop burning, verbal harassment and threats, detention and dismissals. Inevitably, some complaints were hearsay, irrelevant or part of a "regular" campaigning process such as posters being torn down.

96. The JIOG received reports from all sides that competing interests were promising bribes, threats of retaliation or excommunication if the voter did not bring back the appropriate discarded ballot. In response to general concern expressed on all sides regarding such a possibility, several announcements were made on MBC which warned of severe penalties to any person found with a ballot outside the polling station. On polling day, the JIOG found no evidence of people trying to take a discarded ballot home with them.

97. Although the Referendum Regulations called for the preparation of a Code of Conduct, none was ever agreed; pressure groups argued that when the proposed Code was finally submitted it was much too late in the process to have a valid impact.

98. Despite the seriousness of some of the reported incidents, the JIOG found that the position of opposition campaigners improved significantly as the campaign progressed. Furthermore, the campaign period must be placed in the context of Malawi's previous human rights record, with its arbitrary arrests, detention without trial and disappearances. By May Malawi's human rights position had improved markedly and opposition figures were at very much less risk than even a year before. Based on JIOG observations from 23 March until 20 June, and with the exception of the issue of teacher dismissals, there seemed to be no systematic regional or national pattern of intimidation or harassment intended to prevent the expression of an independent choice by the Malawi people.

6. Regional Variations

99. During the referendum campaign, several regional differences were noted from the nature of complaints filed with the JIOG. The most numerous complaints originated in the Northern Region, where multi-party pressure groups often encountered difficulty in holding rallies. In some cases, permission was withheld by the police; in others, scheduled rallies were cancelled due to campaigning by His Excellency the Life President. Local MCP rallies frequently received scheduling priority over multi-party rallies. UDF, for example, was allowed only one rally during the month of May in the Mzuzu District. AFORD successfully took legal action to force the police officer-in-charge to issue the necessary permits; one problematic police officer was then transferred. An excessive police presence at some events, with camouflage battle dress and helmets, was also considered to have an intimidating effect. Campaigning in the Northern Region was the most problematic of the country.

100. Although there were some reported difficulties in holding rallies in the Central Region, the majority of complaints related to intimidation, harassment of domestic monitors, attacks on

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personal property, and beatings. Incidents occurred sporadically, the majority directed at multi-party advocates. Malawi Young Pioneers or people dressed as traditional Nyau dancers were frequently cited as sources of intimidation. Serious threats and attacks were not frequent, though rumors of such incidents were widespread. The most serious incident was the death of a 50-year old multi-party advocate in Mchinji on 16 June following a beating by Malawi Young Pioneers on 17 April. The beating allegedly resulted from his display of the two finger V for victory symbol used by multi-party supporters. The International Committee for the Red Cross was informed.

101. In the Southern Region, the majority of complaints related to detentions and dismissals. Cases of beatings and threats were reported in limited numbers; rally permits were not an issue. The dismissals mentioned above occurred mainly in the Southern Region and a number of civil servants were threatened with a similar fate by local MCP leaders. About 20 people were detained for their activities with pressure groups, conducting unauthorized public meetings or destroying posters of the Life President. The ICG was not informed of any criminal prosecution following these arrests and all those detained were released after a short period of imprisonment.

102. Concern about these problems prompted a strong statement by the European Community (EC) on 2 June which said that "the Community and its Member States believe that the Malawi authorities have failed to reach acceptable standards of democratic campaigning, thus calling into question their commitment to increased respect for human rights." The EC cited lack of access to the radio, "physical maltreatment of individual multi-party advocates, obstruction and cancellation of meetings," as well as failure to restrain the activities of the Malawi Young Pioneers.

103. In June, a number of changes occurred which improved the quality of the referendum campaign. Among these changes were a decline in reports and allegations of MYP intimidation and harassment, improved radio access for multi-party advocates and greater balance in programming and the scheduling of an increased number of rallies and political meetings.

104. Perhaps the strongest mark of change was a joint statement issued by PAC and PCD after an 8 June meeting, the week before the referendum. "The President's Committee on Dialogue declared that the process [of] continuing to recognize and work for the improvement of respect for human rights in Malawi was irreversible irrespective of the outcome of the referendum," the statement said. And the two sides agreed "that consultations between the parties will continue after the referendum and for the purposes of organizing multiparty general elections if the nation votes for change."

IV. REFERENDUM DAY

105. As the sun rose on polling day, more than a million people were queuing outside polling stations throughout the country; some people had been waiting since 4:00 am or even earlier. The enthusiasm and desire to vote was obvious. At some polling stations, when voting started the queues broke and people crowded around the polling station door, only to later reform into queues and wait patiently.

106. JIOG observers found that most polling stations opened at or soon after the 6:00 am starting time. Presiding Officers and staff were generally considered efficient, cooperative and well trained. Although many voters needed instructions as to the voting procedure, most voters understood the choice to be made and did so quickly. Instructions were provided in Chichewa and other local languages. Domestic monitors were present at all polling stations.

107. Despite the heavy morning voter turn-out, queues were short or non-existent by mid-afternoon and most people had voted. Polling stations generally closed on time at 6:00 pm with anyone waiting in the queue at the time allowed to vote. By the end of the day, some 3.1 million Malawians had voted.

108. Counting was conducted at each polling station, with results transmitted to the District Commissioner's Office. The JIOG noted the general orderliness of the count and the continuing presence of local monitors. Although the counting procedure was slow, it was conducted carefully and accurately. District results were conveyed to the Referendum Supervisor. The Chairman of the Referendum Commission announced the final national result.

A. Physical Arrangements

109. There were 2070 polling centres in the country, located so that no one was expected to walk more than 5 km to vote. Within each centre there were polling stations which could accommodate up to 1000 voters. There were 5326 polling stations; some rural polling centres had just one polling station, while urban and plantation centres often had 10 or more. Each polling centre had a Presiding Officer and up to five poll worker staff.

110. Each polling station corresponded to one or more registers, designated by a letter. Registration forms contained the register letter, page number, and line number of the person so

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that people could be told which station to queue for, and then their name could be found rapidly in the list. The name was then crossed off the list or ticked off and the registration form retained by polling station staff. Hands were checked for indelible ink and the right index finger dipped in ink. The voter was then given the two ballot papers -- one with a black cock representing single party and one with a lantern representing multi-party -- and a small envelope, and was provided with a brief explanation of the voting procedure. The voter went into a booth and put the paper for the preferred option into the envelope, sealed it, and threw the other paper for the rejected option into a discard box inside the booth. The voter came out of the booth and put the envelope into the ballot box and left.

111. Polling booths were of an almost standard design and were locally made of burlap, felt, or black plastic sheeting. They were carefully made and were nearly all well placed so as to make it impossible to see inside.

112. The arrangement of polling centres and polling stations varied widely. Some (especially in the warmer south) were totally outdoors, some were in shelters such as tobacco drying barns, and some were inside school classrooms and other buildings. Many used a mix of inside and outside, typically with the table containing the register and ink outside and the polling booth inside; the ballot box would then be either inside near the polling booth or outside near the table, but normally within sight of monitors, polling station staff, and other voters (to ensure security). Nearly all of these arrangements worked well, and are evidence of the training and adaptability of the Presiding Officers.

113. Most polling stations were in schools. Observers saw many instances of one complete polling station per classroom, which functioned well. Observers saw examples of the tables outside but two or even three polling booths inside a classroom, which worked well from a crowd control standpoint, although it was not always possible to ensure that voters used the ballot box corresponding to their register.

114. There were some instances in the central region where Presiding Officers did not keep the polling stations separate within their centres -- using one ballot box at a time for all voters, allowing voters to use any booth and ballot box, or counting all ballot boxes together. This did not, however, affect the fairness of the vote.

115. Presiding Officers were often imaginative and effective in resolving problems. In some polling stations the special envelopes ran out and Presiding Officers obtained more from the nearest office, or from nearby polling centres which seemed to have a surplus. The ballot boxes

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proved too small, especially in those cases where close to the expected 1000 people voted at a station, and Presiding Officers created emergency second ballot boxes after consulting with all those present.

116. One JIOG observer, the chief electoral officer in his own country and an international observer at 13 elections, called this polling day "the best run of any international election I have been at". He added: "I wish my voters at home would come to the poll with the same enthusiasm, dedication and awareness."

117. Referendum day was conducted efficiently and with few problems. Although these problems did not have a significant impact on the referendum result, they have been noted below.

118. Because of confusion over the various voters' rolls, polling stations in several districts did not receive a sufficient number of ballots. In Mulanje, observers reported that at least 3000 people at four polling centres were denied the right to vote and sent home after ballot papers ran out. In Mzuzu observers noted several polling centres short of ballots: one station closed at 1 pm with 100 people still waiting to vote. There were also unconfirmed reports of a shortage of ballot papers in Chikwawa district.

119. Confusion over the validity of old registration certificates meant that some people were not allowed to vote even though they held valid certificates, because the older registers on which they were listed had been lost.

120. Several JIOG observers noted instances of campaigning in the queues and possible intimidation of voters by MCP officials and monitors, particularly in the Central Region. In general, monitors objected and Presiding Officers insisted that the offenders leave; there was at least one official complaint. More serious was a significant number of cases of MCP monitors (and other MCP members) talking to people in the queues. At one polling station, a Chichewa speaking observer overheard an MCP monitor tell a voter to be careful, because there was a camera in the discard box and if she did not throw away the paper with the lantern the local chief would find out and "take action" against her. Such intimidation must be closely monitored and both polling officials and domestic monitors must be vigilant in identifying and challenging such behavior.

121. In a number of polling booths, voters threw their discard ballots onto the floor or onto the top of the discard box rather than placing it inside. In some centres, one booth would have

a pile of papers on the floor even if others did not. In future the proper procedure must be more clearly explained as this is potentially a source of voter influence. (If most of the discards are of one type -- lanterns or cocks -- there may be subtle pressure on the voter to follow the example.) The problem did not occur where the explanation was clearly to put the discard into the discard box (usually supported by a hand motion indicating in). Often when one person failed to put the discard paper into the box, others would follow; observers found some Presiding Officers taking the sensible precaution of checking the polling booths (say every half hour, between voters) and putting into the discard box any discarded ballot papers lying about.

122. The JIOG received only two reports of polling station staff trying to influence voters, and only three reports of people being able to see into voting booths. These numbers are insignificant compared to the thousands of polling station staff and polling booths observed on referendum day, and are evidence of good training and a real commitment to fairness and secrecy by polling staff.

B. Issues for Future Voting

123. The indelible ink worked well as this was the first time it had been used in Malawi, and there were few reported instances of people trying to vote twice. But there are three important points for future consideration: a) The ink must be regularly shaken, or it can be washed off most parts of the hands relatively quickly; b) The ink does stay under the cuticle of the finger and under the finger nail for several days, even when it has washed off the rest of the finger, and polling station staff should be instructed to look for this; often people were told to hold the hands palm up, which is backwards since staff should look at the nail, and c) during the referendum, the index finger was dipped in ink before voting, which meant significant amounts of ink were left on the polling booth curtain, ballot papers and envelopes. In a multi-party election where a ballot paper must be marked, this will lead to a significant number of spoiled ballot papers. In such a case, fingers should be inked only after a person has voted. To ensure that people do not vote and leave without using the ink, it may be necessary to return registration certificates only after the person votes and is inked.

124. Domestic monitors are an important key to the fairness of any election. They are a check against errors, misconduct and fraud. Indeed, their very presence should limit opportunities for wrongdoing. Monitors were present at all polling stations visited by the JIOG, but in most instances they were surprisingly passive and did not take an active role in the process. Monitors have a variety of tasks:

- a) Ensure that the polling station arrangement is correct and that the ballot box is empty and sealed before voting starts. This was generally done.
- b) Watch to see that no one votes illegally by pretending to be someone else ("personation"). Referendum rules require that staff read out loud the name of the person being crossed off the register precisely to allow monitors to check.
- c) Check to see that no one is denied a vote without just cause. In general monitors were not consulted or informed if a person was turned away. In all cases observed by the JIOG, people were turned away for valid reasons (such as illiterate people bringing the registration certificate of their spouse), but monitors did not necessarily know this.
- d) Ensure that the vote is truly secret.
- e) Watch for unexpected problems. For example, monitors should have checked the inside of the polling booths periodically (between voters, not while a voter is there) and would have noticed that in some polling stations discarded ballots were piling up on the floor rather than being put in the discard box, perhaps influencing people's votes.
- f) Participate in urgent decisions such as necessary deviations from the rules. This generally occurred, for example where extra ballot boxes were created when the ones provided became full.
- g) Prevent campaigning and intimidation around the polling station and in the queues. Although this was done in a few cases, most monitors did not see this as part of their job.
- h) Ensure that the polling station is closed correctly and that no one is prevented from voting.
- i) Observe the count and agree on (or challenge) difficult decisions, for example about void or damaged ballots.
- j) Receive a signed copy of the count, as a check on any tampering with the ballots or the result between polling station and district centre.

125. The description of null or void ballots in the "Presiding Officer's Manual" was not precise enough, leading to a wide variation in decisions and in the percentage of void votes running from below 2% to over 10%. In all cases observed by the JIOG, the Presiding Officer's interpretation was consistent during the count, so this is an issue of maintaining consistent procedure rather than an issue of fairness. The most difficult problem was interpreting the two rules that "A vote must be considered void when the envelope is empty" and "A vote must be considered null if ... the ballot is found inside the ballot box outside an envelope." Many older rural people were not accustomed to using envelopes and had trouble with the concept of putting the ballot in the envelope, licking the glue, and then sealing the envelope. Some Presiding Officers rejected envelopes which were not sealed; others rejected unsealed envelopes only if the ballot paper was partly sticking out; still others accepted the ballot so long as some part of the ballot paper was

He announced that 3,153,448 people had voted out of the 4,699,527 officially registered. Nationally, 63.2 % of the people had voted in favor of a multi-party system of government, and 34.5 % favored a single party system; 2.3% of the votes cast were deemed null or void. More than 80% of voters in the Northern and Southern Regions favored a multi-party system, while in the Central Region 65.5% of the voters favored a single-party system (see Annex V).

131. The official results by region were:

Region	Multi-Party	Single Party	Void
Northern	88.4%	10.6%	1.0%
Central	31.5%	65.5%	3.0%
Southern	83.5%	14.5%	2.0%
NATIONAL	63.2%	34.5%	2.3%

The quick count forecast at 1 am on 15 June was:

63.4%	34.7%	1.9%
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132. The JIOG held a series of regional debriefings on 15 and 16 June, followed by a national debriefing in Lilongwe on 17 June. Based on their observations of referendum day, they concluded that "the vote was an accurate expression of the wishes of the Malawi people." Although conditions in the early periods of the campaign were not always conducive to a fair and open debate, significant improvements were noted in the final weeks leading up to referendum day. Areas of continuing concern, however, included instances of intimidation and harassment, the unequal use and distribution of resources among the special interest groups and their access to radio. Nevertheless, these were "not considered to seriously impair the final result of the democratic process." The text of the final statement issued by the JIOG on the conduct of the Malawi National Referendum is provided in Annex II.

VI. AFTERMATH

133. On 17 June, one day after the official announcement of the referendum results, His Excellency the Life President gave a radio address in which he said "I have accepted the results

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of the referendum and Government will respect the wishes of the people by setting up a machinery for the implementation of the referendum results, as soon as possible." He gave special thanks to those who had voted for the one-party system, but stated that Section 4 of the constitution defining Malawi as a one-party state would be repealed "hopefully within a month" and "it is my hope that the general election would be held within a year."

134. Following the announcement of the referendum results, the special interest groups quickly opened discussions with Government on the further steps to be taken in moving toward a multi-party system. Initial talks between the Presidential Committee on Dialogue (PCD) and the Public Affairs Committee (PAC) focused on establishing more formal mechanisms for consultation and dialogue and on the creation of a calendar and agenda for the transition.

135. Government and special interest groups met separately with Mr. Horacio Boneo, Director, United Nations Electoral Assistance Unit, to discuss possible United Nations assistance with the transition. While noting that the further development of the governmental system in Malawi was an internal matter, he suggested several areas in which the international community might be of assistance. In response, the Malawi Government specifically requested the United Nations to provide legal advice on constitutional and other legal reforms. The United Nations was also requested to organize an international roundtable of experts on democratic transition in order to share experiences and discuss various options. Additional technical advice will be provided on issues related to the timing and preparations for general elections.

136. The exact role of the present Government and its laws was a subject of some initial debate. Pressure groups said that the Government had lost its mandate and called for a new three-party interim government, although this was later withdrawn when it became clear that the pressure groups did not yet want to take on full management roles. Dr. Banda stressed in his 17 June speech that the referendum does not "mean that the multiparty advocates have been elected to replace, in any way, the present Government." And police prevented the UDF from holding a victory rally in Blantyre on Sunday 20 June, saying that special rules which had allowed rallies prior to the referendum no longer applied.

137. By the end of June, PCD and PAC agreed on the creation of a National Consultative Council (NCC) which would function parallel to Parliament and would serve as a mechanism for consultation on issues referred to that body. A second consultative mechanism, the National Executive Council (NEC), was also agreed to serve as a parallel to the existing Cabinet. Both

Councils were to be formally established by Parliament as soon as the practical details related to their work had been elaborated.

138. Section Five of the Constitution was repealed and the special interest groups such as AFORD and UDF have taken steps toward their legalization as political parties. A general amnesty was announced for political exiles from Malawi and many began to return by end-June. Agreement was also reached on the need to reorganize the Malawi Broadcasting System.

139. There was general agreement that the earliest possible timing of general elections would be December, allowing a minimum preparation time of six months. However, given the number of issues to be resolved and the practical steps necessary to ensure a viable electoral process, both sides agreed that it might later be decided to delay elections until the first half of 1994. Among the electoral steps to be taken are the formal institutionalization of political parties, the identification and certification of political candidates, the organization and conduct of a new voter registration process and the elaboration and conduct of a comprehensive programme of civic education.

140. The JIOG welcomed the positive steps taken immediately following the referendum to move forward with the transition to multi-partyism. They recognized the progress made in many areas even prior to the referendum and expressed the hope that the discussion and dialogue between Government and opposition would continue, focussing now on the practical steps needed to prepare for general elections. The JIOG looks forward to the next phase in Malawi's transition to greater democracy and wishes the Malawi people well in their historic endeavor.

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MALAWI
DEMOCRATIC AND CIVIC
INSTITUTION
DEVELOPMENT
PROJECT PAPER
ANNEXES G-I
(612-0243)

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ANNEX G

Annex G

REPORT
ON THE
UNITED NATIONS ROUNDTABLE FORUM
ON
DEMOCRATIC TRANSITION
IN
MALAWI

*21-23 JULY 1993
CAPITAL HOTEL
LILONGWE
MALAWI*

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INTRODUCTION

At the beginning of October 1992, His Excellency the Life President of the Republic of Malawi, Ngwazi Dr. H. Kamuzu Banda, announced the formation of a Presidential Committee on Dialogue (PCD) to meet church leaders and other interested parties in the country on issues of national interest and concern. This was closely followed by the formation of a Public Affairs Committee (PAC), made up of representatives from the churches, business community, the Malawi Law Society and other interest groups, to begin dialogue with the President's Committee.

In the same month, the Life President announced his decision to call a National Referendum to enable the people of Malawi to choose whether they wanted to continue as a one-party state or to switch over to multi-party politics. When the referendum was held on 14 June 1993, 63.2% of the 3.15 million votes cast were in favour of the introduction of multi-party politics. In response to the referendum result, the Life President announced that measures would be taken, including the repeal of Article 4 of the Constitution, to enable other parties to register, and that a general election would be held within a year. The time-table of events would include a general review of the constitution and other laws to address issues about human rights concerns that some people had raised. To achieve this, extensive consultations would be necessary between Government and all the new political parties in order to ensure that the wishes of all the people were taken into account. The dialogue between the Public Affairs Committee and the Presidential Committee on Dialogue would thus continue.

As a contribution to this dialogue, the United Nations decided to host a roundtable forum which would provide an opportunity for participants drawn from the Presidential Committee on Dialogue and the Public Affairs Committee to discuss international, particularly African, experiences of issues that were relevant to the process of political change in Malawi, including: constitutional amendment and reform, civic education and more open media, the encouragement of greater political participation among the electorate, and the setting in place of appropriate interim institutional arrangements leading to a general election. The roundtable discussions were to be facilitated by the presence of international and national experts.

The roundtable was held at the Capital Hotel, Lilongwe, from Wednesday, 21 July to Friday, 23 July 1993. The first two days consisted mainly of seven sessions in which each topic in turn was presented to the full roundtable. Each session followed a similar format: the international specialist would make introductory remarks, after which the session was thrown open for general comments and discussion.

On the afternoon of the second day, the roundtable broke up into six working groups, each of which was to consider one of the topics covered in the previous two days. Although topics 5 and 7 had been introduced separately, working group number 5 was asked to consider them together. For ease of comprehension, therefore, the report of the introductory session on topic 7 immediately follows that on topic 5. The various groups worked throughout the early evening of the second day and all morning of the final day to produce their reports.

On the afternoon of the final day, the working groups' reports were presented to two plenary sessions, which were attended by members of the press and the Diplomatic Corps. In each session, three reports were presented consecutively, followed by general discussion. Groups 1, 3 and 4 reported in the first session, and Groups 2, 5 and 6 reported in the second session.

It was not anticipated that agreement would be reached on all the points raised during the various sessions. The aim of the exercise was not to secure consensus on every topic, nor for matters to be adopted, but to provide a forum for bringing issues out into the open and allowing a full and frank exchange of views on them. The roundtable was expected to concentrate on learning from, and discussing experiences of, other countries, rather than on negotiating options.

It was hoped that the working group reports would identify the points of common agreement and the points of difference, for use in future discussions. Many of the reports made specific "recommendations". In this, they were not proposing the adoption of particular positions, merely indicating the issues and topics they thought should be the subject of further discussions between PAC and PCD.

This report is not intended as a verbatim account of the proceedings of the roundtable; it seeks, rather, to identify and state, as clearly as possible, the various issues of concern and points of view expressed during the meeting. In this way, it hopes to provide information that will be of some use in the future deliberations on the transition to multi-party democracy.

Although the topics covered here were, by and large, dealt with separately in the roundtable and are presented in this report in discrete sections, they are, of course, intimately connected; together they make up the jigsaw, or mosaic, of a programme to prepare Malawi for its future constitutional settlement.

AGENDA

Wednesday, 21 July

- 08:00 a.m. Registration
- 08:30 a.m. Welcoming Remarks
- 09:00 a.m. TOPIC 1: THE ESTABLISHMENT AND CONSOLIDATION
OF DEMOCRATIC INSTITUTIONS
- PRESENTER: MR. TESSY D. BAKARY (COTE D'IVOIRE)
- OPEN DISCUSSION
- 10:30 a.m. TEA/COFFEE
- 11:00 a.m. TOPIC 2: CIVIC EDUCATION
- PRESENTER: MS. HELEN HOPPS (USA)
- OPEN DISCUSSION
- 12:30 p.m. BUFFET LUNCH
(served in The Dzalanyama)
- 04:30 p.m. TOPIC 3: PRACTICAL ASPECTS OF ELECTORAL
REFORM
- PRESENTER: MR. MICHAEL MEADOWCROFT (UK)
- OPEN DISCUSSION
- 06:00 p.m. TOPIC 4: DECENTRALISATION, LOCAL
GOVERNMENT, AND DEVELOPMENT
- PRESENTER: PROF. WILLIAM TORDOFF (UK)
- OPEN DISCUSSION
- 07:30 p.m. END OF 1st DAY SESSION

Friday, 23 July

- 08:30 a.m. WORKING GROUPS
(Tea/Coffee served to each Group)
- 11:30 a.m. BREAK
- 12:00 noon BUFFET LUNCH
(served in The Dzalanyama)
- 01:30 p.m. PLENARY SESSION:
REPORTS OF WORKING GROUPS
- EACH GROUP SPOKESPERSON HAS 15 MINUTES TO PRESENT. THE FIRST THREE TOPICS WILL BE PRESENTED CONSECUTIVELY, FOLLOWED BY 1 HOUR OF QUESTIONS/REMARKS FROM THE FLOOR. AFTER TEA/COFFEE THE SECOND THREE TOPICS WILL BE PRESENTED, FOLLOWED BY ANOTHER 1 HOUR OF QUESTIONS/REMARKS
 - DONOR REPRESENTATIVES INVITED
 - CHAIR: HON. JUSTICE MICHAEL KIRBY, AC, CMG
(AUSTRALIA)
- 01.30 TOPICS 1, 3, 4
- 03:30 p.m. TEA/COFFEE
- 04:00 p.m. TOPICS 2, 5/7, 6
- 06:00 p.m. CLOSING REMARKS
- 08:00 p.m. CLOSING DINNER
THE VIPHYA ROOM, CAPITAL HOTEL

PARTICIPANTS

PCD MEMBERS

1. HON. DR. H.M. NTABA, M.P.
VICE CHAIRMAN/MINISTER OF HEALTH
2. HON. R.W. CHIRWA, M.P.
VICE CHAIRMAN/MINISTER OF TRANSPORT & COMMUNICATIONS
3. HON. L.J. CHIMANGO, M.P.
MEMBER/MINISTER OF FINANCE AND MINISTER OF JUSTICE
4. HON. J.Z.U. TEMBO, M.P.
MEMBER/MINISTER OF STATE IN THE PRESIDENT'S OFFICE
5. HON. S. CHITSONGA, M.P.
2ND VICE CHAIRMAN/MINISTER AT LARGE
6. HON. M.M. MWAKIKUNGA, M.P.
MEMBER/MINISTER OF INFORMATION & TOURISM
7. HON. L.G. MUNLO, M.P.
MEMBER/DEPUTY MINISTER OF EXTERNAL AFFAIRS

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8. HON. DR. .. SAMBO, M.P.
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9. HON. W.V. BINALI, M.P.
MINISTER OF LABOUR
10. HON. MS. K. KAINJA, M.P.
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11. HON. F. KANGAUNDE, M.P.
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12. HON. MRS. N. NSEULA, M.P.
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13. HON. MRS. Q.C. GONDWE, M.P.
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14. HON. J.R. KANJERE, M.P.
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15. DR. G.N.K. KHOFI, CHIEF RESEARCH & INFORMATION OFFICER
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19. MR. A.K.C. NYIRENDA, CHIEF PUBLIC PROSECUTOR
20. MR. A.K. TEMBO, CLERK TO CABINET
21. CHIEF JUSTICE BANDA
22. MR. I.E. SABADIA, CITY MOTORS LTD., BLANTYRE
23. MR. S.J. SITUSI, M.P. FOR KASUNGU

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3. MR. M.N. MAGOLA, NATIONAL BANK, BLANTYRE
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1. MR. BAKILI MULUZI
2. MR. ALEKE BANDA
3. MR. W. KATENGA KAUNDA
4. MRS. EUNICE KAZEMBE

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6. MR. S. ITIMU

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9. MR. EDMOND JIKA

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11. MR. L. NDOVI
12. MR. P. KANYENGAMBETA
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15. MR. M. MSISHA
16. REV. M.E. KANSILANGA

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17. REV. H. A. CHANDE-MHONE

18. REV. M.J. KADAWATI

MALAWI LAW SOCIETY

19. MR. W. NAKANGA

CHAMBER OF COMMERCE

20. MR. KASSAM OKHAI

21. MR. MAKHUMULA NKHOMA

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22. MR. SHYLEY KONDOWE

23. MR. ALEX PHAMBALA

OTHERS

24. REV. MUWALO

25. MR. I. PANJWANI

26. MR. H. THOMSON

27. MR. A. G. MAKHALIRA

28. MR. MACHIPISA MUNTHALI

ALTERNATE PAC PARTICIPANTS

1. MR. JAKE T. MUWAMBA

2. FR. P. JERE

3. MR. C. C. CHIZUMILA

4. MR. B. R. NYIRENDA

5. PASTOR R. J. B. MKANDAWIRE

6. MR. B. MPINGANJIRA

7. MR. M. M. MKANDAWIRE

LOCAL SPECIALISTS

1. MR. GEORGE KALIWO - HUMAN RIGHTS CONSIDERATIONS
IN THE CONTEXT OF ELECTIONS
2. MR. DON ALUFANDIKA - DECENTRALISATION, LOCAL
GOVERNMENT, AND DEVELOPMENT
3. MR. BRIGHT MSAKA - THE ROLE OF LAW AND THE
INDEPENDENT JUDICIARY
4. MR. TONY MITA - THE ROLE OF THE MEDIA
5. MR. JAMES NAPHAMBO - CONSTITUTIONAL PROCESSES
AND REFORM
6. MR. D.F. MWAUNGULU - THE ROLE OF LAW AND THE
INDEPENDENT JUDICIARY
7. MRS. A.S. MSOSA - CONSTITUTIONAL PROCESSES
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(COTE D'IVOIRE) - THE ESTABLISHMENT AND
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INSTITUTIONS
- Ms. HELEN HOPPS
(USA) - CIVIC EDUCATION
- MR. MICHAEL MEADOCROFT
(UK) - PRACTICAL ASPECTS OF ELECTORAL
REFORM
- PROF. WILLIAM TORDOFF
(UK) - DECENTRALISATION, LOCAL
GOVERNMENT, AND DEVELOPMENT
- HON. JUSTICE MICHAEL
KIRBY
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REFORM/HUMAN RIGHTS
- MS. ROBIN LUDWIG
(USA) - THE ROLE OF THE MEDIA

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**- RESIDENT CO-ORDINATOR OF THE UN
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**MR. EL-MOSTAFA
BENLAMLIH**

- DEPUTY RESIDENT REPRESENTATIVE

RAPPORTEURS

MR. ROBERT JONES

- UNDP

MR. MARKKU ROINE

- UNDP

MEMBERS OF WORKING GROUPS

WORKING GROUP 1

TOPIC 1: THE ESTABLISHMENT AND CONSOLIDATION OF DEMOCRATIC INSTITUTIONS

MODERATOR: MR. TESSY D. BAKARY (COTE D'IVOIRE)

PARTICIPANTS:

1. Mr. P.D.A. Kanyengambeta
2. Mr. I. Panjwani
3. Hon. L. Chimango
4. Hon. S. Chitsonga
5. Mr. James Naphambo
6. Mr. Gustave Kaliwo

OBSERVERS:

1. Rev. Kansilanga

WORKING GROUP 2

TOPIC 2: CIVIC EDUCATION

MODERATOR: MS. HELEN HOPPS (USA)

PARTICIPANTS:

1. Rev. Fr. A. Kapinga
2. Bishop P.N. Nyanja
3. Mr. P.L. Makhumula Nkhoma
4. Rev. M.J. Kadawati
5. Hon. Kate Kainja
6. Hon. Dr. E. Sambo
7. Mr. B. P. Bhagwanji
8. Hon. M.M. Mwakikunga
9. Mr. D.F. Mwaungulu

OBSERVERS:

1. Rev. Mhone
2. Mr. P. Jere
3. Mr. Kondowe
4. Dr. G.N.K. Khofi

WORKING GROUP 3

TOPIC 3: PRACTICAL ASPECTS OF
ELECTORAL REFORM

MODERATOR: MR. MICHAEL MEADOWCROFT (UK)

PARTICIPANTS:

1. Mr. Edmond Tika
2. Mr. A. Banda
3. Mr. M. Mkandawire
4. Rev. S. Ncozana
5. Hon. L. Munlo
6. Mr. I. Sabadia
7. Hon. S.J. Sitsi
8. Hon. W.V. Binali
9. Mrs. A.S. Msosa

OBSERVERS:

1. Mr. W.W.M. Nakanga
2. C. Chizumira
3. Mr. Machipisa Munthali
4. Pastor R.J.B. Mkandawire
5. Mr. Kantambo

WORKING GROUP 4

TOPIC 4: DECENTRALISATION, LOCAL
GOVERNMENT, AND DEVELOPMENT

MODERATOR: PROF. WILLIAM TORDOFF (UK)

PARTICIPANTS:

1. Mrs. E. Kazembe
2. Mr. K. Okhai
3. Mr. S. Itimu
4. Mr. A.G. Makhalaria
5. Hon. J.R. Kanjere
6. Hon. F. Kangaude
7. Mr. M.N. Magola
8. Hon. Q. Gondwe
9. Mr. D. Alufandika

OBSERVERS:

1. Rev. Muwalo
2. Mr. M. Kulesi
3. Mr. M. Msisha
4. Mr. Mpikiso

WORKING GROUP 5

TOPIC 5: THE ROLE OF LAW, THE INDEPENDENT
JUDICIARY AND CONSTITUTIONAL REFORM

TOPIC 7: HUMAN RIGHTS

MODERATOR: HON. JUSTICE MICHAEL KIRBY, AC, CMG (AUSTRALIA)

PARTICIPANTS:

1. Hon. Dr. H. Ntaba
2. Hon. G. Munlo
3. Mr. B.M. Msaka
4. Hon. Mrs. N. Nseula
5. Mr. Aleke Banda
6. Mr. Jake Muwamba
7. Pastor R.J.B. Mkandawire
8. Mr. A.K.C. Nyirenda
9. Mr. M.H.A. Kulesi
10. Mr. Shyley Kondowe
11. Mr. A.K. Mwakasungula
12. Fr. Peter N. Jere
13. Rev. H.A. Chande-Mhone
14. Mr. L.B.T. Ndovi
15. Mr. C.C.C. Chizumila
16. Mr. George Gabriel Kaliwo
17. Mr. Alex Phambala
18. Mr. M.S. Phikiso
19. Mr. M.M. Mkandawire
20. Mr. E.M. Singini
21. Dr. G.N.K. Khofi

OBSERVERS:

WORKING GROUP 6

TOPIC 6: THE ROLE OF THE MEDIA

MODERATOR: MS. ROBIN LUDWIG

PARTICIPANTS:

1. Rev. Muwalo
2. Rev. Kansilanga
3. Mr. M. Msisha
4. Hon. Mwakikunga
5. Hon. Dr. E. Sambo
6. Mr. Magola
7. Hon. K. Kainja
9. Mr. Bright Msaka

1. Bishop P.N. Nyanja
2. Mr. S. Itimu
3. Mr. Makumula Nkhoma
4. Rev. M. Kadawati
5. Mr. Katambo
6. Mr. I. Sabadia
7. Mr. B.P. Bhagwanji

OPENING REMARKS OF THE UN RESIDENT CO-ORDINATOR MR. MICHAEL HEYN

Hon. Chairman of the PCD, Mr. B. Bisani, distinguished members of the PCD, hon. Chairman of the PAC, the very rev. Ncozana, distinguished members of the PAC, members of the UN expert team, representatives of the press, ladies and gentlemen, it is my honour to welcome you to a new building bloc in the Malawian democratic process: the national round table forum on the democratic transition in Malawi.

The Republic of Malawi embarked on a democratic process that is now considered one of the most successful experiences in the very unpredictable and turbulent environment of Africa today. The peaceful preparation of the referendum, its smooth running, and the respect shown for the decision of the people of Malawi are exemplary. The immediate follow up to the outcome of the referendum and consolidation of the people's choice through initial amendments to the constitution and other administrative decisions to facilitate the move towards multi-partyism and a transition to democracy are highly commendable. All of these exceptional achievements highlight the commitment of the national partners to fundamental and irreversible change. Malawi and Malawians have every reason to be proud of the progress made so far. This experience, though in its early stages, is already rich enough to serve as a pilot light to other candidates also searching for democratic political systems.

The secret of this success is dialogue. An open, frank constructive and fruitful one. The UN has been involved in this process along with other international partners. We have been honored to participate in the facilitation of this national undertaking. The support and active role of the Electoral Assistance Unit from UN headquarters has been most effective and met the highest standards. Yet, the real credit goes to the Malawians: the people and their leadership.

The job, however, is not finished; rather, it has just begun. The march towards democracy and development is not easy. The road is a difficult one where we can expect to encounter many obstacles and impasses that require patience and skillful negotiation. The dialogue and consultation that characterised the process from the beginning must continue to prevail, along with unflinching determination to succeed. The UN will be honoured to play a supporting role, and we shall spare no effort towards this end.

The Malawi national referendum of 14 June resulted in an unambiguous decision to move toward the foundation and development of a democratic political system. At present, the constitution and legal system are based on the premise of a one party state, with limitations on freedoms of speech and assembly. In order to undertake the transition to a more democratic system, consultation between the Government and the political parties is essential, especially regarding the scope, mechanisms and timing of changes. Among the issues to be addressed are: constitutional amendment and reform; the founding and institutionalisation of political parties; the composition and functions of an electoral commission; the organisation of district level electoral structures; civic education and a more open use of the media; the encouragement of greater political participation among the electorate, and, of course, the setting in place of appropriate interim institutional arrangements which will lead us up to the general elections.

This long list of issues shows just how much this process of democratic transition is complex, and its management challenging. Fortunately, this is not the first time such an undertaking takes

place. As we know, both successful, as well as less fortunate, experiences have taken place in different parts of the world, including Africa. Malawians must learn from the successes, and must, by all means possible, avoid or at least minimise the mistakes of others. Democratic transition management is complex as it covers all political, social and economic spheres. Those who bear the heavy burden of managing the democratic transition in Malawi must also assume the responsibility of fully understanding the intricacies and the dynamics that underlie this process. Only on this basis can they lead us to a future based on human rights and progress for all Malawians. Exploring experiences from other regions of the world and debating these experiences, as well as bringing them to the context of Malawi and the reality of the country, should help achieve this goal.

Hopefully, through these three days of national dialogue the conditions will be ripe, for all concerned, to come to grips with the heart of the matter: constitutional, judicial and institutional reforms necessary to create a more conducive environment for an active participation of all concerned in democratic practices.

To this roundtable we have brought a UN team composed of internationally renowned specialists who will share with us their technical expertise and assist all of us to become more acquainted with those ingredients that often shape the transition to democracy. I am honoured to introduce our team:

Mr. Tessy d. Bakary	- Ivory Coast
Prof. William Tordoff	- United Kingdom
Mr. Michael Meadowcroft	- United Kingdom
Ms. Helen Hopps	- United States of America
Hon. Justice Michael Kirby	- Australia

This is a time of great hope and great opportunity. The people of Malawi are watching us closely and undoubtedly expect us to live up to the trust they have placed in us. The United Nations is a committed partner, and I am confident that this forum will provide solid ground on which to pursue further the changes which the people obviously want. But the success of this undertaking and the long journey ahead is clearly in the hands of the leaders sitting around this table. It is your conviction, your courage and your skill which will create the new Malawi. I wish you well!

**TOPIC 1 : THE ESTABLISHMENT AND
CONSOLIDATION OF DEMOCRATIC
INSTITUTIONS**

PRESENTATION AND DISCUSSION

*Wednesday 21 July
09.00 - 10.30*

PRESENTER : Mr Tessy D. BAKARY (Cote d'Ivoire)

CHAIR : W. Tordoff

PRESENTATION

The presentation was based on the paper, 'From Political Transition to the Consolidation of Democracy in Africa', contained in Appendix 1.

Recently, Africa has witnessed elections (e.g. in Zambia and Burundi) which have resulted in a change of Government and whose results were accepted by all concerned. On the other hand, in some countries (e.g. Congo and Nigeria), elections have been boycotted by opposition parties or the results challenged.

Will the holding of multi-party elections lead to the emergence of pluralist democratic systems? What are the conditions that make democracy possible and allow it to flourish? What role can donors play in consolidating democracy?

Answers to these questions may be provided from an analysis of recent experience of the transition from authoritarian to democratic political systems.

Part 1 : Analysis

A. The Mechanisms of Transition: Between Reform and Pact

The experience of Europe and Latin America indicates that there are many paths to democracy and that the mode of transition determines the type of democracy that emerges, its prospects for consolidation and its implications for different social groups.

The modes of transition are determined by the roles played by participants, internal and external factors, the structural context (social and economic structures) and the political/institutional context (the nature of relations between civilian and military authorities, apparatus and personnel of the former single party, etc).

The experience of southern Europe in the mid-1970s suggests that external factors may have a minor role to play in the transition mechanism and that authoritarian regimes are overthrown for essentially internal reasons.

Four general types of transition mode can be distinguished, depending on the roles played by elites or the masses and the use of force or compromise in their choices and strategies:

1. **The Pact** - when the elites reach a multilateral, mutual compromise.
2. **Imposition** - the elites unilaterally and effectively use force against the will of the rulers in power.
3. **Reform** - when mass movements impose a negotiated settlement without resort to violence.
4. **Revolution** - when the masses take up arms and overthrow authoritarian rulers.

In practice, elements of these general types have been combined. Recent experience suggests that "transitions from above" - those in which elites have played a significant role - have most frequently led to the establishment and consolidation of democracy.

In Africa, the three periods of political change - independence, militarisation and liberalisation - have each been characterised by a predominant transition mode and varying degrees of mass participation.

Independence was gained mainly through negotiation with the former colonial power or, less frequently, wars of liberation (Angola, Mozambique). Both benefitted from, or were based on, broad public support embodied in nationalist movements.

The military coups between 1963 and 1990 were characterised by elitism and a lack of public support, which largely explains their authoritarian tendencies.

The process of liberalisation and democratisation since 1990 has been marked by various forms of social demonstration (marches, riots, strikes etc) which indicate widespread popular participation.

These recent transition modes (with the exception of Mali) range between reform and pact. Theoretically, and based on previous experience, they could lead in most cases to corporatist or coalition-type democracies - in which competition is managed by compromise or founding agreements - or to competitive-type democracies, whose fragility could result in a return to authoritarianism.

Transition mechanisms in Africa have been marked by extreme fragility, which will profoundly effect the prospects for the establishment and consolidation of democracy. This is due to two factors:

1. the disastrous economic situation faced by countries means their governments must carry out painful economic reforms and indispensable political reforms simultaneously, which seriously undermines their popularity and alters their relationship with the electorate, and
2. the weakness of the emerging civil societies - the essential foundation of democracy - particularly in a context in which a free and independent press and autonomous judiciary are just as fragile, or non-existent. The new political parties, unions and civic organisations have not been able to incorporate the social movements, which has led in most countries to serious social disturbances.

B. The Perceptions of the Players; Democratisation and Exclusion

Democratisation (the process by which democracy is established) consists of two major phases: the **discussion-of-principles** phase - the acceptance or recognition of democracy as the new principle of political legitimacy, and the **democratic bargaining** (agreement on the rules of the political game). In central and western Africa since 1990, each phase has been marked by conflict, as, with specific interests at stake, the players (tribal authorities, charismatic leaders etc) have mobilised resources (unions, civic organisations) and conducted the activities (broad social movements) needed to advance their interests.

These conflicts reveal that democracy has appeared to many government leaders and their opponents as just another means of access to political positions, and therefore to economic resources - another zero sum political game. The process of democratisation has been presented and perceived as a weapon in the hands of personal enemies of current government leaders (e.g. Togo) or in the hands of the inhabitants of a particular region or ethnic group, against another region or group in the country.

Consequently, democracy has not been seen as a process of **inclusion**, but one of **exclusion**, in that it does not appear to offer guarantees to major social and political interests.

Two lessons are to be learnt here:

1. African democrats and their outside supporters have failed to present democracy as a **preferable and credible political alternative**.

2. Democracy in Africa cannot easily be established against the will of part of the population, but must be established in co-operation with one's adversaries, who could prove to be the most effective backers of continued democracy, because they know they have everything to gain and little to lose with the new system.

C. The "Founding Elections" and Political Violence

In the decisive "political phase" of the "founding elections", -the first national elections following the re-establishment of the multi-party system and essential public freedoms - irregularities have been exposed and accusations of more or less massive fraud have been made nearly everywhere. The resulting conflicts have ranged from more or less violent street demonstrations to civil war.

Such conflicts are a measure of the distrust between the various participants in the political game and represent a serious obstacle to the establishment and consolidation of democracy. They also reveal the weakness, non-existence or incapacity of domestic civil organisations to monitor the electoral process and the consolidation of democracy beyond it.

Part 2 : Strategies and Recommendations for the Consolidation of Democracy

The preceding analysis suggests three types of action aimed towards the establishment and consolidation of democracy:

A. The Promotion of Democracy

The priority task is to promote democracy, projecting a positive image and a clearer idea of what democracy is and is not, making its adversaries become democrats by necessity.

Civic education programmes, seminars, conferences etc should be organised for specific target groups within the population. These varied training programmes should be accompanied or backed up by propaganda (not in its pejorative sense) or marketing operations, with documentary films, video clips, publicity spots, posters and any other form or means of communication appropriate to the context in order to present democracy as a preferable alternative to authoritarianism.

B. Restoration of Confidence Between Participants in the political game

The main aim must be to create and strengthen non-partisan domestic/civic organisations, supported by external counterparts. This will encourage people with different political and

ideological viewpoints to work together toward common objectives (the holding of elections, the establishment of public education programmes etc) which will lower the barriers of distrust between participants in the political process.

C. Strengthening the Foundations of Pluralism

Given the weakness of civil society, and the non-existence or weakness of other foundations of democracy, action here will involve:

1. strengthening civil society by helping to create independent civic organisations (women, rural groups, youth, intellectuals, lawyers, journalists, etc) that can form structured social movements and constitute organised centres for advocacy, mobilisation and legitimisation, and
2. strengthening the legal and institutional framework for democracy - parliaments, political parties, the media, the judiciary, electoral codes and elections - and training key participants.

OPEN DISCUSSION

The following points were made during the open discussion:

A. The Transition Process

1. The wish to benefit from the experiences of other countries - concrete examples of what has worked, and what has not worked - is not easy to satisfy, as the transition to democratic regimes is a relatively recent phenomenon and the lessons are not, as yet, particularly clear.
2. Consensus on the minimum requirements for democracy is necessary so that ways and means of setting up and consolidating democratic institutions can be explored. Democracy means more than a plurality of parties competing in elections to form a Government. It should include notions of responsible and accountable government, subject to the rule of law, and guaranteed popular freedoms. Democracy requires pluralism: power in society should not be concentrated but should be distributed to a variety of institutions - Governmental and non-governmental alike. Changes are required to ensure that sources of power other than the Government, can operate.
3. Eastern European and African experiences suggest that both internal and external factors are influential in the transition from authoritarianism to democracy. A transition which results mainly from external pressure, without an internal demand for change, is likely to be very fragile.

4. The problems encountered in some countries in western and central Africa might have resulted from too hasty a jump from one political system to another. Care must be taken to ensure that change is carefully planned, and responds to the needs and wishes of the people.
5. Popular support for, and involvement in, the transition to, and the functioning of democracy is essential. The transition should involve both Government and other elites, but they need to be representative of, and responsible and responsive to the masses. Political leaders, Government and opposition alike, have a duty to ensure that democratic changes are fully understood and solidly supported by the mass of the population.
6. Top-down democracy has little chance of survival: the participation of mass organisations/civil associations is needed for the smooth transition to, and operation of, democracy. One-party rule has often impeded the development of civil society. Constitutional changes may be necessary to formalise such organisations to enable them to participate. Maximum popular involvement in the transition process will ensure that no political party gains the upper hand or obtains a position of unfair disadvantage in the run-up to the general elections and will help to create mutual confidence between the parties competing in those elections.
7. Mass organisations - parties, pressure groups, etc - should be founded on democratic principles. The leadership of, for example, women's groups have to be chosen by the membership and accountable to it.
8. A distinction needs to be made between the movement towards democracy and the consolidation of democratic institutions and practices. Different social forces may play different roles in each stage. In Zambia, for example, trade unions were very active in the push for multi-party democracy, but more recently their involvement seems to have diminished.
9. Civic education is necessary to ensure the involvement of the mass of the populace both in the transition to democracy and its consolidation.
10. The transition to democracy and its continued effective functioning depend on public affairs being conducted in a spirit of tolerance of differing opinions and views and willingness to engage in meaningful dialogue.

B. The Founding Elections and their Aftermath

11. Measures are required to ensure that, following multi-party elections, the new Government will not abuse its power. Constitutional changes to put in place such safeguards - to guarantee Government is representative and responsible - will be required before the elections.
12. Multi-party politics is not, in itself, a sufficient guarantee of democracy. Democracy requires mechanisms to ensure that the wishes of the people are carried out. Concerted efforts by all interested parties to ensure that free elections, a clear separation of powers, a free press and safeguards for human rights are put in place and sustained, are necessary for the survival of democracy.
13. While dire economic circumstances are no justification for postponing democracy, it must be recognised that economic problems could impede the consolidation of democracy.

Proposed Topics for Further Consideration in the Work Groups:

1. The Promotion of Democracy - efforts to engender a strong attachment to democracy - so that people will wish to preserve democratic institutions and practices.
2. Restoration of Confidence Between Participants in the political game.
3. Strengthening the Foundations of Pluralism:
 - (a) Strengthening civil society by helping to create independent civic organisations.
 - (b) Strengthening the legal and institutional framework for democracy - parliaments, political parties, the media, the judiciary, electoral codes and elections.

REPORT OF WORKING GROUP TO PLENARY SESSION
Friday, 23 July

RAPPORTEUR : Mr. Protazio D.A. Kanyengambeta
SPOKESPERSON : Mr. James Naphambo
MODERATOR : Mr. Tessy D. Bakary

REPORT

1. What is Democracy?

For the purposes of the group discussion, democracy was defined as government by the majority, which guarantees the rights of the minority and which derives its mandate from the people via periodic elections. It was also agreed that democracy is a Government of popular participation.

2. Political Transition

We observed that there are four mechanisms of Transition to Democracy and these have been witnessed in Europe, Latin America and Africa.

- a. Pact:** The elites reach a multilateral and mutual compromise - this type has been experienced in Spain (1976), Sao Tome and Principe, Cape Verde and Tanzania. People sit down together and reach an agreement which determines the nature of the transition.
- b. Reform:** Mass movements impose a negotiated settlement without resort to violence; Examples are Cameroon and Cote D'Ivoire.
- c. Imposition:** The elites unilaterally and effectively use force to oust the rulers. This happened in Italy, West Germany and Japan.
- d. Revolution :** The masses take up arms and overthrow an authoritarian ruler - e.g. Mali.

We therefore agreed that Malawi falls between Pact and Reform, because the elites reached a mutual agreement and the masses imposed a negotiated settlement without any violence. This was also witnessed in Benin and Kenya.

3. Democratic Bargaining

- a. After reaching an agreement, a referendum took place. PCD and PAC met. In a transition from single-party to multi-party politics the legalisation of parties is very important. Parliament soon met to legalise the formation of Political Parties.
- b. We considered next the acceptable transitional institutions which could consider matters such as the constitution, and matters relating to elections.

We looked at two alternatives from the experience of other countries:

- i. Dissolving the existing Government and Legislature and replacing them by an elected Constituent Assembly which has authority on matters pertaining to the constitution and electoral mechanisms. A new constitution is drafted by a technical committee, approved by the Assembly and then submitted to a national referendum. A new electoral code is also drafted by a technical committee. Once the constitution is approved, elections follow. This was the case in Benin, Congo, Mali and Niger.
- ii. Existing political institutions remain in place. A National Consultative Council, comprised of interested players, drafts a new Constitution and electoral code, e.g. Burundi, or amends the Constitution and electoral code, e.g. Cameroon and Cote d'Ivoire, etc. Other examples are Kenya, Burkina Faso, etc.

In the case of Malawi we recommend the second alternative because we have just gone through a referendum and to elect a transitional assembly and then hold a General Election within one year would be costly and create voter apathy. We recommend that the present Government and Parliament continue and that a National Consultative Council, comprising all political players and other interested parties, be set up to look into the amending of the constitution or the drafting of a new one. A new electoral code would be drafted by technical experts. Agreed reforms would be passed through Parliament and a general election would follow (see diagram).

CONSTITUTION 1
:
NATIONAL CONSULTATIVE COUNCIL/TECHNICAL EXPERTS
:
DRAFTING ELECTORAL CODE
:
CONSTITUTION 2

4. **Strengthening of Democracy**

- a. For Democracy to be strong we looked first at the weaknesses of our system:
1. Judiciary: lack of independence and problems in being neutral
 2. Press (Radio): bias towards M.C.P., has not developed enough, lack of qualified journalists
 3. Civic Societies: took a partisan position, need strengthening so they can act effectively
 4. Level of mistrust among political players
 5. Partisan role of the Police and M.Y.P.
- b. We also looked at our strengths:
1. Neutrality of the Army
 2. Churches
 3. Women's Participation: women are involved in all aspects of life in Malawian society
 4. Inter-tribal tolerance

For our Democracy to be strengthened we recommend that both internal and external actors assist:

a. Internal Actors

1. Strong civic organisations e.g. Trade Unions, Employers Associations, Journalists groups and Independent Monitoring groups, will help ensure the transition is peaceful and beneficial.
2. Local councils, through which the masses can participate in politics.

b. International Actors

1. The UN and others can help by providing technical assistance e.g. Equipment & Training to e.g. newly-elected MPs, NGOs, Reporters, political parties etc.
2. Financial Assistance; e.g. organisation and execution of elections and for civic education.

An exhaustive shopping list has not been made because it might not be looked at positively by donors.

OPEN DISCUSSION

The following points were made in response to the report:

1. On the role of a National Consultative Council, it appears that the Government insists that the NCC and NEC will not have overriding powers over the existing Cabinet and Parliament.
2. There is a danger that, without some external guidance, a stalemate might be reached. It might be necessary to have a forum, a conference attended by all parties and the United Nations, to put the finishing touches to the transition modality to be adopted. It still might be necessary to have an independent referee for a sane and amicable solution to be arrived at.

Note of qualification from the chair: although the UN, and other outside bodies, can provide technical advice and information, all decisions on the new political set-up for Malawi are matters that can only be settled by Malawians themselves.

3. The involvement of women in Malawi should be seen less as a strength than as a weakness. There are very few women at the Roundtable and not many women in decision-making positions. Women in Malawi are more active in society - for example in decision-making positions in business, as well as in politics - than women in some other countries in Africa, and in other continents. Low levels of participation in society by women is an international phenomenon. Women in Malawi might not participate enough but at least there is movement in the right direction -- progress is being made, though a lot remains to be done. For example, certain levels of education are often required to enable people to attain decision-making positions and the Ministry of Education is making strenuous efforts to increase the equality of access

to education. Concerted efforts must be made to remove the constraints that prevent women from playing a more active and prominent role in politics and Government. They must be encouraged to participate in public affairs and their capacity for leadership must be enhanced.

4. There is not just suspicion and mistrust between the parties. There are signs that people are losing confidence in the parties, as they are failing to make significant progress in their deliberations on the best way forward. People in the rural areas are becoming impatient; they want things to start happening and suspect that the parties have something to hide, that there is a hidden agenda. This problem can be solved by PAC and PCD drawing up a programme, an agenda for progress, which will be made fully public. Such a timetable will let the public know what is going on and they can keep abreast of the progress being made in the democratisation process.
5. The notions of weaknesses and strengths used in the report are insufficient. They need to be amplified to encompass the notions of threats and opportunities: those factors that will facilitate the transition to greater democracy and those that may hinder, or even deflect, progress in that direction need to be identified so that action can be taken to overcome the threats and to build upon the opportunities.

TOPIC 2 : THE ROLE OF CIVIC EDUCATION

PRESENTATION AND DISCUSSION

Wednesday 21 July
11.00 - 12.30

PRESENTER : Ms Helen HOPPS (USA)

CHAIR : W. Tordoff

PRESENTATION

1. Civic Education is Overall Education

Educating for democracy involves developing a set of values that has to be integrated into all educational activities at every level. It also means acknowledging and promoting the values, skills and knowledge that people already possess. Civic Education includes both formal and informal education, and today, it also means promoting human rights. The project, and it is a collective one, is how to shape a democratic character and how to assure maximum political participation for every member of society.

2. Civic Culture and Participatory Democracy

Defining the tasks of peace education and human rights promotion appears straightforward, but the realities in which we work are marked by political, social, economic, psychological and cultural contradictions. Complexities of the historical moment have to be appreciated and the concrete situation analysed from several points of view. We must analyse (1) the relationship between state power and civil society, (2) the strength of civil society, and (3) power at the community level. Education is not conducted in a vacuum. A culturally appropriate and politically sensitive methodology has to be elaborated.

3. Human Rights Education during the Transition in El Salvador

The current U.N. mission in El Salvador has been a unique experience in human rights observation and an experiment in human rights education. Problems, achievements, collaborative arrangements and methodological considerations from 18 months of field work will be used to illustrate the problematic of civic education during a transition. Co-operation and collaboration with government officials and non-governmental organisations has

occurred. Public authorities (judges, police, military officers and soldiers) teachers, professors, community leaders, students and farmers have all participated in educational events and training, and the emphasis has been on participation. Another objective of civic education is developing a responsible, as well as critical thinking, citizenry and responsible, informed public officials.

4. Civic Education in the 21st Century

At one time civic education was designed to promote loyalty to a particular nation state - a kind of primer in patriotism. In today's more interdependent world, the goals are broader, the base more universal. Citizens are also members of an international community and developing a consciousness of international legal obligations and protections is necessary, both for elected officials and the people they represent.

OPEN DISCUSSION

The following points were made during the open discussion:

1. When discussing democracy, people often have in mind the Western perception of democracy. People need to develop a definition, including certain international agreements and perceptions, which applies to their own particular country.
2. Instead of talking of a transition to democracy it might be more suitable to talk about democratic transformation since the transition period will not lead to a finished product, called democracy, being in place. Establishing, consolidating and developing democracy should be seen as a continuous process.
3. Civic education is concerned with altering perceptions and attitudes but depends, to some extent, on people wishing to change and adapt. In El Salvador the perceptions of leaders changed so that they saw the need to allow the expression of views different from their own. Both sides realised that instead of fighting to the bitter end they could use the UN to end the war. A long civil war made people think and consider change.
4. Instead of using the term civic education one might use instead the term overall education. The aim is to educate people in their rights and duties as citizens, to increase their political participation and to develop a democratic character in the individual, group and society. Civic education is required by all groups in society, including the individuals participating in the roundtable. Different programmes, with different messages and using different techniques, must be developed for different groups.

5. Concrete examples from the experiences of other countries will assist in the reaching of agreement on the contents and ways of undertaking civic education.
6. Evaluating progress in civic education is a very difficult task. There must be clear goals and agreement on what standards are to be met.
7. The initial task in civic education is to get people together, to involve them and to draw upon their experiences and views. Civic education is a dialogue, with everyone learning from each other. The task of educators is not only to explain but also to engage people, to help them overcome their fear and to gain confidence. The question is how to do this and also to realise that it is a slow process.
8. Who is to undertake the training? Trainers need to be learn how to work with people. Groups that can be capacitated need to be identified. The informal network in civic education is as important as the formal one. Politicians are educators, both by example and through talking to people. In El Salvador, much of the education was done by various NGOs (groups of lawyers, church groups etc). Civic education is the responsibility of everyone. One institution that is often forgotten in this context is the family - the values of the family will guide family members.
9. Civic education educates people on their rights within the constitution, in expectation that those rights will be guaranteed and protected by the law. The state has an obligation to ensure that this is the case. It must also not prevent, or inhibit, the discussion and the airing of ideas. The Government must relax laws which inhibit the free expression of ideas. NGOs have to be given the chance to work freely, otherwise civic education will not work properly.
10. The political parties should jointly address mass meetings to explain, for example, why people should register and vote.
11. How are learning materials to be made as neutral and objectives as possible, given that political parties will be involved? In Ghana, university extra-mural departments, under the People's Education Programme, played a useful role in educating people and conducting public discussions on political and economic issues.
12. People's interest in the democratic process will be maintained and increased if they feel that they have a genuine say in their own lives. This means not only that their views should be fairly represented but that they should play an active, participatory role in public affairs and political processes.

REPORT OF WORKING GROUP TO PLENARY SESSION
Friday, 23 July

RAPPORTEUR : Ms Kate Kainja
SPOKESPERSON : Ms Kate Kainja
MODERATOR : Ms. Helen Hopps

REPORT

1. INTRODUCTION:

The problem of where to start the discussions. Many ways of approaching the task - very broad subject.

- (a) Needs Assessment
- (b) Problem Identification
- (c) Feasibility Study

2. TARGET POPULATION:

The masses but in various groupings, e.g.

- the political, economic, social, legal, traditional, civic, etc. leaders.
- age groups, etc.

3. SCOPE:

- (a) Short term (General Election) and long term continuous education.
- (b) Formal (through the school system) and informal (through informal mechanisms).

4. AIMS/GOALS:

To empower the citizen to:-

- (a) behave appropriately and rationally,
- (b) make well informed decisions, and
- (c) participate fully in family, community and national activities.

5. OBJECTIVES:

These are specifics to be determined at the planning stage, i.e. the objectives of civic education for lawyers will differ from that for school children.

6. CONTENT:

To be determined after need assessment and problem identification. However, the following could be included:

- (a) Relating with each other - with different points of view/inclination (religious and political, etc.)
- (b) Changing attitudes
- (c) Tolerance
- (d) Choosing a political party/candidate
- (e) Managing change/differences/tension
- (f) Voter behaviour and how to vote
- (g) Human rights
- (h) Resource availability, e.g. where to go for help, information
- (i) The transition process
- (j) The role of various institutions (Government, traditional, civic, legal, religious, international, etc.)

7. STRATEGY/METHODOLOGY:

Would vary with target population:

- (a) needs assessment
- (b) problem identification
- (c) feasibility study
- (d) training of trainers
- (e) mass training/individual training/education
- (f) print/electronic media
- (g) traditional methods - drama/music/dances
- (h) seminars/workshops/conference, etc.

8. RESOURCES:

Will depend on target population but to include:

- (a) financial - funds
- (b) material - equipment, audio/visual, place, etc.
- (c) human - expertise, skill, time, energy, etc.
- (d) institutional - existing machinery (administrative machinery, NGOs, etc.)
- (e) international -

9. MONITORING/EVALUATION:

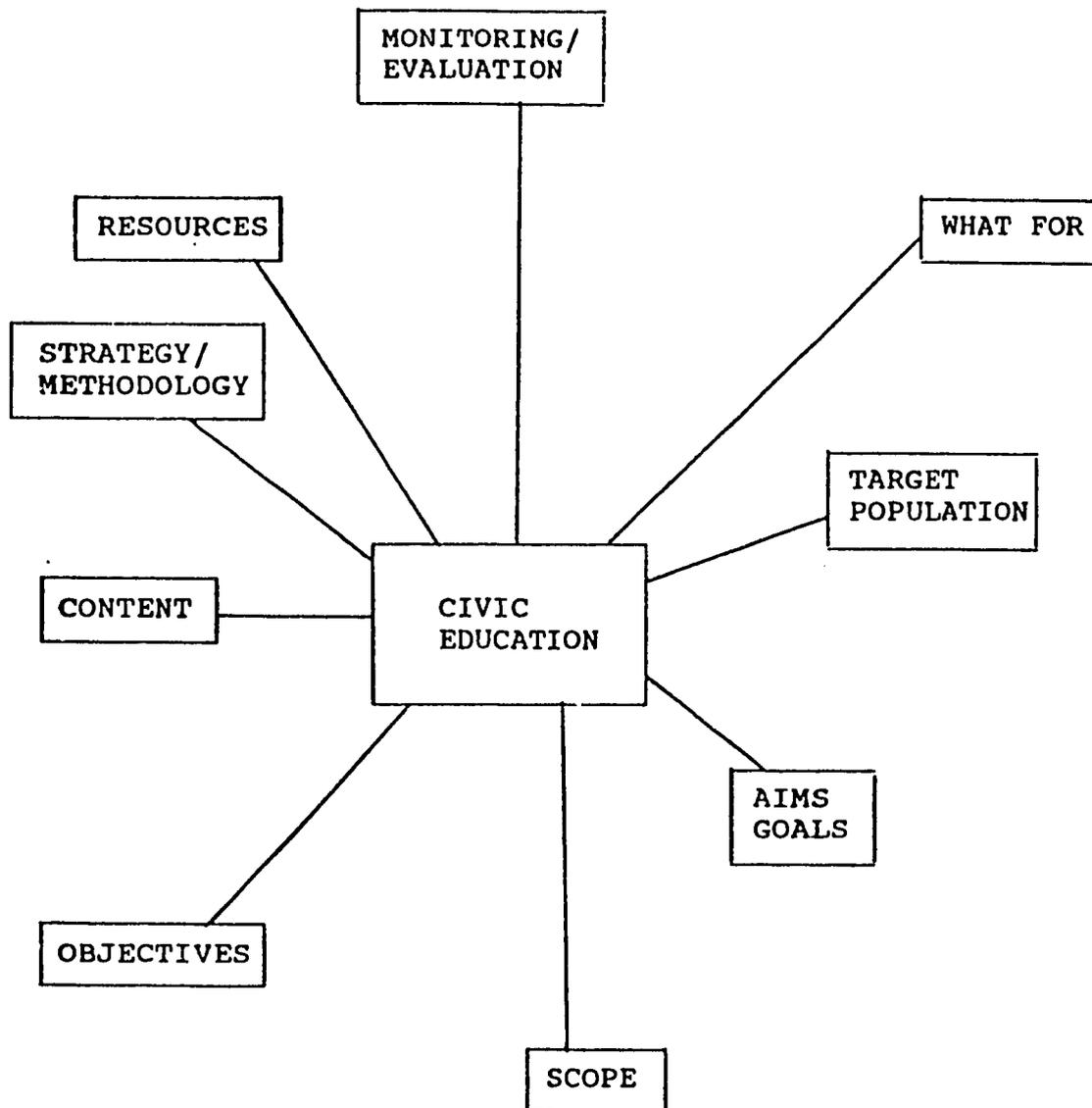
To depend on programme. But to:

- check on validity, accuracy, relevance, effectiveness and efficiency, multiplier effect, to be linked to the referendum experience.

10. GENERAL RECOMMENDATIONS:

1. The next stage of planning a civic education to be drawn, i.e. the specifics to be planned.
2. Proposals for funding the civic education should be drawn and funding sought.

CONCEPTUAL FRAMEWORK



OPEN DISCUSSION

The following points were made in response to the report:

1. All democracies face the problem that, if there is insufficient civic education, politics is reduced to banalities and slogans and, as a result, real discussion of issues is not possible.
2. An independent, and impartial, Council for Civic Education is often a useful institution for carrying out civic education.
3. Civic education is required for all sectors of society and a scheme devised for each specific sector. Civic education is a continuous process. Priority should be given to those aspects of civic education required to ensure a smooth run up to multi-party elections. Qualified personnel to carry out this task should be sought first within the country, and only then should outside experts be used. The UN and other international bodies can provide material that can be adapted, or developed, for use within Malawi.
4. There is a need to modify the school syllabus and the necessary materials need to be developed. It might be appropriate to have an all-party committee prepare materials on the nature of a diverse, multi-party democracy.
5. Civic education is everyone's business and should not be left to the schools alone. Attitudinal changes can be achieved through the family too.
6. Parties and politicians also need civic education. Parties with paramilitary wings need to learn how to redeploy them, otherwise such bodies might proliferate and each party would have a paramilitary wing, as in Kenya, with untold consequences.

TOPIC 3 : PRACTICAL ASPECTS OF ELECTORAL REFORM

PRESENTATION AND DISCUSSION

Wednesday 21 July
16.30 - 18.00

PRESENTER : Mr Michael MEADOWCROFT (UK)

CHAIR : T. Bakary

PRESENTATION

ELECTORAL SYSTEMS AND THEIR EFFECTS

1. Introduction

Electoral systems are not value free. They all have different political consequences and there is no perfect electoral system. Democracy requires consent to be governed and before considering different systems it is essential therefore to determine democratic and constitutional priorities and to consider what broad political effects one wants the system to assist.

2. Objectives

The four broad objectives commonly accepted for a representative voting system are:

- [a] **proportionality** - representation of political parties and opinion groups should be in proportion to their electoral support;
- [b] **accountability** - elected representatives should be collectively and individually responsible to their voters;
- [c] **equal value of votes** - the value of the individual's vote should not be distorted by factors of geography, education, class etc;
- [d] **effective choice** - voters should have as wide a choice as practicable between candidates and parties, towards the formation of an effective administration.

It needs to be realised that, to some extent, these objectives are in conflict with each other and that the four cannot all be fully realised. For instance, "proportionality" most commonly implies fair representation of political parties, and, therefore, voting for party lists, whereas "accountability" requires individual representatives, and, therefore, voting for candidates. The challenge is to examine different systems in the context of the Malaŵian situation with a view to maximising the four criteria. The eventual test of a voting system is whether the public accept the results.

3. The Main Alternatives

[a] Majoritarian

The simple majority, or "first past the post", system is incapable of producing sufficient proportionality. It requires single member constituencies with roughly equal numbers of electors and it is impossible to divide a country up without - even wholly unintentionally - producing a political bias in the results. Majoritarian systems produce reasonable accountability, providing that most seats are not "safe" for one party or other. The winning candidate is the one with the highest number of votes, even if he or she does not get an absolute majority of all votes cast. Sometimes, as in France, if no candidate has 50% of the votes cast there is a second round of elections. This brings delay and is hugely expensive. Given the regional differences in Malaŵi, and the likely number of parties contesting a first election, it may well be thought that it would be difficult for a majoritarian voting system to produce a result sufficiently proportional, and representatives sufficiently broadly based, to encourage a high level of acceptance of the overall result from the people of Malaŵi.

[b] Party List

This requires registered parties to draw up lists of candidates in a pre-determined order, either nationally or at a regional or district level, to fill multi-member constituencies. The electors vote for the party and candidates are elected from each list in proportion to votes cast. There can be a "threshold" percentage, as in Germany, below which a party gets no representation, thus discouraging very small parties from fighting separately. The drawback with list systems is that they give considerable influence to the political parties, and particularly to their central leadership, in that the party determines the list through which candidates secure election. Lists do, however, produce a high level of proportionality.

Germany also uses a hybrid of majoritarian and party list systems: the **Additional Member System**. Voters express a choice for an individual candidate and for a party. Half the MPs are elected from single member constituencies and the numbers of constituency MPs elected from each party is "topped up" with the necessary number from that party's list to ensure that the party preferences indicated in the second vote are delivered. It requires large constituencies and is relatively complicated. It also produces two classes of MP which to some extent offends the "equal value" objective.

[c] **Preferential**

Usually called the "single transferable vote" (STV), this requires multi-member constituencies of reasonable size. Electors vote by marking the candidates in their order of choice - within parties and across parties, and for independents if they so wish. To be elected candidates must obtain a quota of the votes cast. The quota is fixed as the lowest number of votes required to guarantee election. In the view of the UK Electoral Reform Society this system best maximises the key objectives and gives voters the most effective choice. It requires, however, a relatively sophisticated electorate.

4. Logistics

If an early election is thought desirable in MalaWi then this will inevitably affect the choice of electoral system. Given the uneven geographical registration for the referendum, a majoritarian system would presumably require a redivision of constituencies within Districts. Otherwise an election would run the risk of failing to be seen as democratic. To be done fairly, and without bias, this will require a separate, independent Commission and the opportunity for public representations, published proposals open for inspection and objections, and a quasi-judicial means of resolving disputes. The length of time required would seem to militate against using a majoritarian system, quite apart from possible objections of principle.

There are ways and means of using preferential systems (STV), even with substantial voter illiteracy, but the field tests required to ensure that individual voters could cope with the required ballot papers would take time. I hope that such field tests can in any case be carried out for future elections but it is probably not feasible to use STV for the first election in MalaWi.

A party list system could be adapted reasonably quickly for use on a District basis in Malaŵi. If the first election is to be for a shorter term Assembly than for a full blown legislative Parliament then some of the political objections listed above would not be as significant.

5. Example

Any projections based on the detailed referendum statistics must obviously be hedged about with considerable reservations, but they do provide the only currently available material on which one can indicate how a list system might work out.

If an Assembly of 250 representatives was to be elected, on a District basis, with the number of seats in each District *pro rata* with the number of registered voters each District had for the Referendum, the number to be elected would vary from 3 each in Chitipa, Rumphi and Ntchisi, to 32 in Lilongwe. Making the assumption, for the sake of the illustration, that voters who voted "for" single party would vote MCP and that those who voted "multi-party" would vote for one of the other parties, only two districts (Chitipa and Rumphi) would not have representatives from at least two parties. The number of parties presenting lists would make some difference to the eventual representational balance - because the "highest remainder" principle affects the allocation of at least the final seat in each district - but would not greatly disturb the overall proportionality, particularly if a percentage threshold for entitlement to any seats was in force.

6. Conclusion

Malaŵian leaders should think through, and ideally agree, on the purposes of the next election, and a feasible timetable for it, before determining the desired electoral system. It goes without saying that the best electoral system in the world is flawed and undermined if the administration of the whole democratic process is not unbiased, efficient and independent.

OPEN DISCUSSION

The following points were made during the open discussion:

1. The choice of electoral system will depend on: (i) the nature of the regime desired - parliamentary or presidential, (ii) the relative merits of the different electoral systems, (iii) the balance of political forces within the country, and (iv) the timetable for the forthcoming general election.

Nature of Regime

2. Agreement on the type of regime for Malawi to adopt is essential. A presidential regime has been preferred in Malawi; the question is whether the president should be a ceremonial head of state, as in India, or play an executive role, as in the United States. Accountability remains one of the basic issues to be looked into. What should be the division of responsibilities and the balance of power between the executive and parliament: how much power is to be given to the executive, whether it is headed by a president or a prime minister, and how much control and scrutiny is to be exercised by the legislature over the executive? Can ministers be accountable to parliament if they are not members of parliament (as is the case in France and America)?

Merits of Different Systems

3. It is all very well debating the alternative electoral systems in a forum such as this and reaching an agreement on which one to adopt. However, the people in the villages need to be consulted and any electoral system must be accepted by them. Experience from the referendum showed that there was often a lot of confusion in the polling booths. The electoral system should be simple and easy to understand.
4. Francophone Africa usually favours the party list system, while Anglophone Africa tends to opt for first-past-the-post. Experience from other countries should be drawn upon but it must be borne in mind how the various options will fit into the Malawian context.
5. The system adopted might depend on what the election is for. If a Constituent Assembly is to be elected, then a list system, which reflects party strengths and guarantees a proportional representation of views, might be preferred. If the election is for a Legislative Assembly, then a system based on constituency representation might be favoured.
6. Both the list system and the preferential system deliver an electoral outcome in which the balance between parties in parliament reflects their relative support in the country. The further advantage of the preferential system is that it also satisfies the accountability principle because people vote for individuals. Using this model is possible even with a low literacy rate by using pictures and symbols (stickers to be put on the ballot paper in the order of preference). However, a lot of preparatory work and field testing would be required and there is probably insufficient time before the first election.

7. The advantage of the majoritarian system currently used in Malawi is that people are familiar with it. Another advantage claimed for it is that it provides a clear majority in Parliament for one party and thus makes for strong Government. However, the British experience provides ample evidence that this is not automatically the case and, furthermore, that it is extremely rare for a Government with a parliamentary majority to have gained a majority of the popular vote. At the constituency level a Member of Parliament can be elected with well under half of the vote - in other words more people vote against the elected MP than vote for him or her.
8. Low voter registration and/or turnout can undermine democracy. Given the experience of the referendum, this is unlikely to be a danger in the first election. However, voter turnout - the proportion of registered voters turning out to vote - may decline if there are frequent elections. Unless voting is compulsory, as in Australia, there are no guarantees that registration and turnout levels will remain high. The burden is on all concerned to act in such a way as to maintain the desire of the population to be actively involved in political decision making.

Timetable/Electoral Commission

9. Issues such as the age limit for voting, 18 or 21, the number and size of constituencies and their distribution between the regions, must be considered. An independent Electoral Commission which has the confidence of everyone must be set up immediately to deal with these issues at an early stage.
10. The first task is to sort out registration. Once the number, and geographical distribution, of registered voters is known, questions on constituencies/the number of MPs can be tackled.
11. The Electoral Commission could be appointed from nominations by parties and NGOs. They should propose non-partisan people of stature who will not participate in the elections, but who will stand above party politics. The commission will take a corporate view of its responsibilities and make proposals. It should have committees to deal with various aspects of the electoral process, e.g. the role of the media. There must be wide consultations, involving all interested parties, on the proposals the commission makes so that electoral arrangements are widely accepted.
12. A separate Boundaries Commission will be needed to redraw constituencies. This is a major time-consuming task which cannot be completed in time for the first election, given that the people of Malawi expect a general election in a relatively short while.

13. Is it possible to have an independent Electoral Boundaries Commission and Electoral Commission under the present constitution, or is constitutional change required first? One way is for these bodies to be set up immediately and changes to the constitution can be done along the way. It is important to consider how constitutional change is to be approved: is a Constituent Assembly to be elected to ratify constitutional changes, if not, how are changes to be legitimised? Any constitutional settlement must contain adequate mechanisms for the peaceful transfer of power between political parties if the desire for that is expressed by the electorate in any general election.

REPORT OF WORKING GROUP TO PLENARY SESSION
Friday, 23 July

RAPPORTEUR : Mrs. Justice A.S. Msosa
SPOKESPERSON : Mrs. Justice A.S. Msosa
MODERATOR : M. Meadowcroft

REPORT

1. Continue and develop co-operation as was the case in the referendum. It was observed that things generally went smoothly during the referendum, in particular on referendum day. The same spirit should be maintained, and the best way is to choose an electoral system that would ensure a smooth election process.
2. It was observed that the Referendum Commission started on a weak note but later improved. There is a need to study what went wrong and improve on it. The Electoral Commission should be properly constituted, unlike as was the case with the Referendum Commission.
3. It was felt that, at times, the Referendum Commission was weak on policy matters. We should aim at an efficient Electoral Commission. It was observed that the Referendum Commission did not deal effectively with complaints that were referred to it: at the beginning it did not seem certain how to do so. There were several cases of assaults referred to the Commission which it did not deal with and, strangely, the police did not act, although these were criminal activities. It was recommended that the Electoral Commission should be given power to deal with complaints and should have a committee to perform that function.
4. In order to preserve the independence of the Electoral Commission, its members should not be active in the election. Similarly, its Chairman should be seen to act independently. There is need to have the Chairman and members of the Commission appointed at an early stage. Concerned parties should agree on the regulations governing its composition, functions, the appointment of members and the Chairman, and its rules and procedures.
5. A Code of Conduct for the parties should be set out and agreed.
6. Electoral regulations should be formulated by studying the existing laws and models of similar regulations from other commonwealth countries. The regulations to be drafted with technical assistance from outside, if possible.

7. An independent body should work out the electoral regulations, the composition and constitution of the Electoral Commission, and a code of conduct for both the Electoral Commission and political parties.

8. Registration:

A transitional body should look into various issues relating to registration, such as:

- (a) the minimum age for registered voters,
- (b) registration based on place of work,
- (c) the need for employers to give time off to vote,
- (d) the feasibility of establishing a continuous register and the possibility of computerisation,
- (e) staffing and the training of registration personnel,
- (f) universal franchise (i.e. including police and military), and
- (g) the need for more urban registration centres.

9. Voting System:

It was felt that Malawi citizens are generally acquainted with the majoritarian voting system, with single member constituencies. Logistical problems involving constituency boundaries and the size of electorates to be referred to transitional authorities who would also study back up papers on consequences of any voting system.

10. Parties:

The group considered the purpose of registration of parties. It was noted that the registration of parties enables them to participate in constitutional reform processes and also enables them to have opportunities such as being nominated to the Electoral Commission. It was resolved that independent persons should be allowed to stand as candidates.

11. There are different ideas on the best time to hold the elections. Several factors must be considered. There is a need to balance speedy execution of the vote against the need for effective and efficient organisation.

12. It is important to have the Electoral Commission in place as soon as possible. The sooner it starts work the sooner the electoral mechanism can be put in place.

13. In order to have an effective and efficient electoral system, the following items must be given particular attention:

- (a) Electoral Commission
- (b) Voter registration
- (c) Party registration
- (d) Code of Conduct for parties and the electoral Commission

OPEN DISCUSSION

The following points were made in response to the report:

1. It is essential that the head of the Electoral Commission commands the respect of all Malawians and is seen to be truly independent. In some countries, such as Australia, the Electoral Commission Chairman is a Judge.
2. Who will appoint the Electoral Commission Chairman? There was disquiet about the impartiality of the Referendum Commission, given that its Chairman was appointed by the President and its Secretary was the Secretary to the President and Cabinet.

Note of Dissent:

The Chair ordered that it be recorded that the PCD took exception to the comment in the report that "... the Referendum Commission started on a weak note but later improved...The Electoral Commission should be properly constituted, unlike as was the case with the Referendum Commission". PCD representatives claimed that, after the Referendum Commission had first been appointed, it was discovered that there had been a breakdown in communication between PCD and PAC - this incident was well known to members of both sides - which had led to some members of the Commission, including the then Chairman of PAC, not being acceptable. The matter had been discussed and the necessary corrections made. It was not a question of a weak, or ineffective Referendum Commission, rather a matter of the degree of acceptability of that Referendum Commission. It was to be hoped that the appropriate lessons had been drawn from the incident referred to.

**TOPIC 4 : DECENTRALISATION, LOCAL GOVERNMENT,
AND DEVELOPMENT**

PRESENTATION AND DISCUSSION

*Wednesday 21 July
18.00 - 19.30*

PRESENTER : Professor William TORDOFF (UK)

CHAIR : T. Bakary

PRESENTATION

The presentation was based on the paper, 'Decentralisation, Local Government and Development', contained in Appendix 2.

Concepts

Development is a hard concept to define, but it embodies economic growth, social justice, a political element - popular participation in the political process and the protection of civil rights and essential freedoms - an administrative component, so that the state has the capacity to respond to people's needs, and an international element, enabling the state to exercise some autonomy in the conduct of foreign affairs. Thus, development is multi-faceted, with economic, social, political and international dimensions.

Decentralisation refers to the process of transferring power from the centre to sub-national levels, either to officials of the central government in the field - **administrative decentralisation** or the **deconcentration of administrative authority** - or to elected local governments - **political devolution**; they are often complementary rather than separate processes.

Decentralisation in Africa

Instead of opting for substantial decentralisation, independent Anglophone and Francophone states sought to build upon the local government systems which they had inherited. In Francophone Africa the emphasis has been on the central control of local government, with local authorities regarded as 'branches of the state', responsible for the organisation of those public services which were local in character.

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Anglophone African states sought to adapt the English model of local government to the post-independence situation, making such modifications as the leadership believed the changing political scene demanded. The early results - for example, in Ghana, Kenya, southern Nigeria, Sierra Leone and Zambia - were mostly disappointing. Local government was marked by frequent changes in function, corruption, inefficiency, lack of qualified staff and the high cost of providing services.

Subsequently, from roughly the early 1970s to the early 1980s, there was a renewed interest in decentralisation, with most African governments favouring the deconcentration of administrative authority model; there was a shift in emphasis from representative local government to local administration. Central Government exercised tighter control over local authorities and there were often parallel, Government-controlled bodies such as District Development Committees at the local level.

In Ghana, a new unified public service absorbed local government personnel and Government was seen as a single operation wherever, and by whoever, it was carried out. In Botswana too, 1974 saw the transfer of responsibility for Local Authority staffing from the Local Authorities themselves to a United Local Government Service.

In Tanzania, the 1972 decentralisation measures, which abolished district councils, did not - as President Nyerere claimed - 'end bureaucratic dominance' and 'give power back to the people', but conferred considerable authority on civil service Regional and District Directors of Development (RDDs/DDDs) and their staffs. It was they, rather than elected local representatives, who constituted the hub of the new system. In 1984 the Government restored the district councils; they were to operate alongside elements of the RDD/DDD structure. This was done in the belief that something more than administrative decentralisation was required to promote meaningful political participation.

In Kenya, the county councils were stripped of their three major functions (education, health and roads) in January 1970, and the administration was reinforced as the major instrument of development. This is basically still the case today under the 'District Focus for Rural Development', a strategy announced by President Moi in October 1982.

In Zambia, central control over the local authorities remained tight. The Local Administration Act, 1980, underpinned the power of the ruling party at the local level, but aroused considerable hostility both inside and outside parliament. It was never fully implemented and was superseded by the Local

Government Act of 1991. Under this Act, President Chiluba's MMD government proposes to devolve selected functions to local authorities 'as their management capacities improve' - at present, all councils (city, municipal and district) are heavily indebted and are chronically short of both money and equipment.

In Malawi, the Government has been committed to the districts playing a key role in the planning, execution and monitoring of development activities. Two alternative strategies have emerged: to deconcentrate administrative authority to District Commissioners, District Development Committees and the Field Offices of line Ministries, or to strengthen Local Authorities. It is important that clear policy guidelines should emerge through discussions between the interested parties.

Issues

A clear lesson to emerge is that if representative Local Authorities are to have an important development role, they must be strengthened in both staffing and financial resources.

What approach should Malawi adopt? If political devolution to District Councils is adopted, what functions should be devolved and what financial arrangements made? Or should there be deconcentration to the DCs and DDCs? Or should the two approaches be combined?

How can democracy be brought to the local level via decentralisation ?

OPEN DISCUSSION

The following points were made during the open discussion:

1. Local Authorities (LAs) in Malawi are weak in terms of the resources and the staff available to them. Their management of funds and the planning and execution of development activities is consequently poor. If Malawi wants to undertake devolution it will need to develop viable LAs.
2. LAs are weak because their elected representatives are ultimately appointed by the Malawi Congress Party and are controlled by it and the Government and thus lack initiative. They must be given powers to work effectively - to make and implement decisions.
3. Many services that Government provides need to be provided locally. The question is not whether those services should be provided by local institutions or central ones, but who is to have the authority for their provision at the local level - local elected bodies or the field agents of central government.

4. Devolution is essential for democratisation. There is a need to consult the population to discover the extent to which people want to govern themselves and how much power they want at the local level. Is it feasible, or desirable, for example, for the Police to be subject to the authority of District Councils?
5. For devolution to work, LAs must have adequate resources, financial and otherwise, to carry out their responsibilities. Devolution will not be meaningful if responsibilities are devolved while control of all resources is retained in the hands of central government.
6. Malawian LAs suffer from a narrow financial base for raising revenue to provide services. When LAs depend heavily on Government grants their autonomy is eroded. It is a feature common to many systems that when the Central Government provides financial resources to LAs it seeks to exercise control over them. The financing methods employed by LAs in Scandinavian countries, for example, should be investigated to see how best to guarantee LA financial independence from central government.
7. In a multi-party system it is possible that the party in power at the centre is not the same as that in power in the locality. This is a source of potential conflict between central and local government. Conflict might be minimised by central government exercising restraint and local government exercising responsibility.
8. One way of preventing excessive Government interference in and control of LAs is to provide the latter with legal protection through constitutional provisions - as in Nigeria in 1979.
9. Drawing on the lessons from the experience of other countries, in Africa and Europe, Malawi has an opportunity to develop a viable decentralised system of government. Any system must be worked out jointly between all interested parties.

Suggested Topics for Discussion by the Working Group:

1. How can democracy best be developed at the local level?
2. What powers and functions should be given to elected Local Authorities and what to District Commissioners and District Development Committees?
3. The financial basis for Local Authorities.

REPORT OF WORKING GROUP TO PLENARY SESSION
Friday, 23 July

RAPPORTEUR : Mr. D. Alufandika
SPOKESPERSON : Hon. Mrs. Q. Gondwe
MODERATOR : Prof. W. Tordoff

REPORT

WORKSHEET

KEY INTERNATIONAL COMPARATIVE
ISSUES AND EXPERIENCES

OBSERVATIONS OF
WORKING GROUP

1. The relationship between central government at field level and local government in Malawi, having regard to experience in other parts of Africa and the world
We emphasised the need for close co-operation between the two sides
2. The strengthening of the human and financial resources of the local authorities
This is essential if they are to perform effectively a wide range of functions
3. Public land within the jurisdiction of city, municipal and town councils should be made available to these councils in order to facilitate development and to give the councils income
This is essential to encourage development and to create income and employment within these areas
4. A small-scale project development fund should be made available to the district councils
This would enable village communities to implement local projects
5. Both elected local authorities and existing administrative structures at district level should be retained
Both still have an important role to play in promoting district development
6. We recognise the need for the continued co-ordination by the DDC of development activities in the district
Elected members of local authorities should assume greater responsibilities in this sphere
7. Reports of the Local Government Development project prepared by the World Bank and UNDP should be made available for information
This will facilitate the implementation of accepted recommendations

RECOMMENDATIONS

Based on the main presentation and the group discussion on the issues and observations, the following issues require further attention and follow-up action by the various partners in the process:

We examined the local government structure in Malawi in relation to the experience of other countries in Africa and the world with the democratisation process. After discussion, it was found that there were weaknesses in the areas of staffing and financing of local government in general.

Problems were also noted in the areas of appointment of mayors and councillors and political party influence in local government, since this impinged on the effectiveness of the management of the local authorities.

The following recommendations were made after detailed discussion:-

1. Local government members should be elected directly through contested elections and should satisfy appropriate educational and other qualifications.
2. Councillors should be accountable to the local electorate first and to their parties second.
3. Central government control of local authorities should be reduced to a minimum and should in principle be restricted to matters of policy.
4. Public land within the jurisdiction of city, municipal and town councils should be made available to these councils in order to facilitate development and to give them, in addition, income therefrom.
5. Mayors should be elected by elected councillors and therefore section 15 and other relevant sections of the Local Government (Urban Areas) Act should be amended. This should also apply to the election of district council chairmen under the provisions of the Local Government (District Councils) Act.
6. We agree that realistically it is necessary to retain both elected local authorities and the central government structure in the field revolving round the District Commissioner, the line ministries and the District Development Committee. However, we believe that the local authorities should be strengthened in staffing and financial resources in order to enable them to assume a wider range of the functions already listed in local government legislation.

7. Reports on the Local Government Development Project produced by the World Bank and UNDP should be made available for information.
8. We recognise the need for district councils to have available to them a "small-scale projects fund", out of which the village communities can be assisted to plan and develop local projects.
9. We recognise the need to retain the district development committees, on which elected local political representatives and officials of the line ministries serve, as a body to co-ordinate development at district level.
10. We regard it as important to strengthen the links between local authorities, comprising as they do elected members, and the district development committees so that they work closely together in the planning and development of the district.
11. We also regard it as important that the local authorities should be independent of the direction of any political party.

OPEN DISCUSSION

The following points were made in response to the report:

1. Local councils must be directly accountable to their electorates, and stand above party interests. In particular, majority parties controlling local authorities should not use the facilities of the council, e.g. vehicles, equipment, materials and personnel, for party purposes.
2. The report recommends that, while councillors are to be directly elected, mayors be elected indirectly - by the elected councillors. Why can mayors not be elected directly? Whether the mayor is directly or indirectly elected depends on the role he/she is expected to play. Is local government to be a "parliamentary" system, or a "presidential" one. If a "presidential" type of mayor is to be directly elected, this will require the casting of two ballots - one for the local councillor, and one for the mayor.
3. More attention must be paid to the funding of district councils so that they can provide meaningful services. Back in the early 1960s, local councils actually made money from some of the services they provided. This is not the case now, because some of the powers of local government have been withdrawn by central government.

Note: Under the Local Government Development Project, consultants have identified the financial weaknesses of local government and are identifying alternative sources of funding.

**TOPIC 5 : THE ROLE OF THE LAW, THE INDEPENDENT
JUDICIARY AND CONSTITUTIONAL REFORM**

PRESENTATION AND DISCUSSION

*Thursday 22 July
08.00 - 10.30*

PRESENTER : Hon. Justice Michael KIRBY AC, CMG

CHAIR : W. Tordoff

PRESENTATION

The International Commission of Jurists (ICJ) is concerned with defending and advancing human rights and seeks to promote human rights fulfilment in the day-to-day work of judges and lawyers around the world. The history of Africa has not been very good on human rights. In fact, the deprivation of human rights has taken place in numerous countries throughout the continent.

Good Government

What is meant by good government? The minimum characteristics of a society which is well governed are:

1. An educated and informed population, able to understand and participate effectively in the consideration of political issues.
2. A pluralistic society that allows varying interests to be represented effectively by non-governmental organisations.
3. A society with free, open and effective information media that are able to act as a basis for public discussion and as a check on the arbitrariness of government and other powerful forces.
4. A relatively tolerant society in which both leaders and followers are able to accept and appreciate those who differ from them ideologically or in other ways, and in which political opposition is not seen as treasonous.
5. A government whose nature, composition and general policies are determined by elections or other means that allow for the peaceful transfer of power from one group to another when the people so decide.

6. An effective government, able to draft and administer legislation and services relevant to the needs of the people.
7. A legal structure able to roughly guarantee equality before the law and to provide a predictable framework for private and public decision making.

Independence of the Judiciary

Fulfilment of condition seven requires that judges must strive to do what is lawful and just. For that, their independence from outside interference must be ensured. Certain prerequisites are essential for the independence of the judiciary. They can be put in the form of "ten commandments":

1. The independence of the judiciary should be explicitly guaranteed in the constitution;
2. It is for the judiciary to determine the limits of the jurisdiction of the courts of law;
3. There should be no interference in the performance of the judiciary's functions;
4. Everybody has the right to be tried in the general courts. Serious matters should not be tried in courts that will take away the citizen's basic rights;
5. Judges should have freedom of expression (not as members of political parties). They should remain above party politics etc;
6. Judges should be chosen among from people with high education and appointed and promoted on their merits;
7. Judges should enjoy immunity from suit for actions taken in their judicial capacity;
8. Judges should be removed only for proved incapacity or misconduct in office;
9. There should be procedures for complaints and discipline against judges, but these should protect the office of the judge from harassment and retaliation by discontented litigants, and
10. Salary and pension benefits should not be reduced during tenure. Benefits should also be attractive enough to secure and retain high-calibre people, and keep them independent and free from possible temptation or conflict of interest and duty.

Security of tenure is also essential for maintaining the independence of the judiciary. Unfortunately, in many African countries these "ten commandments" have not been adhered to and the executive has impinged on the independence of the judiciary. Some countries facing financial problems have not ensured the proper remuneration of judges; this has led to a deterioration in their conditions of service which exposes judges to temptation. There has also been contempt of judges' decisions, with an erosion of respect as a consequence. Ouster of jurisdiction has occurred (e.g. in Nigeria, a military decree stipulated that no military decree - including itself - could be questioned by the courts). The device of 'transfer out', moving judges to another position in public service, has been used to remove judges who displease the executive. There have been occurrences of what is known as non-justicial cases - when the courts themselves are reluctant to pronounce on what they consider to be "acts of state", over which they have no jurisdiction. And lastly, there have also been cases where judges have been sacked or even murdered.

The Malawi Constitution assigns great importance to the independence of the legal process, but to outside observers, some of its provisions, particularly sections 62 - 64, seem to be inconsistent with the independence of the judiciary.

Although, under section 62, the selection of judges by the president is based on the recommendation of the Judicial Services Commission, the president alone is responsible for appointing the Chief Justice.

The tenure of "acting judges", who can be appointed under section 63 (5), is dependent on the will of the executive; this poses problems for the independence of the judiciary.

Under section 64 (3) (c) judges may be removed for misbehaviour and incompetence, but the fact that they can also be removed where the president considers it desirable in the public interest derogates from the security of judicial tenure that is necessary for the independence of the judiciary. It is against international principles and needs to be reconsidered.

Section 64 (4) is a "transfer out" which allows for judges to be moved to other public service posts. This provision can be used to remove troublesome judges.

Perhaps, during the transition, attention could be paid to these matters.

The Judiciary and Elections

In the run up to multi-party elections it will be most important to have a fair and impartial umpire, who stands above the hurly-burly of political conflict, and who is trusted by all parties. The judiciary may play a part in the conduct of elections in four ways:

1. Judges are often members of Boundary Commissions and Electoral Commissions.
2. Before elections, judges can grant injunctions to strike down actions which threaten the freedom and fairness of the electoral process: for example, in Kenya, the courts struck down an attempt to reduce the time given to parties and candidates to register.
3. During election campaigns, they can make orders to correct and prevent unfair conduct.
4. After elections, judges may be involved with disputes over results.

Constitutional Change and the Transition to Multi-Party Democracy

The transition arrangements are matters of the greatest concern. They constitute a very delicate area. Outside experts can provide principles and examples, but the decisions on the best way to proceed must be left to Malawians to make.

The key issue to be decided is whether to proceed to make constitutional change through an elected Constituent Assembly or to proceed to a general election first and make constitutional changes afterwards. Whatever path is chosen, the way forward will involve securing constitutional reform in a context of constitutional continuity.

The advantages of a Constituent Assembly are that it allows for widespread consultation with the people and for a solution based on the will of the people. The disadvantages are that it may slow down the transfer of power and be seen to be frustrating hopes for change and that it requires the agreement of the incumbent government to pass the laws to establish it.

There are a variety of ways of securing changes to the constitution. In some countries, such as Malawi, an amendment to the constitution requires a 2/3 majority in Parliament; in Australia amendments to the constitution must be submitted for approval by a referendum. It should also be noted that constitutional reform can be achieved, in part, by judicial decisions, for example, the use of international human rights provisions can be used to give substance to constitutional provisions.

OPEN DISCUSSION

The following points were made during the open discussion:

The Independence of the Judiciary

1. The question is how to secure and ensure the maintenance of the independence of the judiciary. Any future constitution must guarantee three essential features: the supremacy of parliament; the supremacy of the rule of law, and the independence of the judiciary. Judicial independence is needed to ensure that public activities are carried out in accord with the law, and that there is no abuse of power by those entrusted to public positions. In order for the judiciary effectively and efficiently to discharge its duty to uphold the rule of law, it must be free from parliamentary control, from the dictates of the executive and from any pressure from other powerful bodies or parties to any particular case. Undue influence on the courts can come from people other than the government.
2. The current constitution makes no mention of guaranteeing judicial independence and this must be rectified in a new constitution, which should provide that neither parliament, nor the executive shall try to interfere with the judiciary in the exercise of its functions.
3. Other provisions to ensure the independence of the judiciary are:
 - (a) The separation of the judiciary from the civil service, with its own pay structure and conditions of service; The need for appropriate remuneration of the judiciary has long been recognised but nothing has been done to change the current low levels of pay.
 - (b) A strengthened Judicial Service Commission, with the sole responsibility for making appointments. Judges must be appointed on the basis of their competence, honour and integrity and enjoy secure tenure: their removal from office before retirement should only take place in cases of misconduct or incompetence.
 - (c) A separate Supreme Court.
 - (d) Once judicial decisions are made they must be enforced speedily, with full support from all the agencies of the executive.
4. The independence of the judiciary is also threatened by the fact that the Attorney-General is not independent, but is subject to the control of the executive.

5. The independence of the judiciary can be undermined by the appointment of judges to serve as members of the boards of statutory bodies, for which they receive remuneration. The suspicion will tend to be that they have been bought off.
6. In order to ensure the independence of the judiciary a code of conduct for judges should be established. In some cases judges know the people involved in cases coming before the court, and have been known to give informal legal advice to litigants. Judges who may have an interest in a case should declare it and should not participate in hearings but should be replaced in them by judges who are manifestly neutral.
7. The judiciary should be independent of all groups, not only of the government. It must be accepted that every judge has his or her personal philosophy. However what is essential is that judges should not allow their personal beliefs to interfere with their judicial functions, which must be discharged only by reference to the proved facts and the applicable law.

Police Powers

8. The powers of the police should be strictly controlled. Their duties are to obey the courts and enforce the law. Too often, judgements have been made and ignored by the police. The police must be under the rule of the law so that the rights of the accused are safeguarded.
9. Should the police control the prisons, as they do now? Should those who arrest people also be responsible for their custody? Judges and lawyers are not allowed access to places of detention without police permission.

Traditional Courts

10. Malawi maintains two systems of courts at the same time. Traditional courts tend to violate human rights because of the absence of a right to legal representation, as guaranteed by international human rights law. Traditional courts should either be abolished, or reserved only for petty crimes. They should not be used for capital crimes, serious crimes and offences related to the political process.

Constitutional Change

11. After the referendum result people want a change in parliament and the executive. If a Constituent Assembly were elected to change the constitution people would not see the changes in parliament and cabinet for some time. This might not be acceptable for Malawians. Therefore there

should be an early election to enable fundamental changes to be initiated without delay. This election could take place before the end of the year.

12. A Constituent Assembly could be elected to draw up a constitution and then, as in the case of Namibia, become the legislative assembly.
13. Even though people want changes there is a time factor to be considered when discussing the timing of elections. December 1993 might be difficult for various reasons (i.e it is in the middle of rainy season). However, even if elections were to be postponed, some activities could start soon to keep alive the interest of the people. For example registration could start very soon so that the number and size of constituencies can be determined.
14. Any constitutional change must consider the relation between parliament and the constitution. The supremacy of parliament can be a threat to human rights: in Ghana, the Preventive Detention Act was tested in the courts, who held that as it was an act of Parliament it was not illegal nor did it offend the constitution. The lesson to draw from this is that the supremacy of the constitution over parliament must be enshrined in the constitution, so that serious abuses of human rights are put beyond legislative capacity by adherence to a bill of fundamental rights which will be upheld by the independent courts.

TOPIC 7 : HUMAN RIGHTS

PRESENTATION AND DISCUSSION

Thursday 22 July
14.00 - 16.00

PRESENTER : Hon. Justice Michael KIRBY AC, CMG

CHAIR : M. Kirby

PRESENTATION

The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR), adopted by the General Assembly of the United Nations in 1948 affirmed that "All human beings are born free and equal in dignity and rights" and proclaims that a full range of civil, political, economic, social and cultural rights which nations and individuals should strive to promote and respect.

Several of its provisions are relevant to Malawi in the transition to multi-party democracy.

The Preamble: *"... if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression ...human rights should be protected by the rule of law"*

Article 2: *"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as...political or other opinion."*

This upholds the right of diversity of political opinion.

Article 12: *"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."*

Article 19: *"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media..."*

- Article 21:** 1. "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage..."
- Article 28:** "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised."

Malawi and Human Rights Declarations

Section 2 of the Malawi Constitution specifically recognises the UDHR:

"Subject to this constitution the Government of the Republic shall be founded upon the following principles -

- (iii) *The Government and people of Malawi shall continue to recognise the sanctity of the personal liberties enshrined in the United Nations Universal Declaration of Human Rights and of adherence to the Law of Nations"*

However, although this is an important commitment, it is a relatively weak statement of aspiration. Although it is a useful foundation stone for the protection of human rights it suffers from several drawbacks: it is "subject to the constitution"; only the general principles of the UDHR are accepted, not the specific and detailed wording; it does not allow for an individual who feels their rights have been derogated from to take action in the courts to enforce the stated rights.

One of the questions facing the drafters of any new constitution is whether to stay with the general principles of aspiration or to incorporate in some way the principles of the UDHR and other international instruments of human rights in the constitution. By doing so, the constitution would provide judges with the means to ensure that basic human rights cannot be encroached upon without accountability to the courts.

Although the constitution says the republic is to be founded on the Law of Nations (see Section 2 (iii) above), Malawi has not given effect to that commitment by ratifying the core international conventions adopted since the UDHR, eg the International Covenant on Civil and Political Rights and its Optional Protocol - 1966, which were intended to give greater content to the UDHR.

Ratification of such instruments opens up the laws and practices of a country to international scrutiny to ascertain to what extent national laws and practices are in harmony with internationally-determined human rights. The first Optional Protocol provides a means by which an individual affected, who has exhausted domestic remedies, may invoke the scrutiny of the Human Rights Committee.

The African Charter on Human and Peoples' Rights is a more detailed version of the UDHR, with an African perspective. OAU member states, such as Malawi, undertake to legislate in order to realise its provisions. Chapter II details people's duties. Of particular significance here is article 29.7.:

"To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation..."

Democracy depends, in part, on the freedom to have different opinions. It also relies on the duty to respect the opinions of others and to seek to alter opinions through dialogue rather than seeking to prevent the expression of alternative views. The right to differ, so important for democracy, is enshrined in the UDHR and in the African Charter.

In the steps taken towards the multi-party election in Malawi and in the final constitutional settlement Malawi should decide what steps to take to put the principles of fundamental human rights into practice so that they become a part of the living law and culture of the country.

Two questions:

1. What steps will a post-election Malawi take to accede to provisions on human rights? What will it want to include within the constitution, or other laws, and how will it set about including the appropriate provisions in the law?
2. What assistance is required from the UN and other international bodies to ensure that an understanding of human rights is disseminated not only to decision makers and opinion formers but to the whole community?

OPEN DISCUSSION

The following points were made during the open discussion:

1. A new Government must incorporate international conventions and charters into a new constitution.

2. The ratification of international conventions by a Government does not guarantee that all the principles will be carried into domestic law. How to introduce them into the laws of the country is the challenge facing Malawi, along with other countries. Individual redress, readily available in the courts, helps to translate the fine commitments of international human rights law into the living law of society.
3. Some governments have used "national security" as grounds for infringing human rights. A strong, independent judiciary, with strong constitutional provisions on human rights should be a necessary safeguard against such abuses of power.
4. As they stand apart from the party political battle, the churches and the judiciary may be among the best institutions for carrying out extensive civic education campaigns to inform people of their human rights. Churches see such activities as an integral part of their pastoral duties.
5. International organisations can provide popular versions of international human rights instruments, with pictures, detailing human rights and appropriate constitutional provisions.

REPORT OF WORKING GROUP 5 TO PLENARY SESSION
Friday, 23 July

The report was presented in two parts.

Part A covered:

1. Independence of the Judiciary
2. Constitutional Reform
3. Control of Police Functions
4. Electoral Commission

Part B covered:

5. Electoral Laws
6. Human Rights Protection
7. Incorporation of Human Rights Standards in the Constitution
8. Ratification of International Instruments or Treaties on Human Rights

PART A

RAPPORTEUR: Mr. A. K. C. Nyirenda

SPOKESPERSON: Mr. A. K. C. Nyirenda

MODERATOR : Hon. Michael Kirby

1. Independence of the Judiciary

- a. The group unanimously agreed that it was of paramount importance that the independence of the judiciary be spelt out in our constitution. Therefore, it is necessary that the constitution should contain a specific provision stipulating the independence of the judiciary.
- b. Secondly, and linked to the principle of the independence of the judiciary, the group, again unanimously, agreed that it is particularly important that the position of judges should be autonomous. To ensure this, it is, in turn, particularly important that judges should be protected from, and be free from, any form of pressure from whatever source.
- c. Thirdly, and still related to the subject of the independence of the judiciary, the group discussed two other matters:

- i. The question of detaching salaries and conditions of service for judges from the civil service in recognition that the judiciary should be a separate branch of government with its own budget.
- ii. There was also discussion relating to section 64 (3) (c) of the constitution on the removal of judges from office.

The group agreed that, while the first issue is important, and should indeed be looked into for the future in appropriate forums, it is not immediately essential to the transition process. What cannot be pended, however, is the question of the removal of judges from office in section 64 (3) (c). The group agreed that this provision be removed and replaced with the earlier provisions which referred the matter for action by the National Assembly and even then only on grounds of proven misconduct and incompetence. (See constitution)

The group was not agreed on whether section 64 (4), which allows for judges to be moved from judicial functions to other functions of national importance should also be removed. It was felt by some members that this provision is also capable of being indirectly used to remove judges from office. Other members, however, were of the view that this provision is important in matters of public interest.

2. Constitutional reform

In the context of the constitution a question was raised as to how, indeed, to handle the whole question of constitutional reform.

The group noted that the mechanism and procedure for putting an ideal constitution into place is under consideration between PCD and PAC in the context of a National Consultative Council.

3. Control of Police Functions

Some members expressed concern over the activities of the police and their powers in relation to certain functions, in particular the powers of arrest, criminal investigations and bail for arrested individuals. The matter was strongly debated but there was no consensus on whether indeed there is a malfunction in the activities of the police. Participants agreed that the matter be referred to PCD and PAC for further discussion.

4. Electoral Commission

Concern was expressed over the alleged victimisation of individuals from both sides during the referendum process. It was felt pertinent to mandate the Electoral Commission to formulate rules guarding against such acts and providing appropriate remedies thereto.

It was emphasised, however, that such rules should avail all sides involved in the election process equal protection.

PART B

RAPPORTEUR: Mr. Bright Msaka

SPOKESPERSON: Mr. Bright Msaka

MODERATOR : Hon. Michael Kirby

5. Electoral Laws

1. The group agreed that the position and functions of the Traditional Courts are matters that need to be discussed.
2. A discussion was had relating to the jurisdiction of traditional courts, especially in certain electoral offences. Some members took the view that it would not be appropriate to bring crimes, or anything relating to the electoral process, before the traditional courts.
3. It was also noted that S.30 of the Constitution does actually provide for the creation of an Electoral Commission. The question that arose was whether the Electoral Commission as presently constituted was adequate.
4. Issues relating to the composition of the commission, the constituency boundaries, voting age, etc. were considered in detail.

It was observed that all the issues above are matters under discussion in a Committee comprising PCD and PAC and it was agreed to leave that particular committee to address all these issues and concerns.

6. Human Rights Protection

1. The group discussed the issue of Prisons. After some elaborate discussion, it was noted that the ICRC, at the invitation of the Malawi Government, had visited

prisons and interviewed prisoners and had subsequently submitted a report with recommendations to the Government of Malawi. Some participants mentioned that the Malawi Government had actually implemented some of the ICRC's recommendations. And it was also stated by some members that the Malawi Government was doing all that it can in view of:

1. Present financial constraints;
 2. Promises of some financial assistance from donor organisations for this purpose, to address some of the recommendations by the ICRC.
2. Some participants expressed concern over what was seen to be non-compliance by the police with the procedures relating to powers of arrest, criminal investigations, bail and the timely bringing of an arrested person before the court. It was stated by some members that the ICRC had already made a report and recommendations on this issue, which report and recommendations some members expressed the desire to see. It was, however, not agreed whether in fact this was a matter necessary for the transition or whether it is a matter that can be dealt with in more detail by the appropriate body at a later stage.

It was agreed that matters concerning the police should be referred to PAC/PCD for further discussions.

7. Incorporation of Human Rights Standards in the Constitution

1. The group agreed that it is necessary to incorporate international human rights standards in the constitution to the extent that they have not already been incorporated.
2. The group noted certain moves by the Courts in Malawi and in other Commonwealth jurisdictions to utilise international human rights norms in their decisions.

8. Ratification of International Instruments or Treaties on Human Rights

1. Some members were of the strong opinion that an agenda be drawn up to consider Malawi's ratification of international human rights treaties in view of the observation that a number of such treaties still remain unratified. Some participants, however, doubted the usefulness of such a proposal, since the ratification or non-ratification of such human rights treaties was a matter that involved a complex array of considerations which a group of persons not involved in government and international relations would not readily appreciate or accept.

The moderator added that, although consensus had not been reached on most points discussed, the general view of the working group was that the exchange of ideas and opinions had, in itself, been a useful, and worthwhile exercise.

OPEN DISCUSSION

The following points were made in response to the report:

The Police

1. There should be civic education of the police so that they can be made fully aware of the limits on their own authority, e.g. they should learn that they should obey High Court orders. The Attorney General is their legal adviser, but they seem to ignore him. Civic rights, and citizens' rights should form part of police basic training.
2. The police should arrest only according to the law, not on the "instructions of a higher authority".
3. The police should not detain people in custody in order to extract confessions from them. Clause 176 of the CPC allows for confessions to be used as evidence in court. It should be repealed.

Ratification of International Treaties on Human Rights

4. A representative of the Government recently supported the call for the creation of a United Nations High Commissioner for Human Rights and implied that Malawi would comply with international human rights conventions. What difficulties are there with formally ratifying them?

The Amnesty

5. The amnesty applies only to exiles. It should cover locals too. There are many cases pending concerning events during the referendum, and the police are still taking people to court. The Attorney General should instruct the police to stop prosecuting people for petty crimes committed during the run up to the referendum.

TOPIC 6 : THE ROLE OF THE MEDIA

PRESENTATION AND DISCUSSION

Thursday 22 July
11.00 - 12.30

PANELISTS : Ms. Robin LUDWIG (lead speaker)
Prof. William TORDOFF
Mr. Michael MEADOWCROFT
Mr. Tessy BAKARY
Hon. Justice Michael KIRBY
Ms. Helen HOPPS

PRESENTATION

Ms. Ludwig: the country is in a delicate position. Decisions have to be taken regarding both the structures and dynamics of the media. Two factors have to be considered within the context of Malawi. Firstly, the press started to develop and open up before the referendum and this has led to a large number of newspapers. Secondly, the role the media are to play after the election has to be considered. The media will play a crucial role during the transition period and the basis for its future role will be laid during this period.

Justice Kirby: certain control mechanisms for the media can be put in place. In Australia, control is divided between the federal bodies, who deal with the electronic media (radio, TV, videos, films etc), and state bodies which are responsible for the print media (newspapers, magazines, periodicals etc). The print media is more conservative in nature and also concentrated in a few hands which seems to be a general phenomenon in Western countries. The electronic media tends to be more neutral. The Australian Broadcasting Corporation (ABC) is a government-owned company, but works like the BBC, trying to maintain a certain degree of neutrality. One of the issues of concern in Australia is the concentration by the media on popular and entertainment topics. Another is the trivialisation of political issues.

Information is fundamental for all democracies to emerge and develop. People have to know the options which they can choose from. Overall, the media provide the best vehicle for getting the message through. Access to the media is one of the key factors. In Kenya, the electronic media were highly biased before the election. The media should be encouraged not to be the mouthpiece of any particular group.

A few problem areas can be identified. One of them is the growing internationalisation of the media. This has both advantages and disadvantages. A definite advantage is that international events are brought closer and there is wide coverage of various issues. The disadvantage is that the electronic media tend to become biased and disseminate the views of the metropolitan powers. For Malawi, it is essential to protect the local media so that it can do its job in a Malawian fashion, trying to maintain the indigenous language and culture. When discussing the development and role of the media it should be noted that this goes beyond the coming election.

Mr. Meadowcroft: the various media seem to operate in different ways, the press often stimulating discussion and debate and the electronic media being more persuasive. The power of electronic media (radio) was illustrated by its effective use in postponing an election in Iraq.

Regarding British institutions, the BBC is not really a state institution. It gets its funding through licence fees. The trade-off is that no political advertising is allowed, but the corporation allows free time on screen so political parties do have access to it. The BBC also tries to maintain a high professional standard in all its programmes.

Concerning access to the media in Malawi, there was a change during the time before the referendum and at the end of the period radio was used by both sides. In many countries (i.e. Yemen) various bodies, like electoral commissions, have been given power to control the media and the time allocated for various groups. The control of access is often justified in view of the imbalance of financial resources available for gaining access to the media.

Ms. Ludwig: what kind of changes are to be made in the media? The control of the media can vary from total government control (i.e. China) to very little control (i.e. USA). Usually developing countries fall somewhere between these two extremes. Concrete examples can be provided, if necessary, from Mozambique, Angola, Nicaragua, El Salvador and Cambodia, about control mechanisms, particularly those covering election campaigns. Funding sources for the media can also differ (public vs private). The key question is to study the experience of other countries carefully and then decide upon the type of system to be set up.

Prof. Tordoff: during recent years the electronic media have become more important, especially during election time. Television is very powerful but has limited coverage. Radio has wide coverage but is often muted. The press is especially important in forming views.

In many cases when the press begins to develop, large numbers of new papers emerge, as in the case of Zambia. These papers include ones which are very critical towards the government. This phenomenon is important to society: for example, in Ghana, a newspaper survived a long time without interference from government despite the very critical views expressed by it. Jamaica is often cited as an exception among developing countries due to its critical and outspoken press. However, the Jamaican press does not play a major role in the country because it does not cover economic and financial issues well enough to be able to make government accountable for its actions. For African countries press coverage is usually a problem and therefore the role of radio becomes more important.

Problems related to the press are the short life-span of many of the papers, often due to a lack of financial resources, and the low quality of journalism, which calls for the training of journalists.

Ms. Ludwig: newspapers are often started by parties but may develop into independent ones later on. In the case of Malawi radio might open more channels. TV might be an option later on. The questions to be considered are how to finance these institutions, the type of control mechanisms to be put in place and the level of control over the media. There might be a need to have a body, i.e. board, to control the media. The range of options should be carefully considered. Some of the structural questions can also be decided upon in the constitution.

The dynamics of the media will be determined by the active participation of people, government and the press itself. The role of editors and journalists can also be an important one. In many countries there is a code of conduct for journalists and the international press and various associations can serve as a source of advice. Regarding the life-span of various papers, people will show their interest in different papers by their buying behaviour (voting by using their money). People will decide whether issues reported by a paper are important. Not all the papers currently available in Malawi are likely to survive for long.

Ms. Hopps: equal access to the media is vitally important for democracy. Theoretically, the more papers you have the more choices people will have and the more information will be distributed: this is essential for democracy. The media can face certain problems because of poor quality. A high professional standard is important and there is a need for the training of journalists.

Mr. Bakary: the power of the media in elections is very significant. Effective media can also be a factor leading to good

governance, as in an example from Cote D'Ivoire, where information about misconduct was leaked to the media. Regarding the structure of the media, Francophone Africa seems to follow the French system in which National Councils of Communication play a major role in monitoring the media. The main question with this type of institution is who decides the composition and degree of independence of the controlling body.

Justice Kirby: regarding the international media, it is important that the perspective of the media in a particular country is not be set from outside. The media have a great capacity to be key players in a democratic society. There should always be a balance between the rights and responsibilities of the media.

OPEN DISCUSSION

The following points were made during the open discussion:

1. The print media has its advantages, but in Malawi, where the literacy rate is very low, radio broadcasting will be the medium ensuring real coverage. The recent case of the Kenyan elections, in which the electronic media was heavily biased, should be carefully studied to avoid the same risk in Malawi.
2. Some kind of body should be established to control the MBC. A new Board of Governors is necessary to enable new rules and policies to be developed to ensure that it really is a national body and acts to foster understanding and toleration of different viewpoints. This is essential for the proper functioning of democracy. MBC has an important educational role to play in the run up to multi-party elections and the development of democratic politics. Bi-partisan or impartial broadcasts should replace its present biased approach to the presentation of political events and issues.
3. When discussing the question of MBC being biased towards the government it should be noted that there was bias against the government in the international electronic media. Regarding the future of MBC, some development has already taken place and the discussions about the future role of the MBC will continue.
4. The churches had a major role to play in the recent events in Malawi even though they are not part of the media. Is this beneficial, or detrimental, to democracy? It can be argued that churches are part of the media, even though not officially, and religion has played a major role in many countries. Should political messages be given to churches to disseminate since they are not an official medium. Can they be a channel for more than one type of message.

5. There is a definite need for all the new newspapers which have mushroomed in the country. They cannot be considered as non-starters since all of them have financial support from various sources. When discussing freedom of the press one should also note that this does not necessarily lead to a more democratic society. Inexperienced journalists might abuse the power of the press. There is a need for better training of journalists.
6. Democracy requires that differing viewpoints should be mutually understood and respected. This should be reflected in the media. Everyone should be alert to the possibilities of media bias. To some extent the media should try to police themselves by developing a code of conduct that every member of the profession would be expected to adhere to.

REPORT OF WORKING GROUP TO PLENARY SESSION
Friday, 23 July

RAPPORTEUR : Mr. A. K. Tembo
SPOKESPERSON : Mr. M. Msisha
MODERATOR : R. Ludwig

REPORT

The committee recognised the importance of the electronic and written media in a pluralistic society. It considered that the development and protection of a free and professional media were essential in creating and sustaining democracy.

Because we are in transition it is necessary to address issues relating to the media on a short-term and long-term basis.

Electronic Media

Short term

- A. The Committee recommends that an all-party committee should prepare a code of conduct which should be aimed at:
1. guaranteeing free and equal access to the public radio station (MBC) for all political parties and groups;
 2. guaranteeing editorial freedom to MBC;
 3. guaranteeing journalistic freedom to MBC reporters;
 4. assisting and requiring MBC to exercise fairness and neutrality in reporting and to be guided only by professional journalistic judgement;
 5. ensuring total freedom for the MBC, subject only to professional journalistic judgement in formulating programmes, and
 6. creating a professional disciplinary tribunal to ensure that reporters are not subjected to managerial punitive measures on account of their reporting.
- B. The Committee recommends that immediate steps be taken to identify and eliminate programmes of a partisan political nature.

- C. The Committee recommends that the Malawi Broadcast Corporation Act be reviewed in order to eliminate all provisions impinging on journalistic and editorial freedom.
- D. The Committee recommends that a new Electoral Law should encompass clear directives for the conduct of the voice media (not only MBC)

Long term

The Committee recommends:

1. That there be established by law an Independent Commission to be responsible for the allocation of radio and television channels to all applicants, based only on the availability of channels on the frequency spectrum. The Postmaster General, who is the authority currently charged with this task, cannot be independent as he is a major user of radio frequencies;
2. That the right of private persons to own and operate radio and TV stations be clearly recognised and provided for, and
3. That a second channel be established by the MBC to allow more time for the airing of matters of public importance and interest;

Print Media

The Committee recommends:

1. That the Censorship Act should be repealed and replaced by a system of classifying material for the information of the public as to the contents of printed matter for purposes of safeguarding morality in relation to children.
2. That all provisions of the Penal Code providing for the banning of publications generally, or by any minister, be repealed.
3. That all provisions of the Penal Code providing for the punishment of journalists on account of their professional work be repealed. The general law will sufficiently protect any person aggrieved by any publication.
4. That the Journalist Association of Malawi be supported by public funds to enable it to conduct training seminars to enhance the professional competence and code of conduct of journalists.

The Committee recommends that a clear timetable for taking administrative and legislative steps for the implementation of the above be formulated.

The Committee calls on the PAC/PCD subcommittee on the radio to act expeditiously in taking steps for the implementation of all the short-term recommendations for achieving the independence and neutrality of the MBC.

The Committee noted that it was imperative to review all laws impinging on the freedom and independence of the media during the transition so that any incoming government should be immediately bound by laws which will guarantee the rights of all in a new democratic order.

The Committee urges owners of printing facilities to consider only commercial factors in availing their facilities to the infant press in the country.

The Committee also recommends that there be established a Faculty of Journalism in the University of Malawi in order to improve the professional competence of journalists.

OPEN DISCUSSION

The following points were made in response to the report:

1. Protection for employees should be extended to the management level. Management should also be free from influence. This concerns the way that management are appointed and boards nominated.
2. It is intended that, through the Journalist Association of Malawi, all journalists, including those in the Government service (Mana), will be covered by the recommendations.
3. A small committee of PAC/PCD exists. So far it has not convened, but in the informal meetings between the members some of the issues regarding MBC have been touched. However, since some of the changes proposed will have financial implications, they cannot be undertaken without proper consideration about the short-term and long-term consequences. Technical advice will be required for some of the issues raised.

Note of Dissent:

At the request of the PCD the Chair ordered that it be recorded that the PCD had problems with some of the issues recommended by the work group and therefore had reservations about the report. There was no unanimity about media issues in the plenary session.

CLOSING STATEMENTS

REPORT OF THE CLOSING COMMENTS FROM THE PUBLIC AFFAIRS COMMITTEE

In his closing remarks, the Very Reverend Dr Ncozana, acting Chairman of the Public Affairs Committee expressed his thanks to the United Nations Resident Co-ordinator for having organised the conference, which was of great importance in the democratic transition of Malawi. He felt sure that he spoke for the whole of the Public Affairs Committee in saying that the time spent had been extremely valuable. The fact that, both in the formal sessions and outside, the participants had been able to exchange views in an amicable manner was of the utmost importance, for it had created an atmosphere in which they could work patiently together.

The roundtable had offered a great opportunity to hear the views and ideas of local and international experts. Their inputs had been exemplary and they had brought a lot of meat to chew on. The presentations of the experiences of other African countries which had gone through the transition to multi-party democracy was most useful. The experts had enriched the fund of experience from which the participants could draw in their future deliberations.

In the referendum of 14 June Malawians had unequivocally decided that they wanted the democratisation process to go ahead. The attendance at the roundtable of the top people from each side had clearly demonstrated the commitment of all concerned to fulfill that expressed desire.

The presence of the Diplomatic Corps at the final plenary session underlined the historic importance of the roundtable which had shown how serious all sides were about the way that Malawi should move ahead.

Having thanked the UN experts and Resident Co-ordinator, the members of the Diplomatic Corps and the honorable Ministers and Government representatives, he called upon Mr Mordecai Msisha, Publicity Secretary of the Public Affairs Committee, to address a few remarks to the proceedings.

Mr Msisha noted that the roundtable had been significant for all those involved in the process of the move to democratic pluralism. The nation was aware that the Presidential Committee on Dialogue and the Public Affairs Committee had not met for about three weeks and there had been fears that the process of negotiations might be coming to an end. In that respect, the roundtable had come at a most opportune time for it had served to show that the commitment to continuing that process was still strong.

The roundtable had confirmed that Malawi was not unique in its need to establish transitional mechanisms for the move to democratic pluralism. It had also provided a forum for the airing of new ideas on the various issues that concerned all sides and there had been agreement on broad principles, such as the commitment to respect human rights, and the need for diversity and tolerance, an independent judiciary and a free press. This had been most gratifying. The next step was to move towards agreement on technical details.

The roundtable had provided an impetus to continuing the work that had to be done on the transition to multi-party democracy. All sides had recommitted themselves to carrying out the will of the people as expressed in the referendum and to working together to make Malawi a better place and to create a system of Government that all could be proud of. Having thanked the United Nations experts and the local experts, and the Diplomatic Corps, he expressed his gratitude to the Presidential Committee on Dialogue for its willingness to engage in frank and meaningful dialogue and he felt confident that all sides could move forward together in a constructive, peaceful and amicable manner in the process of managing the transition to democratic pluralism.

CLOSING STATEMENT OF THE PRESIDENTIAL COMMITTEE ON
DIALOGUE

There follows the text of the closing speech delivered by Dr. Featherwick Ntaba, vice-chairman of the Presidential Committee on Dialogue:

Mr. Chairman, Your Excellency the UNDP Resident Representative to Malawi, Honourable Ministers, Members of the President's Committee on Dialogue, Distinguished Members of the Public Affairs Committee, Ladies and Gentlemen, I am speaking to you on behalf of the Chairman of the President's Committee on Dialogue, Hon. R. Chirwa, who is unable to be here because of other earlier commitments.

There is no doubt in everyone's mind that Malawi is going through a most historic process. In October last year, His Excellency the Life President, Ngwazi Dr. H. Kamuzu Banda, decided to call a National Referendum to enable the people of Malawi to choose whether they wanted to continue as a one party state, or to switch over to a multi-party state. Just over a month ago, some 1.9 million voters, representing 63% of the 3.1 million who voted, opted for the introduction of the multi-party system of politics.

The Joint International Observers Group, representing over 210 international observers from eleven governments and several inter-governmental and non-governmental organisations, including the OAU and the UN, described the Referendum as "Free and Fair", and as an accurate expression of the wishes of the people of Malawi. They noted that there was a demonstration of co-operation and calm displayed by the voters, polling officers and monitors. The statement concluded that the group was impressed by the general efficiency and constructive manner of the Referendum Officials at all levels and their organisation and conduct of the programme. The final results were said to have accurately reflected the wishes of the people through a democratic process. In some Western capitals today the Malawi Referendum is already being referred to as a model of a process or a trendsetter in the transition from single party rule to multi-party rule.

In a state radio broadcast to the Nation on 17th June, 1993, His Excellency the Life President, Ngwazi Dr. H. Kamuzu Banda, unequivocally accepted the results of the Referendum and announced to the world that Article 4 of the Constitution would be amended to enable other parties to register. The Life President also indicated that dialogue between the Public Affairs Committee and the Presidential Committee on Dialogue would continue. He announced that the programme of events will include general elections, within a year, to be contested by all new parties and the Malawi Congress Party. The Life President also indicated that the time table of events would include a general review of the constitution and other laws to address issues about

Human rights concerns that serve as the basis for this. To achieve this, extensive consultations will be necessary between Government and all the relevant political parties in order to ensure that the wishes of all the people were taken care of. The UN President also indicated or emphasised that this was a complex and highly technical exercise which would require technical support from within and from outside.

This UN Roundtable forum on democratic transition is a seminar which marks the beginning of the UN's initiative in response to that request for technical support from the Head of state.

I have taken the liberty of explaining in some detail the background of this seminar because some external media, as you all know, have called this Roundtable forum a UN attempt to salvage the alleged broken down talks between FAC and PCD. Despite clarifications from the UNDP Resident Representative; from me and from others here, BBC, Reuters and other foreign media have persisted in broadcasting, or publishing, their unwarranted perceptions that the UN experts have come to Malawi to break an impasse in the dialogue between FAC and PCD. I am happy that the FAC and PCD members that have been engaged in these discussions know what the truth is and that the UN experts among us here all know what they came for.

We all can agree that we have had most fruitful and frank discussions in the last few days. The UN experts have shared with us the experiences of other countries in democratic transitions or transformations to multi-party states. We have managed to achieve a high level of consensus on many issues. In the few places where this was not possible we gracefully agree to disagree with a view to flagging those issues for later discussions.

I trust that the report of this seminar will no doubt serve a very useful purpose in the continuing dialogue between FAC and PCD during the transition period.

On our part, we wish to assure all Malawians that the Government, through PCD, is committed to a continuing dialogue, which will no doubt be intensified as we move along. We hope the UN will continue to come forward to support us and our partners in this dialogue with the technical and logistical support which we will need in this process. We call on other donor governments to do likewise.

We have no choice but to continue this dialogue. We have made progress in the past, even in the face of intense differences. I remember that at the first FAC/PCD meeting on October 19th last year, which we had at Chief Mbelwa House here in Lilongwe, FAC members could not accept the drinks or tea that we had offered them. Most likely we, as MCP members, could have

... that the ...
... that ...
... different. ...
... control ...
... political evolution to multi-party ...
... political tolerance. We are avoiding a revolution. I am convinced
that such a political evolution is the best way to bring
irreversible and long lasting political changes to Malawi.

You will all recall that since the Referendum, Government
moved swiftly and passed the Constitution (Amendment No. 2) Act,
1993. Malawi is now a multi party state. Nevertheless, it is
important that the present constitutional order be preserved
until the next Government which wins the next multi-party general
elections assumes power. Secondly, the Political Parties
(Registration and Regulation) Act, 1993 paved the way for the
formation of other political parties and provides the necessary
procedures for their registration and regulation. This enables
them to take part in the next Parliamentary General Elections.
Thirdly, Parliament has passed the General Amnesty Act, 1993
accordng amnesty to all persons that resided outside Malawi
because of political reasons during the period we were a one
party state. These measures have all come into effect a few weeks
after the Referendum. Therefore, the fears that government is
dragging its feet on the transition are unfounded.

The Presidential Committee on Dialogue considers these three
enactments crucial in the transition process. The speed with
which they have been passed should confirm Government's
commitment to the process of transition and to ensure that the
process is orderly.

The Presidential Committee on Dialogue agrees that besides
the three laws enacted the Constitution will require to be
further amended, may be even re-written, to suit a model for a
multiple party set up. A very urgent task is to enact a new
electoral law, which among other things, will provide for an
electoral and a boundary commission. This is necessary to
facilitate the forthcoming general election. I have already
underscored the Presidential Committee on Dialogue's commitment to
working together in close consultations with the Public Affairs
Committee and other interested groups on such tasks.

Mr. Chairman, all I have said so far demonstrates the
Government's strong will and capacity to forge ahead with the
transition. It is clearly a manifestation of the total commit. ment
of this Government to this process of transition, a process which
is clearly irreversible. There is no need to have any doubts in
this respect. I am aware of the concern that establishment of the
institutional mechanisms such as the National Consultative
Council and others have not been concluded yet. The Presidential
Committee on Dialogue, in fact, has agreed to the principle of

dialogue through two councils to facilitate the process. The Public Affairs Committee made their proposals as regards to the constitution and the powers of the two councils in question. The Public Affairs Committee also tabled a list of some eighteen statutes, including the Constitution, which they want amended and/or repealed. Government gave PAC a preliminary verbal response on some of the issues, but asked for time to study the proposals and to prepare its own detailed response. These matters are crucial, and require careful attention. They also concern matters of constitutional principles and, understandably, Government wanted to give them the attention they deserve.

The Presidential Committee on dialogue is committed to the maintenance of the present constitutional Order up to the precise moment of the assumption of power by a government formed after the next multi-party general election. In this way we are sure that at no time is government authority for the Republic uncertain or abandoned to other unelected bodies. We are convinced that this is the only way we have to follow to guarantee the Constitutional and orderly transition. Let me add that when the Presidential Committee on Dialogue agreed to the formation, outside government, of the National Consultative Committee and of the National Executive Committee to assist in the process of that orderly transition, the agreement was subject to the precise role of these two bodies being subsequently determined by both PAC/PCD in a later exercise. This is what is happening now between the two groups. We have already stated to PAC for instance that the appointment of any body to share in the exercise of executive and legislative authority of the country that is being advocated by the Public Affairs Committee is unconstitutional and unacceptable, while, on the other hand, the role of the National Consultative Council to review some aspects of the constitution, draft a new electoral law and review the registration of political parties act have already been agreed to. Government stands ready to continue to discuss more acceptable precise roles of the proposed bodies in its continued dialogue through the Presidential Committee on Dialogue with the Public Affairs Committee.

On behalf of the Malawi Government, I wish to thank the UN most sincerely and all the donor Governments that have made this seminar possible. Let me also thank the UN experts who have travelled from far and wide to come and share with us the transition experience of other countries for our benefit.

I also wish to thank the participants from PAC/PCD, and the groups of local experts and observers who contributed to the success of this seminar. I now would like to believe that PAC and PCD will continue their dialogue for preparing this country for the peaceful multi-party general elections. I hope that the same reconciliatory and accommodating spirit that prevailed during this seminar will prevail in our subsequent discussions. Thank you.

APPENDICES

**FROM POLITICAL TRANSITION TO THE
CONSOLIDATION OF DEMOCRACY IN AFRICA**

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SUMMARY

FROM POLITICAL TRANSITION TO THE CONSOLIDATION OF DEMOCRACY IN AFRICA

GENERAL OBJECTIVE AND STRUCTURE OF THE DOCUMENT

The general objective of this document is to provide a number of elements in response to a central and essential question, which is as follows: What lessons can be drawn, with a view to the establishment and consolidation of democracy, from the political changes that have been affecting the African countries since the beginning of the 1990s?

The first part of this document, therefore, is devoted to an analysis of the transition from authoritarianism to pluralistic and democratic political forms. In Part Two, a number of recommendations are suggested based on the lessons that can be learned from these experiences, with a view to the establishment and consolidation of democracy in Africa.

Part One

The uncertainties, dynamics and dilemmas of transition

This document is in no way intended as an assessment of political transition during the past three years, which would be premature. It contains a brief analysis of three aspects of this process, summarizing similar experiences in southern Europe, Latin America and eastern Europe: the uncertainties (the unpredictability of the outcome of the process), the dynamics (the logical sequence of the processes) and the dilemmas (obstacles, impasses or contradictions) of the processes of transition from authoritarianism to the desired objective of democracy.

The first subject to be addressed concerns the mechanisms of political change, how democracies are born in Africa. Second, we shall examine the perceptions of the various agents of change, their hopes and fears, founded or unfounded, which are common to the conflicts observed in many countries. And finally, the decisive "political phase" of the "founding elections", the first nationwide plebiscite following the re-establishment of the multiparty system and essential public freedoms.

A. THE MECHANISMS OF TRANSITION: BETWEEN PERFORM AND PACT

Given the considerable importance of the mechanisms of transition, an analysis of how democracies are born in Africa is indispensable. Indeed, prior experience in Europe and Latin America has shown that there are many paths to democracy but that the actual mechanism of transition set in motion determines the "types of democracy" that will emerge, their prospects for consolidation and their implications for different social groups.

Particularly in the case of Africa, since the long-term success of economic reforms inspired by the World Bank and the International Monetary Fund will depend on broad popular support, an additional reason for studying these transition mechanisms is to ascertain their degree of transparency to the public at large and the level of public participation, measurable in terms of the social movements that have preceded, accompanied or followed the re-establishment of political freedoms.

The mechanisms of transition are a function of how the various elements of the process interact, the roles played by participants and internal and external factors, which may vary in relative intensity, their choices and strategies shaped by a structural context (social and economic structures) and a political/institutional context (nature of relations between civilian and military authorities, apparatus and personnel of the former single party, etc.).

Recent transition experiences (the "third wave of democratization", which began in southern Europe in 1975), clearly show that external factors have played a minor role and that the reasons for the overthrow of authoritarian regimes are essentially internal. Depending on the predominance of the elite or the masses, and the varied or combined use of force or compromise in their choices and strategies, four general types of transition mechanisms can be distinguished: the Pact, when the elites reach a multilateral, mutual compromise; Imposition, when the elites unilaterally and effectively use force to effect political change against the will of the rulers in power; Reform, when mass movements impose from their grass roots base a negotiated settlement without resorting to violence; Revolution, when the masses take up arms and overthrow authoritarian rulers (see Table 1).

In practice, recent experience has shown that elements of these four general types have been combined. This experience also shows that no stable democracy has resulted from transition mechanisms in which the masses predominate, even momentarily, over the traditional governing elite. Attempts at grass-roots reform through unconstrained movements of contention could lead to competitive democracies. Revolutions may result in democratic political regimes with a dominant party, but have not as yet resulted in pluralistic and democratic systems in which power may change hands from one party to another. The types of transition which have most frequently led to the establishment and consolidation of democracy are "transitions from above". These are transitions in which the governing elite, though subject to grass-roots pressure, still controls the situation and successfully uses strategies of compromise (pact) or force (imposition) or a combination of the two in order to retain at least some of its power. Transitions based on pacts, can give rise to corporatist or coalition democracies, whereas the mechanism of imposition, could result in conservative democracies.

Historically, three periods of political change in Africa may be distinguished (independence, militarization and liberalization), each characterized by a predominant transition mechanism and in particular by varying degrees of mass participation.

Between 1956 and 1989, African countries gained independence through two main mechanisms: negotiation with the former colonial powers for the most part and wars of liberation (see Table 2). The two mechanisms have in common the fact that they benefitted from or were based upon more or less broad public support embodied in nationalist movements, with wars of liberation representing the greatest degree of popular mobilization and recourse to violence.

The military coups between 1963 and 1990 were characterized by their elitism, and the notorious lack of public support behind them would largely explain their authoritarian tendencies (see Table 3).

The various forms of social demonstration (marches, strikes, riots, etc.) that have marked the process of liberalization and democratization underway since 1990 are indicative of widespread popular participation, which some have called "the resurrection of civil societies", in other words, of societal support for the return to political pluralism. As shown in Table 4, recent transition mechanisms in Africa, with the exception of Mali, range between reform (participation of the masses, or "grass-roots pressure") and pact (compromise within the elite).

Theoretically, and based on previous experience, the transition mechanisms observed in Africa could lead in most cases to corporatist or coalition-type democracies, in which competition is managed by compromise or founding agreements, or to competitive-type democracies, whose fragility could result in a return to authoritarianism.

But what emerges most clearly from the analysis of transition mechanisms in Africa, and which will weigh heavily on prospects for the establishment and consolidation of democracy, is their extreme fragility, which results from two important factors. The first is the disastrous economic situation of countries which for the most part do not rise above subsistence levels and whose governments must carry out painful economic reforms and indispensable political reforms at the same time, seriously undermining their popularity and altering their relationship with the electorate. The second factor largely responsible for the authoritarian tendencies of previous political transitions is the weakness of the emerging civil societies, which constitute the essential foundation for democracy, particularly in a context in which the other pillars (a free and independent press and an autonomous judiciary) are just as fragile or non-existent. An indication of the fragility of civil societies in Africa is that the new political parties, unions and civic organizations have not been able to incorporate the social movements, which has led in most countries to serious social disturbances.

B. THE PERCEPTIONS OF THE PLAYERS: DEMOCRATIZATION AND EXCLUSION

Given its intrinsic characteristics — the passions and motivations which lay behind it — democracy carries with it a certain potential for conflict. Indeed, the process by which it is established (democratization) amounts to the institutionalization of uncertainty, the submission of all interests to uncertainty.

Since 1990, conflict has marked the discussion-of-principles phase (acceptance or recognition of democracy as the new principle of political legitimacy). With specific interests at stake, the players (tribal authorities, charismatic leaders, etc.) have mobilized the resources (unions, civic organizations) and conducted the activities (broad social movements) needed to advance their interests, leading to the first measures of liberalization. The same was true of the following phase, that of democratic bargaining (towards an agreement on the rules of the political game), with different stakes, different players (negotiators), different resources and different activities. The aggravation and prolongation of this second category of conflicts have brought some countries to the edge of anarchy and civil war, which has been described — erroneously it would appear — as "the restoration of authoritarianism" (implying that authoritarianism had disappeared in a year or two), resulted largely from the fact that for one reason or another, in the African countries, the participants in each of the two phases have been the same, whereas the characteristics required for each are different.

Generally speaking, these conflicts reveal how democracy and democratization have been perceived and experienced by some of the participants in the political game.

Democracy appeared to many government leaders and opponents as just another means of access to political positions, and therefore to economic resources, just like earlier mechanisms of political change (coups d'état, palace revolutions) – another zero sum political game. The process of democratization has been presented and perceived as a weapon in the hands of the personal enemies of current government leaders or in the hands of the inhabitants of a particular region or ethnic group, against another region or group in the country.

As a result, democracy has not been perceived as a process of inclusion, but one of exclusion, in that it does not appear to offer guarantees to major social and political interests.

There are two lessons to be learned here. The first, is that African democrats and their outside supporters have failed to constitute and present democracy as a preferable and credible political alternative. The second lesson is that democracy in Africa cannot easily be established against the will of part of the population, but must rather be established in cooperation with one's adversaries, who could prove to be the most effective backers of continued democracy, as has been the case elsewhere, because they know they have everything to gain and little to lose with the new system.

C. THE "FOUNDING ELECTIONS" AND POLITICAL VIOLENCE

Irregularities have been exposed and accusations of more or less massive fraud have been made nearly everywhere, even in the country considered as the model or the laboratory of democracy in French-speaking Africa. The conflicts that have arisen over the results of the first national elections after the re-establishment of the multi-party system range from more or less violent street demonstrations to civil war.

These conflicts reveal more than a thirst for power among the governing elite and an equal passion among their opponents to take their place, for whatever reason they may have. They are a measure of the distrust between the various participants in the political game and represent a serious obstacle to the establishment and consolidation of democracy. These conflicts also reveal the weakness, non-existence or incapacity of domestic civil organizations to monitor the electoral process and the consolidation of democracy beyond it, hence a high degree of external dependence.

Part Two

Strategies and recommendations for the consolidation of democracy

The three aspects analyzed above suggest at least three types of action aimed towards the establishment and consolidation of democracy.

A. THE PROMOTION OF DEMOCRACY

Beyond the ranks of democrats by conviction, the idea and the image of democracy may have already been tarnished. While it may not be necessary for the entire population of a country to believe in democracy in order to see it established, the majority, at least, must not oppose it. With the political and social turmoil that have persisted in many countries since 1990, and the violence, anarchy and nascent civil war, people could lose faith in the advantages democracy is supposed to bring them and look more favorably on the political systems that existed before.

The priority task for African democracies and their foreign friends in this area is to promote democracy, projecting a positive image and a clearer idea of what democracy is and is not, making its adversaries become democrats by necessity, who can often prove more beneficial than democratic purists, who love democracy too much, to the point of counterproductivity during its process of establishment and consolidation.

Civil education programs, seminars, conferences, etc. should be organized for specific target groups within the population. These varied training programs should be accompanied or backed up by veritable propaganda (not in its pejorative sense) or marketing operations with documentary films, video clips, publicity spots, posters and any other form or means of communication appropriate to the African context in order to present democracy as a preferable alternative to authoritarianism.

B. RESTORATION OF CONFIDENCE BETWEEN PARTICIPANTS IN THE POLITICAL GAME

The main idea is to help create and strengthen non-partisan domestic/civic organizations supported by their counterparts outside of Africa, something which has already been done in a number of countries. This will encourage women and men with different political and ideological points of view to work together toward common objectives (the holding of elections, the establishment of public education programs, etc.), which will have the effect of lowering the barriers of distrust between participants in the political process.

C. STRENGTHENING THE FOUNDATIONS OF PLURALISM

Given the weakness of the civil societies, and the non-existence or weakness of other foundations of democracy, action here could take two directions.

- (1) Strengthening civil societies by helping to create independent civic organizations (women, rural groups, youth, intellectuals, lawyers, journalists, etc.) that can generate to form structured social movements and constitute organized centers for advocacy, mobilization and legitimization.
- (2) Strengthening the legal and institutional framework for democracy and training its members -- parliaments, political parties, the media, the judiciary, electoral codes and elections constitute the parapets of democracy and help to consolidate it.

PART ONEUNCERTAINTIES, DYNAMICS AND DILEMMAS OF THE
POLITICAL TRANSITIONSFROM POLITICAL TRANSITION TO THE CONSOLIDATION OF
DEMOCRACY IN AFRICA

INTRODUCTION

A number of political events in Africa since 1990 are representative of the dynamics and dilemmas of political transition: "the transfer of power in Sao Tome and Principe and in Cape Verde, the election of Victor Chiluba in Zambia, the formation of a politically open government in Senegal, problems raised by transition elections (boycott by the opposition, low voter turnout, fraud and irregularities, disputed results, etc., nearly everywhere), arrests, verdicts, sentencing of opposition leaders to prison terms in Cote d'Ivoire, military coups d'etat (Congo, Niger, Togo, Zaire), etc.

In the light of these events and many others, one might wonder whether the almost universal demise of authoritarian regimes and the advent of pluralist elections has put these countries truly on the road towards democratic transition. In other words, will they result in the emergence of pluralistic and democratic systems? Will the new regimes be able to survive the current economic and social difficulties? "What are the conditions that make democracy possible and permit it to flourish?" (Rustow, 1970, 337). In what forms and in what specific areas can donor countries provide assistance and what roles can they play in the process of establishing and consolidating democracy?

Given the long past and heavy authoritarian baggage of the African countries, and the disastrous economic context in which the political transitions are occurring, these questions are particularly timely and relevant.

This document advances the general hypothesis, in Part One, that answers can be found to all of these questions by analyzing the political transition experiences of the African countries since the beginning of the 1990s, and, in Part Two, that lessons can be learned from these experiences and applied to the establishment and consolidation of democracy.

I. Uncertainties, dynamics and dilemmas of the political transitions

This document in no way constitutes an assessment of political transition in the African countries over the past three years, which would be premature. Its stated objective is to draw lessons from concrete experiences at three levels of analysis that symbolize the uncertainties, dynamics and dilemmas central to the political conflicts and the future development of democracy in Africa. These three levels are the mechanisms of political transition, the perceptions of democracy by participants in the political process, and the founding elections.

A. MECHANISMS OF TRANSITION: BETWEEN REFORM AND PACT

According to Dankwart Rustow "The emergence of democracy is not necessarily uniform geographically; there may be several paths toward democracy (Rustow, 1970, 346). Many works on the

processes of democratization in southern Europe and Latin America (Karl, 1990; Karl and Schmitter, 1991; Hagopian, 1990; O'Donnell, et al. 1986; Share, 1987), have confirmed this proposition and shown that, though diverse, the roads leading to democracy may be classified into categories or as models. These authors have also emphasized the fact that the actual mechanisms of transition from authoritarianism to democracy determine the types of democracy that will emerge and their prospects for consolidation and will have important consequences for different social groups (Karl and Schmitter, 1991, 269):

This part of the study will therefore be devoted to a comparative analysis of the "roads to democracy", the mechanisms of political transition in Africa, particularly insofar as they reveal the role played by civil societies in the emergence of new political systems. Are civil societies responsible for the changing political prospects in Africa (Offe, 1987)? What mechanisms are actually leading or have led to a return to political pluralism in the African countries? How are they characteristic of emerging or institutionalized civil societies and what could be the consequences? In other words, how are democracies born in Africa; what role, secondary or primary, have civil societies played in the process; and what are the possible – as opposed to probable – prospects for the future (Hirschman, 1971)? It is particularly important to gauge popular participation, since the long-term guarantee of success for the economic reforms inspired by the World Bank and the International Monetary Fund lies in broad popular support. Thus, an additional reason for studying these transition mechanisms is to determine their degree of transparency to civil societies and the level of popular participation, measurable in terms of the national movements that preceded, accompanied or followed the re-establishment of essential political freedoms.

Before turning to an examination of African experiences, their classification according to various models or categories, and the lessons that can be drawn from them, it would be useful to briefly describe the various mechanisms of transition.

1. The importance and diversity of transition mechanisms

An analysis of the transition mechanisms is useful in particular because it reveals the range of factors or variables at work in the process of political transition: the players (Mainwaring, 1987) and their strategies, the internal and external constraints, causes, forms of social participation (Bratton and Van de Walle, 1992a), the stakes, the relations between the State and society (Rothchild and Chazan, 1988; Migdal, 1988) between the elites and masses, the role played by the State (Heper, 1992; Snyder, 1992; Liniger-Goumaz, 1992) and by the type of regime (Bratton and Van de Walle, 1992b; Collier, 1982), that is to say the impact of authoritarian regimes (Remmer, 1985) and the lessons learned from authoritarianism (Bermeo, 1990) etc.

They permit an assessment of the gradual or sudden appearance of ideas or ideologies, attitudes and strategies that have led Africans to draw more extensively on the repertoire of existing democratic rights. Furthermore, the new and varied forms of overt or underground political participation (Chazan, 1986), that is the increased use of non-institutional or non-conventional political participation, in the form of wild-cat strikes, demonstrations, protests, city-wide strikes, marches and other demonstrations (Offe, 1987) or all other forms of unrest, resistance or opposition to power (M'Bembe, 1989). Finally, they shed light on the intensive and exhaustive use of existing communication channels between the State and the society by an increasing number of Africans for problems of all kinds and in particular their questionable usefulness as structures for public communication. They are thus emblematic of the way

in which Africans have moved in a few years from "private happiness" to "public action" through the classic processes described by Albert Hirschman (Hirschman, 1982).

In other words, they reveal the manner in which African societies endlessly call upon the States to expand (often imperceptibly until the explosion at the beginning of the 1990s) the traditional political boundaries with new forms of mobilization and new mobilized sectors (the military -- yesterday and always -- civil servants, youth, unemployed college graduates, the uneducated, women, churches, the victims of public sector curtailments, the economic crisis and structural adjustment programs, rural groups, etc.) and the consecutive and correlative emergence of new political tasks, the formulation of a new political agenda.

The mechanisms of transition from authoritarianism towards other political systems can therefore be used to measure the role played by civil societies in the various countries to the extent that the political changes underway are the manifestation or consequence of the "resurrection" of civil societies (O'Donnell, Schmitter, 1986, 48-56; Gelner, 1991; Tarrow, 1991; Weigle, Butterfield, 1992) or at least of their emergence.

Indeed, the nature of the individual and collective players in the process of change -- "the people, the migrant masses, the intellectuals, men of the church, men of the apparatus" (Eboussi Boulaga, 1993, 31-58) and that of the "catalysts of democracy" -- "youth, the bar, churches, unions, parties, men, the media" (Tedga, 1991, 53-130), their models of organization, their resources and strategies, their values and beliefs, their range of activities or the types of social movements engaged in (marches, demonstrations, strikes, city-wide strikes, civil disobedience campaigns, riots), etc., can provide information about the degree of consistence and structure of civil societies in the various countries. This is particularly true since the image that appears to dominate the transition mechanisms is that of societies triumphing over the State, the masses imposing democracy upon the elite.

The history of democracy, since its appearance and development in "the founding democracies" (Hermet, 1983, 31-67), Great Britain, in particular, France and the United States, reveals that democracy is born in two ways or more precisely from the conjunction of two movements: grass-roots or mass pressure for the expansion of political rights and the resistance of the elite. Africa is no different in this regard, even though the popular image, propagated by the pundits and journalists tends to emphasize the first of these movements.

Adam Przeworski says that "The depiction of a campaign for democracy as a struggle of the society against the State is a useful fiction at the beginning of the first period of the transition, a unifying slogan of forces against the existing authoritarian regime" (Przeworski, 1991, 66). To what extent, therefore, does the popular and media image of recent political change correspond to reality?

The analysts of earlier or current experiences of democratization in Latin America and Central Europe, like Rustow, recognize that the roads leading to democracy after an authoritarian interlude are numerous and varied. Each of them must be considered unique in its genre, but some clearly successful experiences (Spain for example), have inspired others and it is possible to classify them in two major categories (Stepan, 1986, 64-84) or models (Karl, 1990, 1-21, Karl and Schmitter, 1991, 268-283), based on two main criteria.

The first differentiation is based on the importance of the role played by internal or external agents -- the latter played a decisive role in the "second wave of democratization", following the allied

victory in 1945. The second category is that in which external forces play a less important role. The most decisive factors in the political transition are therefore and above all internal, with the following caveats: in eastern Europe the fear of Soviet intervention played a determining role in the early stages, and similarly, American pressure had a definite influence on the forms of transition in Central America. The importance of internal factors constitutes the essential characteristic of the "third wave of democratization", which began in the mid 1970s in southern Europe (Spain and Portugal) and in which the east Europeans and Africans have participated since 1989. According to the main conclusions that can be drawn from the most impressive contribution to the analysis of the process of political transition edited by O'Donnell et al. (1986), this third wave is characterized by the fact that the various transition mechanisms were not pre-determined by macro-structural conditions (economy, means of production, participation in the international division of labor, history, culture, social structures, etc.). The success or failure of the democratization processes was above all the work of different players depending on the stages of the transition process. These particularly skilled players have their own values, mobilize a variety of resources, pursue objectives that are not necessarily similar, use different strategies and make different strategic choices.

The importance ultimately ascribed to the role played by the various players and their strategies - the notion that the result of the process depends less on the objective conditions that form the context of action than on the players' subjective evaluations of their strategic choices does not mean that political change depends solely on the will of the elite or the masses (Karl and Schmitter, 1990, 271). The strategic choices they make are determinative, but also confined by "a structural context" (socio-economic structures), "a political/institutional context" (political parties, civilian-military relations, parliament, political class, etc.), and a "public context" (Habermas, 1978), which is to say the civil society as defined above.

Thus, the agents of change may face three major constraints. One is formed by the prevailing socio-economic forces - "the wall of money" - the presence or absence of a middle class or a bourgeoisie able or inclined to support democracy - "No Bourgeoisie, No Democracy", to use Barrington Moore's phrase (Karl and Schmitter, 1990, 271). Based on the current social structures and economic conditions in the African countries, it would not appear that the property-owning classes constitute an obstruction, and in most cases the national middle classes and bourgeoisies are in the process of development.

The second source of constraints could prove far more significant for the burgeoning democracies of Africa: the nature of relations between civilian and military authorities, as was the case for the Latin American countries - "the Gorilla question" - insofar as military interventions can delay and compromise, if not jeopardize, the transition process. Another aspect of this constraint is the nature of relations between the State and society, and specifically the relations between the former single party and the State apparatus. The risk associated with the "Nomenklatura question" in eastern Europe is also real in Africa, where governing elites, technocrats and various interests associated with the former parties/States may sabotage the transition process (Karl and Schmitter, 1990, 272).

The last source of constraints could be just as significant, insofar as a strong, well-structured and pluralistic public framework will provide important support for the survival and consolidation of democracy.

Based on these two principles derived from the concrete experiences of democratization, Alfred Stepan distinguishes ten different paths which he classified in three general categories. The first, in which

war and conquest (the victory of the Allies and in particular the United States during the Second World War) played the most important role in rallying the countries of "the second wave of democratization". It is divided into three sub-categories: internal restoration after external reconquest (Belgium, Denmark, Norway and the Netherlands); internal reformulation (France, Greece, Italy); controlled introduction by external forces (West Germany, Japan, Austria) (Stepan, 1986, 66-72).

The second general category is particularly important and is characterized by the fact that the initiative in democratization was taken by members of the authoritarian regime attempting to preserve much of their interests and power. It comprises three different sub-categories according to the institutional base of the group taking the initiative of democratization within the authoritarian regime: civilian political leadership (Spain, Mexico); the army as government (Brazil); the army as an institution (Greece, Portugal, Peru) (Stepan, 1986, 72-78).

The third and final general category encompasses the transition processes in which the opposition forces played the primary role in the fall of the authoritarian regime and have or have not succeeded in establishing a framework for democratization. Action taken by the opposition forces may take three different forms: uncontrolled mass social movements, or transition driven by the society (Greece, 1973, Argentina, 1969, Peru, 1977); the signing of pacts between opposition parties with or without coalition elements (Chile, 1978-80, Uruguay); the organization of violent rebellions coordinated by reformist democratic parties (Costa Rica, 1948, Bolivia, 1952, Venezuela, 1958); and revolutionary war directed by marxists (Sandinist Nicaragua).

Based on the same principles, Karl (1990) and Karl and Schmitter (1990) distinguish four basic types of transition mechanisms (See Table 1): the pact, when the elite reach a multilateral compromise (Spain, Uruguay); imposition, when the elite unilaterally and effectively uses force to bring about political change against the will of the ruling power (Turkey, Bulgaria, El Salvador); reform, when the mobilized masses impose a negotiated settlement without resorting to violence (Czechoslovakia, Poland, Yugoslavia); and revolution, when the masses take up arms and overthrow the authoritarian government (Nicaragua, Bolivia, Cuba, USSR).

In practice, recent experience has shown that elements of these four general types have been combined. This experience also shows that no stable democracy has resulted from transition mechanisms in which the masses predominate, even momentarily, over the traditional governing elite. Attempts at grass-roots reform through unconstrained movements of contention could lead to competitive democracies. Revolutions may result in democratic political regimes with a dominant party, but have not as yet resulted in pluralistic and democratic systems in which power may change hands from one party to another. The types of transition which have most frequently led to the establishment and consolidation of democracy are "transitions from above". These are transitions in which the governing elite, though subject to grass-roots pressure, still controls the situation and successfully uses strategies of compromise (pact) or force (imposition) or a combination of the two in order to retain at least some of its power. Transitions based on pacts, can give rise to corporatist or coalition democracies, whereas the mechanism of imposition, could result in conservative democracies.

What lessons can be drawn from these models and categories with respect to the part played by civil societies in establishing democracy? Theoretically, civil societies play a decisive role in the third of Stepan's categories. In the two other categories, democratization (following war or conquest, or initiated by members of the authoritarian regime), may be supported or backed by strong societal demand, which is often the case when there is a tradition of democracy in the country (West Germany, Italy,

Spain, etc.) or when the process of democratization has been initiated by the military (Brazil, Chile). The survival and consolidation of democracy in southern Europe is explained in part by this factor. The absence or weakness of this societal demand most often leads to failure or a questioning of democratization, particularly in the African countries in the 1960s and 1970s, when the initiative in returning to political pluralism was taken by military leaders, as we shall see further on (Upper Volta in 1978, Ghana, 1969 and 1979 and to a certain extent Nigeria in 1979).

In Karl and Schmitter's typology, in theory, the civil society plays an important role in the three mechanisms of political transition (revolution, reform and pact). The mechanism of imposition, which corresponds to Stepan's categories 1 and 2, presupposes a unilateral decision by the civilian or military elite or by foreign agents, and a strong social backing or support constitutes a necessary condition for the survival and consolidation of democracy.

How are the mechanisms of political transition in Africa organized or distributed according to the criteria described above? How are they classified in the models and categories just outlined? What consequences may be presumed for the nature of civil societies and the prospects for establishing and consolidating democracy?

2. The African paths: the emergence of civil societies

Within the general framework created by pressure for the expansion of political rights from below and resistance by the elite from above, which has always been characteristic of democratization, the African countries have taken several different paths. But here, as in other regions of the world, obviously, the successful experiences, such as Benin's "Conference of Vital National Forces", have served as models to countries that have embarked later upon the processes of liberalization and democratization and have thus learned from their predecessors.

At a more concrete level, it would appear useful to adopt a long-term perspective, insofar as lessons can be learned from the past. Thus, since colonization (leaving aside colonization itself as a mechanism for political change in African society), three phases of political change may be distinguished, with very clear and differentiated characteristics as to the role played by external and internal agents and the degree of involvement of the masses or the elite in the processes of political change: independence (beginning in 1956), militarization of the political systems (beginning in 1963) and liberalization/democratization (beginning in 1990).

According to the hypothesis that the role of the external factors has remained at a constant level since independence, the first and third phases (Tables 2 and 4) are characterized by a high level of mass participation, whereas the second (Table 3) is marked by pretorian and elitist transition mechanisms and external intervention whenever significant interests of the major powers were at stake, which explains why all cases of transition are in the upper right-hand corner of Table 3.

a) Independence and nationalist movements

The characterization of the general movement of political change in Africa as a "second independence" suggests the idea of a tempting, easy but purely symbolic comparison between the nationalist movements that led to independence and the more recent social movements against authoritarian regimes. Indeed, while popular support is common to both, nowhere in the recent movements has it displayed the magnitude or intensity observed in the nationalist movements. The recent

movements have been more urban and have lacked the resources and organization of the earlier movements. In most cases the unions, political parties and civic organizations have been unable to incorporate the social movements, leading to numerous excesses. Also lacking is the common enemy, the colonial power, which helped to rally together individuals and groups with divergent interests and objectives. It is also not certain that the pro-democratic movements have had the same impact on the collective memory as the struggles for independence, because of their brevity and less profound emotional intensity for the population as a whole. Furthermore, given the authoritarian tendencies of post-independence political regimes, caution in comparing the two movements is advisable.

As a specific mode of political transition, independence took two main forms: negotiation with the colonial powers (which was the case for most of the former British and French colonies) and wars of liberation (Algeria, the former Portuguese colonies, Namibia and Zimbabwe). While the leadership of the educated elite was decisive, the breadth of nationalist movements varied according to the degree of commitment of the popular masses, with war serving as the best symbol in Algeria, Namibia, Zimbabwe and the former Portuguese colonies. In other colonies, the anti-colonial struggle often began with violence and occasionally verged on civil war or revolution (Cameroon, Cote d'Ivoire, Kenya, Madagascar), but almost always ended in negotiation with the colonial power.

With the exceptions of Botswana, Gambia and Mauritius (it would be premature to include Namibia), the main lesson to be drawn here is that the manner in which African countries gained their independence – whether it be through negotiation or wars of liberation – seems to have had little influence on the survival and consolidation of democratic institutions inherited from the colonial power. A comparison of the means of gaining independence according to location (Table 2) with Tables 3 and 4 is interesting in that it permits a reconstitution of the political trajectories of various countries.

While efforts to gain independence benefited from strong social support, the same may not be said of the first wave of political change after independence.

(b) Pretorian and elitist mechanisms

Military coups d'etat, beginning in January 1963 in Togo, and more precisely, depending on the country, from the time the military took power for themselves after acting as the arbitrator during the initial phase in disputes between civilians, constitute the essential pretorian mechanism for political change. The forms, reasons and objectives of military overthrows have certainly varied between the countries and over time, but military coups d'etat are all marked by a lesser degree of participation by the masses, even though in Congo in August 1963 and in Dahomey in October of the same year, military intervention was preceded by major popular demonstrations ("Les Trois Glorieuses" in Congo and "the October Revolution" in Dahomey). The contagion which was particularly rampant from 1965 onwards helped to accentuate the notorious absence of masses in the initial political changes following independence. Since Africa was a battleground in the war against the "peril" of communist expansion after 1945, foreign powers played a more or less determining role. The controversial visits by Jacques Foccart to French-speaking Africa in the 1960s are noteworthy insofar as the myth surrounding this personality inspired coups d'etat either prior to or in the wake of his visits. The recent statements by President Francois Mitterand to the effect that France, in organizing coups d'etat, has played a historic role (this at a time when the Bob Denard trial was underway) appear to confirm France's participation in the political changes of the 1960s and 1970s.

The marked absence of the masses also characterized the elitist modes of political transition, whether they took the form of political openness during the 1970s or that of incremental political reforms of the 1980s.

(c) Return to political pluralism

Between 1969 and 1989, African countries experienced the three main forms of return to political pluralism: democratization in the wake of foreign intervention, democratization under military auspices, a constitutionally limited multi-party system and semi-competitive elections.

Democratization in the wake of foreign intervention

In Uganda (1980) and the Central African Republic, the return of civilians to power and the re-establishment of the multi-party system was exceptional in that it followed the intervention of Tanzanian and French armies. The fact that the return to political pluralism was imposed following a war and military conquest in one case, and an organized military coup d'état with logistical support from a foreign power in another, undoubtedly explains the failure of these experiments in democratization, the imposition models of the post World War II era (excepting the Philippines and South Korea) notwithstanding. The consolidation and survival of democracy in the former Axis powers (East Germany, Italy, Japan) were largely the result of American power, but clearly previous democratic experience in those countries and the existence of strong social demand played a decisive role, which was never the case in Uganda and the Central African Republic.

Democratization under military auspices

The absence of strong social demand also largely explains the failure of experiments in democratization under military auspices in a number of African countries during the 1960s and 1970s.

The military forces in power in Ghana (1969, 1979) and Nigeria (1979) restored civil powers and re-established the multi-party system by organizing pluralist elections. But these attempts did not lead in either of the two countries to stable and lasting democratic regimes. The precariousness of this transition mechanism appears to stem from the fact that it was the army as an institution, to safeguard its corporatist interests, that brought down the authoritarian regime without the help or support of strong social demand in Ghana. In the case of Nigeria, this social demand for a return to political pluralism existed, but among other factors, it would appear that it was not sufficiently strong or well perceived and that it was not in the corporatist interests of the army to leave power.

Constitutionally limited multi-party system

The constitutionally limited multi-party system has been another mechanism for returning to political pluralism. It was initiated for the first time in Senegal in 1976 by the creation of three political parties. The same occurred in 1978 in what was then Upper Volta at the initiative of the army acting as government. In Senegal, the process of democratization was expanded with the introduction of a full-fledged multi-party system in 1981, when Abdou Diouf assumed power. The presidential and legislative elections of 1983, 1988 and 1993 and the political debate in general testify not only to the strengths and weaknesses and level of consolidation of democracy but also to the effects or results of this transition mechanism.

The constitutionally limited multi-party system failed in Upper Volta, one might say, despite the difficulties of establishing a single party system since independence, given the strength of the unions, which have always maintained a certain degree of pluralism. The main reason appears to lie in the fact that the transition had been initiated by the army as government, even though the corporatist interests of the institution, its inclinations or pretensions to governing did not motivate it to leave power, which the rise to power of Thomas Sankara and the messianic and redemptive nature of his regime confirmed.

Semi-competitive elections: democracy and the single party

Since 1965, Tanzania has developed a system of limited plurality of legislative candidates within the framework of a single party. In the 1970s, this system was expanded (full-fledged plurality of candidates) and used in Kenya and Zambia and would have been used in Uganda if not for the coup d'Etat by Idi Amin Dada (Cohen, 1981). The analysts tend to agree (Cliffe, 1967; Barkan, 1979; Barkan and Okumu, 1978; Saul, 1972) that this system of "One Party Democracy", even if it does not offer any alternative to the one party, allows a choice between individuals, a high degree of rotation in political leadership and, above all, a of legitimacy because of the ties established between elected officials and their constituencies (Hopkins, 1971).

In 1980, the Cote d'Ivoire inaugurated this electoral system on the Kenyan and Zambian models (Bakary, 1985, 1986; Brard and Viou, 1982; Cisse, 1983; Pimont, 1986) and towards the mid- 1980s it was extended to other countries (Cameroon, Mali, Mauritania, Niger, Togo). The development of this incremental strategy of democratization, from above, was interrupted in 1990 by a wave of full-fledged political pluralism. Its elitist form was visible in the mechanism by which it was established, which was unilateral imposition by the Heads of State. The enthusiasm this system generated among the elite (from 500 to 900 candidates for 100 posts approximately in some countries) stands in contrast to the indifference of the masses and low voter turnout. The relative failure of semi-competitive elections to mobilize the electorate, particularly the masses, is difficult to explain solely in terms of a lack of true political choices, but is rather an illustration of the weakness of social demand. Nonetheless, this experience served or could have served an educational purpose in terms of electoral choice. But the impact of this form of democratization has been rather attenuated. Its appearance and development in English-speaking east Africa were explained by the survival of political cultures associated with democracy and political pluralism. Paradoxically, however, Tanzania, which instituted the model, as well as Kenya and Zambia, were the most reticent African countries to accept the principle of multi-party politics at the beginning of the 1990s.

The mechanisms for political transition during the first 30 years of independence were therefore characterized by elitism, imposition and the striking absence of the masses, an indication of the weakness of civil society which explains in part the fact that the experiments in democratization survived only in Senegal. The experiments underway since 1990 seem to have benefited from greater participation by the masses.

c) Eruption of the masses

The varied forms and strategies of transition in Africa are the result of the varying degrees of intervention by internal and external forces, the part played by social movements (Bratton and Van de Walle, 1992) and civil societies in the processes leading to the recognition of democracy as the new principle of political legitimacy.

Richard Joseph distinguishes seven different mechanisms of transition (Joseph, 1991, 11-24): (1) the national congress (Benin, Congo, etc.); (2) transfer of power through democratic elections (Benin, Cape Verde, Sao Tome and Principe); (3) co-opted transitions (Cote d'Ivoire, Gabon); (4) guided or controlled democratization (Guinea, Nigeria); (5) minimal and recalcitrant reform (Cameroon, Ghana, Kenya, Malawi, Mauritania); (6) armed insurrections leading to elections (South Africa, Ethiopia, Uganda, Rwanda); and (7) conditional transitions (Algeria, Tunisia). This typology, which the author himself qualified as provisional, is interesting in that it is indicative in some cases (mechanisms 2, 3, 4, 5 and 7) of the stage reached by the countries in their democratization process, based on a certain number of transition phases regularly published in "Africa Demos". It therefore provides little information on the part played by civil societies in the decision to return to political pluralism.

In order better to gauge this participation, the various transition experiments will be grouped in two major categories, based on what appears to be the dominant mechanism according to the popular and media image of political transition in Africa: the "Sovereign National Congress" (SNC). A distinction will be drawn between, on the one hand, the eight countries with SNC that appear to have democratized through the mechanism of rupture, with a theoretically strong participation by the civil society and, on the other hand, the other countries, where the return to political pluralism occurred after reforms introduced by the forces in power, which suggests less involvement by the civil society. In both cases, external agents appear to have played a considerable role, although the leading role was played by internal forces.

SNC: Prelude or alternative to civil war?

This question, based in part on the title of a text published by Mamar C. Diop and Mamadou Diouf in a recent issue of the CODESRIA bulletin is generally based on the post-Benin destiny of the SNC with edifying examples from the Congo, Togo and Zaire, but also on the important part the civil society is supposed to have played in the holding of these congresses and in the emergence of political pluralism.

There are clearly important differences between the "Conference of the Vital National Forces", which became sovereign during the course of events and by chance, and the "National Congress" without sovereignty in Gabon and that with limited sovereignty in Chad. Nonetheless, the eight national congresses have fundamental characteristics in common which provide an indication of the role played by the civil society. Since the legality of the SNC is beyond doubt, insofar as the letters of convocation were in all cases signed by the Heads of State then in office, the issue is the origin of this mechanism of transition, the extent to which it is representative, its sovereignty and its legitimacy.

An analysis of the process of intervention of the SNC in Benin sheds light on a number of significant aspects and shows the decisive influence of the history and political evolution of this country, an absolutely unique and exceptional combination of circumstances (the ideological, political, economic and social failure of a regime, the generalized crisis in the socialist-communist regime) and is therefore not identically reproducible elsewhere. Such an approach does not render illegitimate those in philosophical terms of ritual, theater and catharsis or in terms of references to "palabres traditionnelles" (traditional discourse), dimensions which are restored by the work of Eboussi Boulaga (1993). However, considering the long-term *raison d'être* of the immediate triggering factors and the dynamics of the process once underway (the reconstitution of the chain of events), prudence and realism are advisable, in order to avoid the excessive ex-post rationalizations that have been gaining increasing currency in this area and raising the SNC to mythic proportions as a means of political transition in Africa.

With regard to its origins, the prevailing interpretation is that the SNC is a purely internal invention. According to this view, the concept emerged full blown from the minds of Benin intellectuals, particularly because of their French cultural heritage and the supposed influence of the 1789 Revolution on their political thought, with the Estates General serving perhaps as a subliminal image. The fact that the SNCs have only been organized in French-speaking countries would provide another argument in support of such attribution to French culture (Robinson, 1992). The interpretations of the SNC with reference to the Estates General since the idea was developed by Pearl Robinson (1991) have been refined, as shown by the example of Banock's work on the democratization process in Cameroon with the similarities that the author suggests between the SNCs and the Estates General of 1789 with regard to the generative circumstances of these assemblies and their consequences (Banock, 1992, 135-153).

In reality, if France had played a decisive role in the development of the concept, it was not through culture or some desire to recreate 1789 in Africa, but simply because it suggested the idea of a meeting, leaving it to the organizers to decide on the concrete form and name it would take. A copy of correspondence between the Ministry of Cooperation and the President of the Republic in Benin published in "Temoigne chretien", is unequivocal on this point. It is however possible to find an internal source for the concept: "The Leadership Conference" held by the Kerekou regime from time to time in periods of crisis. The role of France has therefore been significant, but the interaction between this external impulsion and the internal reactions are very complex and in no way minimize the role played by the national players within the countries. Each of the protagonists in the crisis, particularly the opponents to the authoritarian regime, have used or profited from the role of France in order to advance their own aims, thus illustrating the autonomy of internal social forces in situations of dependence. Indeed, they exceeded the boundaries initially established by France for political change, which would have taken the form of incremental democratization and full-fledged plurality of candidatures within the single party, following the example of Cote d'Ivoire in 1980.

The representative character of the SNCs, the mode of designation used, the number and quality of participants, extended debate and controversy in most countries, and above all in Zaire. Already in Benin, the internationally vague term "vital national forces" and later "political awareness" or mobility (in general "presidential") in other countries, illustrates all of the dimensions and complexity of the problem of the representative character of the SNCs, the essential basis for their legitimacy in the eyes of many analysts. Press commentary and expert analyses stress the fact that all socio-professional segments of the population were represented in the SNCs. Nonetheless, some social groups were overrepresented in relation to their numeric size, such as students (100) in Niger, and the SNCs were above all the creation of educated politicized urban masses, which is to say the elite, as if technical competence were the basis for social competence. Given this particular dimension, this transition mechanism resembles that of the negotiated pact between elite groups in the typology of Karl and Schmitter.

The degree of transparency of the national congresses to the civil societies is also measured by their sovereign character which in a way is the best indication or consequence of their representative character and legitimacy. Two additional explanations for the self-proclamation of the Benin National Congress must be taken into account. One is external and is based on pressure exerted by France in response to Kerekou's avoidance of profound reform. Emboldened by these pressures, the opponents were more strident in their demands, with the most extreme elements calling purely and simply for the resignation of the President. Internally, it was inevitable that the national congress would gain sovereignty, first because of the gravity of the social, economic and political situation and also because of the precedent set by the earlier "Leadership Conference", whose decisions produced no effect. That Kerekou remained in office — and it must be recalled that he was not reduced to the simple role of

inaugurator of chrysanthemums like his counterparts in Congo and Togo (he still represented the country abroad) -- and the amnesty he enjoyed must be taken into account in evaluating the sovereignty of the national congress insofar as it constitutes the quid pro quo in the deal between the President and the opponents of his regime.

In the final analysis, the SNC would be the best illustration of the important role played by the civil society in the process of transition. The references to the Estates General of 1789 are consistent with this, and the remarks by Maurice A. Glele are clear on this point when he states that "national congresses result from the resurgence of civil societies establishing themselves as the only true repositories of national sovereignty in order to give a voice and power to the people" (Glele, 1991).

The breadth of the various social movements that led to the organization of the SNC in Benin or those which joined in calling for SNCs in neighboring Togo and Burkina Faso and in Central Africa in Congo, Cameroon, Niger and Zaire, would appear to confirm the preponderant and decisive role played by civil societies. Thus, the transition mechanisms observed in the SNC countries would fall in Stepan's third category. It remains to be determined whether the organization of SNCs -- or the failure to organize them -- constitutes the ultimate proof of the strength and structures of civil societies.

Final assault strategies and bunker mentality

The countries that did not organize SNCs, which are more numerous, are paradoxically those in which the social movements that preceded the re-establishment of the multi-party system (Cote d'Ivoire, Kenya, Zambia) and those which accompanied the calls for an SNC, when advanced as a veritable political negotiating point (Cameroon, Central Africa), played a particularly important role (one need only consider, for example, the city-wide strikes in Cameroon) and continued beyond the acceptance of democracy as principle of political legitimacy, a good example of this being the case of Cote d'Ivoire.

These social movements took the form of permanent occupation of the streets, constant harassment of the authoritarian regime, spectacular operations, etc. While opposition movements tend to be commensurate with or in the image of the regimes in power, it must be stressed what this "final assault" strategy, as it was proclaimed and above all practiced by the main opposition party in Cote d'Ivoire, the Popular Front, owes to the revolutionary theories of taking power. The fact that the Popular Front calls itself a leftist party or that its Secretary-General is a former Marxist, is perhaps not unrelated to the approach it has taken to gain power. The events of February 18, 1992, and their legal and political consequences, particularly the subsequent deterioration of the democratization process illustrates the fatal logic of the "final assault" strategy.

In Cameroon's variation, this strategy resulted in a bunker mentality that comes naturally to the Etoudi palace given its geographic location and its architecture: the wait-and-see policy, the game of the deteriorating situation, repression and blow-for-blow violence and other methods of political and social isolationism that culminated in a state of emergency after the presidential elections.

Paradoxically, in these two countries, despite their violence as evidenced by damage to property (Cote d'Ivoire) and/or human life (Cameroon), the social movements have led to reform (often slight as in Cote d'Ivoire), of the procedures for controlled transition, those in which the members of the authoritarian regime maintain most of their prerogatives and safeguard most of their fundamental interests. These results, however, are far from signifying the weakness of civil societies, since the

breadth of the social movements, even those confined to the towns, indicate the contrary with various and more or less permanent forms of mobilization of the urban masses.

As shown in Table 4, recent transition mechanisms in Africa, with the exception of Mali, made be classified between reform (participation of the masses or grass roots pressure) and pact (compromise within the elite).

Theoretically, based on earlier experiences, transition mechanisms in Africa could lead in most cases to democracies of the corporatist or coalition type, in which competition is regulated through compromise or founding agreements, or of the competitive type, whose fragility could open the way for a return to authoritarianism.

While the mechanisms of political transition in Africa are truly indicative of the nature and strength of civil societies, the lessons that can be provisionally drawn are rather tenuous and to a certain extent paradoxical. Contrary to the idea generally given, the SNC countries do not appear to be those in which the civil societies are the most highly developed. Despite the fact that the transitions are at the discretion of the members of the authoritarian regime, the countries that have not had the SNC experience appear to be those in which the civil societies are best structured.

A more certain judgment cannot be made until a precise response is given to the question of the true nature of the social movements that have preceded, accompanied and followed the re-establishment of the multi-party system. Were they sudden passing social fevers such as countries experience from time to time in their histories? Or were they the manifestation of profound movements, the equivalent of what has been qualified as the new social movements in the developed countries (feminism, pacifism, environmentalism, etc.) and through which the traditional boundaries of politics have been called into question? The inability of the unions, the political parties and the civic organizations to integrate the social movements with the strongest political demands and social agitation lay behind numerous excesses in several countries and suggest a positive response to the first question. Low voter turnout in Mali and elsewhere, and political indifference nearly everywhere after the elections tend to confirm this assessment.

The widespread exhaustion of the processes of transition, foreseeable and natural, the search for a "fair" balance or relationship of force between the protagonists of change (mistakenly referred to as "restoration of authoritarianism") are the strongest indication that civil societies in Africa are only emerging and urgently need to be strengthened.

B. PERCEPTIONS OF THE PARTICIPANTS: DEMOCRATIZATION AND EXCLUSION

This portion of the study is based above all on a clear reality, the strife and polarization within African societies (with risks of civil war in some countries) since the beginning of the 1990s, the confused and violent wave of democracy that is washing over the continent, (Manent, 1982, 7), where it inspires "a sort of religious terror", (Tocqueville, 1986, 44) the events alluded to above resulting from the fears and hopes of both sides still poorly defined, one apprehensive about democracy, the other hopeful of progress towards it. Afterwards, it formulates the hypothesis that both sides are right to fear and to hope, but that their fears and hopes are misplaced and that it is possible to discover in earlier experiences with democratization throughout the world, particularly those of the founding democracies, England, the United States, France (Hermet, 1983, 31), "an image of democracy itself, of its tendencies, its character, its prejudices and its passions" (Tocqueville, 1986, 48), in order to determine what must be feared or hoped. Finally, it will proceed from the premise that in Africa at this stage in the history of the

development of democracy on African soil, as was the case for example in western Europe, the traits of the new political societies are difficult to discern, "for the dust of battle (which has only just begun) has still not fallen and the passions inspired by combat still cloud clear vision" (Manent, 1982, 8)

Given its intrinsic characteristics (Przeworski, 1986, 56-58) – the passions and motivations which lay behind it – democracy carries with it a certain potential for conflict. Indeed the process by which it is established (democratization) amounts to the institutionalization of uncertainty, the submission of all interests to uncertainty (Przeworski, 1986, 58).

Since 1990, conflict has marked the discussion-of-principles phase (acceptance or recognition of democracy as the new principle of political legitimacy). With specific interests at stake, the players (tribal authorities, charismatic leaders, etc.) have mobilized the resources (unions, civic organizations) and conducted the activities (broad social movements) needed to advance their interests, leading to the first measures of liberalization. The same was true of the following phase, that of democratic bargaining (towards an agreement on the rules of the political game), with different stakes, different players (negotiators), different resources and different activities. The aggravation and prolongation of this second category of conflicts have brought some countries to the edge of anarchy (Zolberg, 1992) and civil war, which has been described – erroneously it would appear – as "the restoration of authoritarianism" (implying that authoritarianism had disappeared in a year or two), resulted largely from the fact that for one reason or another, in the African countries, the participants in each of the two phases have been the same, whereas the characteristics required for each are different.

Overall, these conflicts reveal how democracy and democratization have been perceived and experienced by some of the participants in the political game and by certain social groups.

Democracy appeared to many government leaders and opponents as just another means of access to political positions, and therefore to economic resources, just like earlier mechanisms of political change (coups d'état, palace revolutions) – another zero sum political game. The process of democratization has been presented and perceived as a weapon in the hands of the personal enemies of current government leaders or in the hands of the inhabitants of a particular region or ethnic group, against another region or group in the country.

As a result, democracy has not been perceived as a process of inclusion, but one of exclusion, in that it does not appear to offer guarantees to major social and political interests.

There are two lessons to be learned here. The first, is that African democrats and their outside supporters have failed to constitute and present democracy as a preferable and credible political alternative. The second lesson is that democracy in Africa cannot easily be established against the will of part of the population, but must rather be established in cooperation with one's adversaries, who could prove to be the most effective backers of continued democracy, as has been the case elsewhere, because they know they have everything to gain and little to lose with the new system.

The perceptions of democracy, the hopes and fears vested in it are manifest in the attitudes of the political forces participating in it, in the conflicts (from urban riots to Civil War) which have appeared nearly everywhere following transitional elections or founding elections.

C. FOUNDING ELECTIONS AND POLITICAL VIOLENCE

In Africa, since the legislative elections of September 1990 in Gabon, the "democratic" aftermath of authoritarian rule, marked by violence and accusations of frauds by incumbent governments in countries like Burkina Faso, Congo, Cote d'Ivoire, Kenya, Mali, Mauritania, Niger etc., are clear indications of the predicaments of the processes of transition from authoritarian rule and democratic consolidation.

The fundamental reason of the disputes over elections outcomes is that, these elections are "founding elections" (O'Donnell and Schmitter, 1986, 61), the first elections after the restoration of a multiparty system and fundamental political rights. "Transition elections" as Nancy Bermeo calls them, are important because "the party that wins the transition election plays a key role in the consolidation of democracy, often writing a new constitution, deciding the fate of the old guard, and rewriting the "rules of the game" (Bermeo, 1987, 23).

In democratizing African countries they are not only important, they are also "critical elections" (Key, 1955), because of the specific context of the political transitions (their political, ideological, cultural, economical and international dimensions), have here unusual significance.

The first cause is to be found in what is really at stake with democracy as a new principle of political legitimacy, its perceptions by the social and political actors, the fears and hopes vested in it.

The second cause of post-electoral violence is the lack of confidence in the administration of the electoral process by incumbent governments. The high level of distrust between political actors, (which for example accounts for the refusal of domestic monitors for the 1992 legislative and presidential elections in Congo and the February 1993 presidential elections in Senegal) resulted from the pre-independence and post-colonial electoral politics.

A. HIGH RISK OF POST-ELECTORAL VIOLENCE

As stated above, maybe more than in the intrinsic characteristics of democracy as a new principle of political legitimacy, the potential for violence lies partially, first, in the social meaning of a political position which gives to the outcomes of the "founding elections", an unusual significance and dimension.

The second source of violence which is strongly related to the former, is the fact that, alternation in power, meaning the victory of the opposition and consequently the defeat of the incumbent political party (the former unique party) is conceived as the criteria of the fairness of the electoral process and of the democratic nature of the new regime.

1. Political careers, since colonial times, have been attractive and lucrative and along with schooling, represented the first sources of upward social mobility, the political position constituting the main access to economic resources. Thus, and because of the more or less zero-sum game which have characterized authoritarian politics in many countries, any attempt to the distribution or redistribution of the political offices whether normal (congresses of the unique political parties, non-competitive or semi-competitive elections, government reshufflings, etc.) or abnormal (military coups d'Etat, palace revolutions) was of great social significance and has a decisive impact on the social destiny of individuals and groups.

What is really at stake with the processes of liberalization and democratization, goes far beyond the change in the rules of the political game, the mere adoption of a new principle of political legitimacy. It is the rather dramatic calling into question of the previous structures of patronage and rewards, allocation of resources, relations between politicians and their constituencies. Thus, there is more than power-addiction behind the fact that Eyadema and Mobutu are playing the "Comeback Kids" in the post "National Congress" political life of their countries.

The fears (incumbents) and the hopes (opponents) vested rightly or wrongly in democracy which can account for the violence and the bitterness of ongoing political conflicts and through which Africans are learning nothing more than the fact that "democracy is a contingent outcome of conflicts", (Przeworsky, 1988), lie perhaps in the feeling, that more than previous political changes (the military coups d'Etat) democracy could alter more fundamentally the existing structures of allocations of resources and rewards.

2. The upsurge of democracy in many French speaking African countries, among other factors, has been influenced by the sudden reversal of ideas (in the mid 80s) about democracy and the capitalist West, by leftist or radical intellectual oppositional groups. Apart from the fact that democratizers could be divided in two groups, those by belief and those by convenience or necessity, democracy was for many, a mobilizing mode of protest against the political establishment, as has been socialism or revolution in the 60s and 70s. And from this standpoint, the victory of the opposition, or "political alternation" as outcome of the "founding elections", like in Cape Verde, Sao Tome and Principe (January 1991), Zambia (October 1991) has been characterized as the main criteria for the evaluation of the fairness of the elections and the democratic nature of the new regimes.

B. PREVIOUS ELECTORAL POLITICS AND LACK OF CONFIDENCE

The pre-independence and post-colonial experiences of electoral politics in Africa, account for the understanding of the process and aftermath of "founding elections": boycott by opposition parties (Burkina Faso, Cameroon, Ghana, Mauritania), low voter turnouts (Burkina Faso, Congo, Mali, Mauritania, Niger), mismanagement, irregularities and nullification (Central African Republic), conflicts over the outcomes and social unrest (Cameroon, Cote d'Ivoire, Senegal), civil war (Angola), etc.

The lack of confidence in the election machinery and personnel of the incumbent governments (which dates back to the 1983 and 1988 presidential and legislative elections in Senegal, and was part of the explanation of the outburst of violence in Cote D'Ivoire in February 1992 with the arrest, trial and imprisonment of the leaders of opposition parties), grew out of half a century of electoral abuses. The point of departure in the French Empire has been the colonial administration electioneering, searching for an "interlocutor valable", and sometimes creating what were known then as "partis administratifs" (the equivalent of today's "partis alimentaires", the political parties created by incumbent leaders).

Because of what was then at stake, the moving into the colonial palaces, political parties learn very quickly that in politics, the most important is not to participate contrary to the olympic pledge, but to win, and by all ways and means available. Strong traditions of massive frauds, ballot boxes filling, vote buying, intimidations, pressures and violence against opponents, etc., developed and contributed to the emergence of one-party systems.

The end of formal political opposition, and thus the breakdown of the democratic systems inherited from colonial powers, resulted in two or three decades of non-competitive elections with their

famous high voter turnouts and their 100% votes cast in favor of the ruling party or the incumbent president.

The consequences of about 50 years of electoral practices as very briefly outlined, are obvious and much determining for the explanation and the understanding of the problems with elections in post-authoritarian Africa, and the need for pollwatching. They have generated some of the evils of elections in Africa: political cynicism, de-mobilization, lack of interest in politics and elections, lack of experience in electoral choice by voters which explains partially the low voter turnout in many countries; lack of trained personnel for the administration of competitive and pluralist elections almost everywhere, underdevelopment regarding the level of the required material equipment (ballot boxes, polling booths, etc.) and the administrative machinery (reliable census, updated electoral lists, widespread identification system, etc.); lack of reliable and effective means of distribution of the electoral documents, etc. The nullification of the 1992 legislative elections in Central African Republic has epitomized, all these evils.

Moreover, in systems where political structures worked only from the perspectives of the leaders, where votes do not count and politicians have little need to develop political parties, political programs and electoral campaigns are meaningless. The long traditions of elections rigging or the conditioned reflexes of frauds, are structured by the strong belief that the "mystery of democracy" derives not from the secrecy of the ballot (an individual and private choice after a collective debate), but in the alchemy of the manipulations of electoral documents (electoral lists and identification cards) votes counting irregularities.

The potential for violence during the formative period of democracy and the effectiveness of violence symbolized by Cote d'Ivoire in February 1992, Cameroon in September-October 1992, Senegal in February-March, 1993, and more importantly and dramatically by the post-electoral civil war in Angola, the lack of confidence in the existing election machinery and the distrust between political actors and all the evils which are plaguing electoral process and thus the process of democratic consolidation in Africa, call for sure for the presence of international observers but also and more decisively for the massive presence of domestic monitors.

Indeed, and maybe more than any other "founding elections" in recent history, elections in Africa require the presence of international pollwatchers, fulfilling their traditional functions. But, given the scope and the complexity of the task to be accomplished by observers because of the material, administrative and political environment, the international community has to show more than a moral support to democratic elections. What have been done in that sense in Zimbabwe (1980), Namibia (1989) and Angola (1992), cannot, obviously be repeated in the other 44 Sub-Saharan African countries for the elections to come. Hence, the development of a strong network of domestic monitoring organizations, is one important way, not just to supplement efforts made by international actors, but to cure the evils of elections in Africa, and thus contribute to the process of invention and consolidation of genuine democratic and pluralist political systems threatened by the disputes over elections outcomes.

PART TWO
STRATEGIES AND RECOMMENDATIONS
FOR THE CONSOLIDATION OF DEMOCRACY

INTRODUCTION

The following recommendations are based on the lessons it appears possible to draw from the three areas analyzed in Part One: the mechanisms of political transition; the perceptions of democracy held by the various political forces and social groups; and the disputes that have arisen with regard to the results of founding elections.

Before examining the suggested strategies and recommendations in detail, it is important to understand the guiding principle applied in formulating them.

This document has concerned itself far more with the question of "democracy" than "governance", for theoretical and practical reasons.

Africa is well known to be a great consumer of theories and concepts formulated without reference to its specific realities, and the problem has always been to adapt the latter to the former. These theories and concepts have been resuscitated, yesterday by the authoritarian governing powers, and today by their opponents, who use them in debate. The concept of "civil society" has gained extraordinary favor in African political debate, and is used as a weapon against the State, or against the governing powers. But while the development and consolidation of civil societies are desirable, as we shall see further on, they will never replace the State, whose construction must be continued and whose role and functions must be redefined.

The concept of "governance", has not enjoyed the same currency as that of "civil society" because the term is new to the French language and probably also because of its definition.

Aside from this problem of definition (roughly, the manner in which power is exercised) and because of the fact that at the level of political theory the concept represents a return to functionalism. In general, and in Africa in particular, to distinguish governance from democracy is to pose an important problem, primarily of a practical nature, which is as follows: can "good governance" appear and be developed outside of a pluralistic and democratic framework?

This document states a general hypothesis that serves as the guiding principle for the recommendations that follow, namely that the establishment of a pluralistic and democratic system constitutes a prerequisite for the improved exercise of power, for "good governance".

The accountability of government leaders, their legitimacy, representative character and competence, the transparency of administrative and government procedures, the predictability of administration and government behavior, the decentralization of functions and decision-making processes, the independence of the judiciary and legislature as well as all other elements or dimensions of "good governance" will be the product of a stable, democratic pluralist system open to alternation.

In support of this reasoning, the fact that all the elements which were long conceived as the preconditions for democracy (economic growth, fairer distribution of income, improvement in the level of education, greater media exposure to the masses, more tolerant civic culture, propensity for dialogue and compromise, etc.) have been finally revealed as the consequences of the functioning of democratic institutions.

Nowadays, it would not occur to anyone that the contrary might be possible, but the conceptual separation of "governance" and "democracy" could not only degenerate into the excesses of functionalism, but suggests – particularly since it is argued that the countries of southeast Asia, though not pluralist or democratic, practice "good governance" and above all are economically successful.

In Africa, in the current context, a separation of democracy from good governance appears difficult to justify. The creation and consolidation of a pluralistic and democratic framework therefore constitute a priority and it is on the basis of this general principle that the following strategies and recommendations have been made.

These strategies and recommendations have three aims: to ensure the promotion of democracy, to restore confidence between participants in the political game, and to strengthen the foundations of pluralism.

I. THE PROMOTION OF DEMOCRACY

Beyond the ranks of democrats by conviction, the idea and the image of democracy may have already been tarnished. While it may not be necessary for the entire population of a country to believe in democracy in order to see it established, the majority, at least, must oppose it. With the political and social turmoil that have persisted in many countries since 1990, and the violence, anarchy and nascent civil war, people could lose faith in the advantages democracy is supposed to bring them and look more favorably on the political systems that existed before.

The priority task for African democracies and their foreign friends in this area is to promote democracy, projecting a positive image and a clearer idea of what democracy is and is not, making its adversaries become democrats by necessity, who can often prove more beneficial than democratic purists, who love democracy too much, to the point counterproductivity during its process of establishment and consolidation. Two types of action might be considered: education/training and propaganda.

A. EDUCATION/TRAINING

The civic education programs, seminars, conferences, etc. should serve to disseminate a number of ideas about democracy, political institutions (the legislative and executive bodies) and their functions, political parties and their roles and functions, and electoral operations and their meaning and consequences. The aim here is to contribute to forming well-educated and informed citizens aware of the authoritarian past of African societies, the predominant political cultures and the general level of socio-economic development. These programs will naturally target the rural population, since the urban masses are generally more politicized and better educated.

B. COMMUNICATION, PROPAGANDA AND MARKETING

These varied training programs should be accompanied or backed up by veritable propaganda (not in its pejorative sense) or marketing operations with documentary films, video clips, publicity spots, posters and any other form or means of communication appropriate to the African context in order to present democracy as a preferable alternative to authoritarianism.

The documentary films that may circulate from village to village, video clips, publicity messages on the radio and television, (they already exist in a number of countries) posters, popular theater, which the population is fond of (a number of plays on democracy already exist, but must be made more didactic or others must be created that are) or any other form or media of communication or publicity could be used.

II. TO RESTORE CONFIDENCE BETWEEN THE POLITICAL PLAYERS

Given that the level of mistrust and the obvious lack of confidence between the different participants in the political game, as demonstrated by the conflicts that have arisen following the results of the first pluralist elections in a long time, it is imperative to restore confidence between them.

The aim here is to make women and men with different political opinions work together so that these persons learn to have confidence in one another and cultivate tolerance. The creation of civic organizations could be a useful means and electoral politics as well as human rights, fields for priority action.

A. CREATION AND STRENGTHENING OF CIVIC ORGANIZATIONS

The main idea is to help create and strengthen domestic, non-partisan civic organizations supported by their counterparts outside of Africa, as has already been the case in certain countries with, for example, the Studies and Research Group on Democracy and Economic and Social Development in Africa (GERDDES-AFRICA). Two things in particular must be stressed. First, the totally non-partisan character of the organizations recommended. They are open to all public opinions and are apolitical, in that they are not instruments for gaining power, as are parties. These organizations should be supported by their counterparts in the developed countries, which doubtless would give them greater weight within their countries.

B. ELECTIONS AND HUMAN RIGHTS

The fields par excellence where these types of organizations could be developed are those for the promotion and protection of human rights, the holding of elections and the monitoring of democracy in general. In this last case in particular, the tasks to be performed to ensure that election results are accepted by all, regardless of which party wins, are long, complex and considerable. Similarly, what the international community did in Zimbabwe (1980), Namibia (1989) and Angola (1992) obviously cannot be repeated in the other 44 States. The solution, therefore, lies naturally in the creation of powerful election monitoring organizations, such as NAMFREL in the Philippines or "Z' VOTE" in Zambia, not in order to add more international observers, but rather to contribute to healing the ills that have plagued elections in Africa. This would reduce dependence on external assistance in ensuring the legitimacy and credibility of election results while at the same time entrusting the development of

democracy to internal actors, who are in a position to defend it day in and day out because of their commitment to non-partisan organizations; this will also help to strengthen the foundations of pluralism.

III. EXPANSION AND REINFORCEMENT OF THE FOUNDATIONS OF PLURALISM

The strategy proposed here is designed to help ensure decent material working conditions, improve the level of training and expertise required for effective and efficient functioning of political power and to strengthen the foundations of pluralism.

Indeed, as a result of the weakness of civil societies, the nonexistence or weakness of the other foundations of democracy (media, justice, political parties, etc.), the action to be taken here will be in two directions, improvement of the conditions for the operation of political institutions and expansion of the social and cultural foundations of democracy.

A. IMPROVEMENT OF THE OPERATION OF POLITICAL INSTITUTIONS

The activities at this level should first address the most urgent material needs, and afterwards -- this is just as important -- to form and train the personnel of the institutions (parliament, government, justice, etc.) whose functioning or regular meetings constitute both the symbols and reality of democracy, even though the heritage of the authoritarian regime, the prevailing political culture and in some cases the structures of power that emerge following the adoption of a new constitution, are reasons against a shift in the balance of power in favor of parliamentary assemblies.

1. Material equipment

The best constitutions in the world, the best electoral codes and other legislative texts, the best experts in the world cannot operate without minimum material equipment. The situation varies from one country to the next according to the general level of socio-economic development, but in general terms the material needs are enormous and complex. The ones that must be addressed on a priority basis are those that can facilitate or handicap the daily functioning of political institutions.

(a) Data processing equipment (computers, word processing software), photocopiers, etc. do not constitute luxury products in today's world, but increasingly indispensable working tools for the reproduction and distribution of legislative documents to members of parliament, for example, prior to the opening of parliamentary sessions.

(b) Libraries, documentation and political analysis centers, the appropriate personnel and equipment to provide reliable and indispensable information in fields as varied as economics, finance, international relations, law, political science, etc. are often lacking, particularly at the assembly level.

(c) To help furnish elected officials (members of parliament, municipal council members) with technical assistance in the preparation, analysis and wording of draft legislation under consideration. This assistance is necessary even in cases where the educational level of the elected officials is rather high because of their socio-professional backgrounds (engineers, doctors, lawyers, architects, teachers and various categories of civil servant, etc.). It can be provided locally, free of charge or at little expense, by NGOs, such as, associations of lawyers or jurists or unemployed university graduates often grouped in associations.

2. Training program

The aim here is to provide elected officials and staff members of the political institutions with the experience and technical expertise needed to perform their duties.

(a) Elected officials: the problem for African members of parliament in the context of recently established multi-party systems, is not awareness of their responsibility towards the electorate, but rather how to strengthen their attachments to democracy and avoid the repetition of bad habits developed during the single party period.

Aside from a vast civic educational program especially designed for elected officials, the best school could be the exchange of experience between African elected officials and American and European elected officials. The former could be invited to North America or Europe to observe the functioning of deliberative bodies, not only in the assemblies (for example the operations of the most prestigious parliamentary committees) but also in the field, in selected electoral districts. The inverse might also be possible: North Americans and Europeans visiting Africa to share their experiences with their African counterparts.

An important suggestion here would be that, insofar as most African countries have already elected their members of parliament or will do so by the end of 1993, the sooner such sharing of experience is organized, the better.

(b) Personnel: at this level, in addition to helping improve the level of technical training of middle and intermediate level personnel, whose absence is often painfully evident, the senior officials of different institutions (for example, the Secretaries-General of assemblies and governments as well as the persons responsible for relations between the various institutions) could also benefit from exchanges similar to those described for the parliamentarians.

B. STRENGTHENING OF THE FOUNDATIONS OF DEMOCRACY

There is increasing agreement that a strong, well-structured civil society is essential to democracy, as are political parties. Given the current situation in the African countries, the activities undertaken in this area will seek first of all to strengthen civil societies and the other pillars of pluralism.

1. Civil societies: the emergence of institutionalization

The concept of civil societies is very fashionable in Africa, almost to the point of "gadgets". The task, therefore, is to make them operational, by helping to create or strengthen social movements (neighborhood associations, women's groups, religious groups) and civic organizations from all social strata (rural population, youth, intellectuals, lawyers, journalists, union members, entrepreneurs, etc.) that can generate structured social movements and constitute organized centers for advocacy, mobilization and legitimization.

These associations and organizations can be operational at all levels (local, regional and national) and in all areas, from consumer protection to environmental protection or the promotion of national or

local cultures. Their activities can serve to bring the power closer to the daily life of the citizenry and increase accountability at all levels.

The ties between civil societies and democracy are very complex, and in Africa, probably more than elsewhere, the emergence of a strong and well-structured civil society is no guarantee that democracy will be established and consolidated. On the other hand it is very unlikely that democracy can survive without such institutionalized civil societies. As Tocqueville observed, civil societies constitute a pillar of democracy, because it is within them that public opinion is formed and it is through independent associations that citizens can express themselves to the State.

However, in emphasizing the need to help create and consolidate or institutionalize civil societies in Africa, it must not be presumed that civil societies will replace the State or are necessarily against the State. The collapse of authoritarian regimes in certain countries exploded the monopoly they held over symbolic violence. Several centers of violence appeared and many States are on the verge of anarchy. The strengthening of independent civic organizations of the State cannot and must not contribute to the decay of the central State, whose role and functions must be redefined.

To accomplish this objective of strengthening and institutionalizing civil societies, the Latin American experiences in designing and implementing civic education programs are available and may be adapted to the African context, the general objective here being to ensure that individual and collective members of society can be well informed as to their place, role, rights and duties within a pluralistic and democratic framework. Civic instruction courses, or more generally, education about the constitution, human rights, civil rights, the holding of elections, the management of NGOs, their relations with political and administrative authorities, etc. may be included in such civic education programs. These may take various forms: workshops, seminars, conferences, and use support materials as varied as those indicated above for the promotion of democracy (posters, chants, theatrical plays in which local artists perform in the most popular languages, audio and video cassettes, etc.

2. Develop the media

The political history of sub-Saharan Africa, particularly in countries that have suffered military coups d'Etat, attests to the important role played by the media. When coups d'Etat would occur, the radio and television offices (to the extent they existed in the early 1960s), were first to be occupied even the presidential palace in some cases. The recent military interventions in Togo have confirmed the lasting importance of the mass media in the political life of Africa. Despite inadequate broadcast coverage (not all of African territory is covered) and the population's limited access (relatively few households are equipped with television and radio receivers), community use of such media has developed considerably).

It is still unknown whether the great importance placed on media stems from oral traditions, in a cultural context in which "to say is to do". Opponents still complain continually about the inaccessibility of the State media. An embryonic but very dynamic private press has played a decisive role in the emergence of multiparty systems in many African countries. Most of these newspapers have disappeared and those that survive subsist under particularly difficult conditions.

Aside from the print media, the use of private FM radio in Burkina Faso (Radio Horizon), Mali (Radio Liberte, Radio Bamakan, etc.) is extremely promising, but here again, the physical difficulties are enormous and threaten the survival of private and independent media.

Assistance in this area will seek to meet equipment and technical personnel needs in order to ensure the existence and independence of the media.

3. Create an official status for the opposition

In many African countries, the recently created political parties are weak, badly organized and above all lacking in resources. Moreover, in some countries the electoral victory of one party eliminates any viable and credible opposition, a situation which could easily slide towards the single party system of the past.

Since it will not be possible to provide material assistance of any consequence to all of the political parties in all of the countries, even if only to parties represented in parliament, one way of contributing to the survival of the opposition, and thus to that of democracy, would be to help create an official status for the opposition.

This innovation should go beyond the establishment of "codes of conduct for political parties", as observed in many countries. It is an idea which had also been advanced by the President of Congo during his 1992 electoral campaign, although the specifics have still not been spelled out in detail.

In the African countries, as a result of the personalization of power, the perception and acceptance of the rural masses, that is the majority of the population, is one of the dangers threatening the very existence and survival of a viable and credible opposition. The idea of creating an official status for the opposition is intended primarily to make its role acceptable to average citizens and ensure consistency with their cultural values.

This status could be based on the British model of "His Majesty's Opposition" with the leader of the opposition having an official position in the institutions of the State. The symbols and reality of associating the leader of the opposition (and why not, his shadow cabinet) in the exercise of power, could help to moderate the opposition's criticism of the authorities in power, which is often perceived negatively by the average African, for example, as personal grudges for ethnic reasons or others between leaders of the opposition and those in power. This approach to the opposition could increase its acceptance from a cultural point of view by the public at large, without contradicting or conflicting with the attitudes of the more westernized social and political elite.

This suggestion addresses the need, if not the imperative, to rethink democracy and good governance on the basis of African social and cultural realities, which should be considered an integral part of the assistance provided in the process of establishing and consolidating democracy in Africa. Seminars or any other form of academic meeting bringing together specialists in the social sciences, political figures and representatives from the donor countries, could be a good strategy.

ANNEX I

Table 1: MODES OF TRANSITION*

		<u>Strategies</u>	
		Multilateral Compromise	Unilateral Force
<u>Actors</u>	ELITES	<u>PACT</u>	<u>IMPOSITION</u>
	MASSES	<u>REFORM</u>	<u>REVOLUTION</u>

* From Karl et Schmitter, 1990, Page 275

Table 2: MODES OF ACCESSION TO INDEPENDENCE

		<u>Strategies</u>	
		Multilateral compromise	Unilateral force
ELITES	<u>Actors</u>	DY RCA RCR <u>PACT</u> GB TD TE HV	BI RA NR TG KN CG <u>IMPOSITION</u>
MASSES		<u>REFORM.</u>	GU AL AN MZ <u>REVOLUTION</u> GB CV

- AL : Algeria
- AN : Angola
- BI : Burundi
- CC : Congo
- CV : Cape Verde
- DY : Dahomey
- GB : Guinea Bissau
- GU : Guina
- HV : Upper Volta
- MC : Morocco
- MZ : Mozambique
- RA : Rwanda
- TE : Tunisia
- TD : Chad

Table 3: TYPES OF TRANSITION MECHANISMS IN AFRICA (BEFORE 1990)

		<u>Strategies</u>	
		Multilateral compromise	Unilateral force
Actors	ELITES	SN HV GH <u>PACT</u> NA UG RCI HV	ML TG RCA TZ CN ZA
	MASSES	<u>REFORM</u>	<u>IMPOSITION</u> RCA HV TG DY UG

- CN : Cameroon, 1987
- DY : Dahomey, 1963, 1965, 1972
- GH : Ghana, 1966, 1969, 1979
- GU : Guinea, 1984
- HV : Upper Volta, 1966, 1978
- KN : Kenya, 1969
- ML : Mali, 1985
- NA : Nigeria, 1966, 1979
- RCA : Central African Republic, 1980
- RCI : Côte d'Ivoire, 1980
- SN : Senegal, 1976, 1981
- TG : Togo, 1963, 1967, 1985
- TZ : Tanzania, 1965
- UG : Uganda, 1970, 1980
- ZA : Zaire, 1977

Table 4: DISTRIBUTION OF TYPES OF TRANSITION IN AFRICA (since 1990)

		<u>Strategies</u>	
		Multilateral compromise	Unilateral force
ELITES		<u>PACT</u> TZ STP CV	<u>IMPOSITION</u>
<u>Actors</u>		BN GB CG NR TG TD SR	GH MG
MASSES		ZN RCI MT CN <u>REFORM</u>	ML <u>REVOLUTION</u>

BN : Benin
 CN : Cameroon
 CV : Cape Verde
 CG : Congo
 GB : Gabon
 GH : Ghana
 KY : Kenya
 MG : Madagascar

ML : Mali
 MT : Mauritania
 NR : Niger
 STP : Sao Tome & Principe
 TZ : Tanzania
 TD : Chad
 TG : Togo
 ZR : Zaïre
 ZN : Zambia

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Woods, D. 1992. "Civil Society in Europe and Africa: Limited State Power through a Public Sphere". *African Studies Review*, 35 (2), (September), p. 77-100. et a prédire le sens de ce qui se passe sur le continent africain depuis 1989.

APPENDIX 2

U.N. ROUNDTABLE FORUM ON
DEMOCRATIC TRANSITION

21-23 JULY 1993
CAPITAL HOTEL
LILONGWE, MALAWI

DECENTRALISATION, LOCAL GOVERNMENT AND DEVELOPMENT

William Tordoff

I begin by discussing briefly the terms that I am using. First, development: we can say what it is not more easily than what it is - it is not economic growth alone, though economic growth is essential to development. It also embodies social justice: that is, the distribution in a reasonably equitable manner of the benefits of economic growth among the country's regions and people. The difference between growth and distribution is captured in the 1970s story about mutual recriminations between Tanzanians and Kenyans. The former are said to have accused Kenyans of being interested only in material prosperity: by pursuing economic growth alone, they were creating 'a man eat man society'. According to the story, the Kenyans responded by saying that the Tanzanians emphasized equality but had nothing to distribute; their's was therefore 'a man eat nothing society'. Development also has a political component - provision must be made for popular participation in the political process and for the protection of civil rights and essential freedoms; an administrative component, so that the state has the capacity to respond to people's needs; and an international element, enabling the state to exercise some autonomy in the conduct of foreign affairs. Thus development can be said to be multi-faceted, with economic, social, political and international dimensions. From this it follows that, as Fred Riggs argued, developing countries should be studied within their entire ecological context. Since new states in the Third World are mostly old societies, the social context must not be forgotten. I recall the story of a poultry scheme undertaken by a United Nations' agency in rural Senegal to benefit the local people: only when the hens were laying was it discovered that egg-eating was locally taboo!

This story - a true story by the way - underlines the need to involve the local people in decision-making. Popular participation in government is an essential aspect of decentralisation, that is in the process of transferring power from the centre to sub-national levels, either to officials of the central government in the field or to elected local governments. The former transfer is usually referred to as administrative decentralisation or the administrative deconcentration of authority and the latter as political devolution; they are often complimentary rather than separate processes. As well as this 'territorial decentralisation', there is likely to be 'functional representation' also, that is decentralisation to parastatal or non-governmental organisations such as marketing boards.

Decentralisation is justified on many grounds: these include the belief that public participation in decision-making is essential if projects are to be realistic and receive local support, and the conviction that centralised decision-making and over-tight central control is inherently inefficient, entailing for example delay in releasing funds and obtaining supplies and thus causing local frustration. The last point was vividly underlined by a member of the Constituent Assembly drawing up India's independence constitution in 1947; he stated: 'Too much centralisation produces anaemia at the extremities and apoplexy at the centre'. Another justification of decentralisation in Africa was that many countries had experienced some form of it when they were colonies. In British and French African colonies, for example, authority was delegated from the centre to administrative officers in the field; these officers enjoyed wide discretionary powers and, in the terminal stages of colonial rule, co-ordinated the operations of specialist officers in agriculture, veterinary affairs, health and education. While the French preferred a prefectorial system of administration and regarded local government as a projection or instrument of the centre, the British not only conferred administrative authority on district officers but also devolved political power to local institutions enjoying some autonomy - first, from the 1920s, to native authorities operating under a system of indirect rule and then, from the 1940s, to representative local authorities containing an increasing number of elected members.

The corollary of decentralisation, whether political or administrative or a combination of the two, is obvious: as functions are transferred from the centre to the provinces and districts, the number of functions to be performed at the centre will be reduced: they will relate to policy-making and overall supervision and control. It follows that qualified personnel will need to be redeployed to provincial and district levels, together with sufficient financial resources to enable the functions transferred to be properly discharged. It cannot be too strongly stressed that the commitment to decentralisation by top civil servants as well as leading politicians is essential to the successful implementation of decentralisation.

It needs to be emphasised that decentralisation does not necessarily lead to less administrative efficiency, as bureaucrats often assume, but indeed may, if accompanied by appropriate safeguards, actually increase administrative efficiency. Safeguards are of course important: thus, unless the way in which funds are expended at provincial and district levels is closely scrutinised, the door might be opened to wasteful expenditure and corruption; the expensive duplication of scarce staff resources must be avoided; and local politicians must learn to respect the limits of their role. But abuse of power can occur at all levels of government and this is not in itself an argument against decentralisation.

African Experience

Instead of opting for substantial decentralisation, independent Anglophone and Francophone states sought to build upon the local government systems which they had inherited. In French-speaking Africa local government continued to be based on the fundamental principles of French administrative law and organisation. The emphasis was on the central control of local government, with local authorities regarded as 'branches of the state', responsible for the organisation of those public services which were local in character. This underlying principle has continued to be followed. In the urban areas, the essentials of the pre-independence communal structure topped by the mayor were retained despite many changes in the size, character and problems of the areas being administered; the responsibilities of the urban authorities and the larger prefectural units overlapped.

Anglophone African states sought to adapt the English model of local government to the post-independence situation, making such modifications as the leadership believed the changing political scene demanded. For example, the formal powers of chiefs and traditional authorities were reduced or removed entirely, though their influence often persisted and their support was needed to implement local development projects. The results were mostly disappointing. Take Ghana, for example. Before the 1966 military coup, elected local authorities were subject to frequent changes in area and functions, as well as interference at the hands of politically-appointed district commissioners. Many councils proved inefficient and even corrupt and, with inferior salary scales and poorer promotion prospects than those obtaining at the centre, could not attract staff to match the quality of those entering the civil service. In these circumstances, supervision of the local authorities was barely adequate, despite sound institutional devices such as the local government inspectorate system established after independence.

Ghana was not alone in its failure to develop a viable system of local government. Thus, in Kenya the county councils were stripped of their three major functions (education, health and roads) in January 1970, while in Sierra Leone the district councils were suspended in 1972 after being chronically sick for several years. In Nigeria's southern states the post-independence record was one of stagnation and corruption in local government (the north performed much better). In Zambia rural local authorities long exercised minimal functions at the cost of considerable sums of public money (city and municipal authorities had a better record).

Nevertheless, the period from the early 1970s to the early 1980s saw renewed interest in decentralisation by Third World governments generally; they drew on a wider range of models than their colonial predecessors. In Africa, the deconcentration of authority model was favoured, representing something of a shift in emphasis from representative local government to local administration; in part, it was a movement towards the French prefectural model. Where elected local authorities still existed, they tended to be subjected to tighter central control.

They were paralleled by government-controlled development committees. Early committees, though dominated by central government field officers, included a number of politicians and local authority officers and members, and often a sprinkling of representatives of non-government organisations such as marketing boards, traditional authorities, churches and business firms. The experience was that the effectiveness of these committees declined as their memberships increased in size. The subsequent tendency has therefore been to restrict their membership to technically qualified personnel, sometimes (as in Botswana) transferring wider representation and debate to an annual national district development conference. Most development committees still lack executive authority.

While incoming military regimes might retain these committees, they have usually dissolved local government councils and replaced them with 'management committees'. This move towards local administration was brief in Ghana and Nigeria, but lasted throughout the Amin regime in Uganda. In examining this centralising trend, I focus on the experience of Ghana, Tanzania, Zambia and to an extent Botswana.

In Ghana, following a transitional period when the military government established regional and district committees of administration, a new structure was instituted from 1974 onwards. This was based on the Mills-Odoi Report of 1967 which found that the machinery of government was characterised by 'excessive centralisation of authority and resources in Accra' and 'an almost completely ineffective local government system' based on non-viable units. It recommended radical decentralisation and the creation of a single, unified public service, which would absorb the existing local government service. Government, it said, should be regarded as 'a single operation wherever and by whom carried out'. The Ghanaian government accepted most of these proposals and began to establish an integrated structure based on them and comprising four tiers: regional councils; district councils; area, municipal, urban and local councils; and town and village development committees. Despite the existence of these various local authorities the government, as in Kenya, regarded the administration as the main agent of development; the new structure therefore signalled a departure from the principle of representative local government. In the event, this structure was not fully established before it was superseded under the Rawlings' military regime which, possibly drawing upon experience in Libya, established a countrywide network of defence committees.

In Tanzania, President Nyerere introduced decentralisation measures in 1972 that were designed (he said) to 'end bureaucratic dominance' and 'give power back to the people'. In fact, the opposite was achieved. The former district councils were abolished and replaced by district development councils, each of which was chaired by the area chairman of the Tanganyika African National Union (TANU), comprised officials and people's representatives in equal proportions, and was supported by a representative-dominated district development and planning committee. But civil service

Regional and District Development Directors (RDDs and DDDs) and their staffs constituted the hub of the new system. As James Finucane commented in his book Rural Development and Bureaucracy in Tanzania (1974): 'The administrative or bureaucratic approach to development has dominated in Tanzania'. The decentralisation measures led to a deterioration in relations between TANU and the civil service bureaucracy and resulted in periodic clashes between the political Regional Commissioners and the new, powerful Regional Development Directors.

In Zambia, President Kenneth Kaunda took two large bites of the decentralisation cherry. Under reforms initiated in 1969, he appointed a Cabinet Minister, subsequently replaced by a member of the central committee of the ruling United National Independence Party (UNIP), to head each of Zambia's provinces and a political appointee named a district governor to take charge of each of the country's districts. It was, he explained, a decentralised system which would not sacrifice central control in any way. These arrangements, however, failed to achieve rural development and did not satisfy unpaid local UNIP officials.

The government therefore introduced major reforms. Under the Local Administration Act, 1980, party and governmental organs at district level were to be merged in order to create an integrated administrative structure, called a district council, in each of the country's 55 districts. Each council was to act through a district secretariat, comprising former central government field officers and local government officers constituted into a single national public service, and party officials. It was to be chaired by the district governor (a political appointee) and most of its members were to be party officials, prominent among whom were the UNIP regional secretary (the 'district political secretary') and UNIP chairmen of ward committees in the district. This new local administrative structure, which underpinned the power of the ruling party at the local level, aroused considerable hostility both inside and outside Parliament. In the face of this opposition, and in view of the great reluctance of central government ministries to redeploy staff and transfer functions to the district councils, implementation proved difficult and delays inevitably occurred. The effective working of the district councils was seriously curtailed by the politicisation of the administration and the shortage of high-calibre manpower, finance, housing, office accommodation, transport and fuel.

I turn next to Botswana. Though representative local government was in a healthier state here than in the countries referred to above, a number of problems had emerged and several changes were made. The major problems were the shortage of skilled manpower and lack of finance. The quality of staff serving the nine district councils established under legislation passed in 1965 varied widely, probably inevitably given the enormous variation in their geographical size and population. The arrangement whereby all staff responsibilities were delegated to the local authorities favoured the larger, better-off councils; the Central District was easily the best served, though here as elsewhere there was a severe

shortage of trained technical staff. In 1972 a Commission under the chairmanship of Mr M J Pilane reviewed the salaries and conditions of service of local government employees and recommended that these should be brought into line with those prevailing in the public service; but it rejected the merger of the central and local government services into a single service, as recommended by Mills-Odoi for Ghana. As an indirect result of the Commission's report, a centrally directed Unified Local Government Service (ULGS) was formed in 1974 and was made responsible for the recruitment, posting, transfer, promotion and discipline of local authority (and land board) staff other than industrial-class employees. While the pre-1974 arrangements had worked to the detriment of the smaller district councils and were open to nepotism and other abuses, the councils resented the over-centralisation of power in the hands of ULGS headquarters' staff who, they alleged, had limited field experience and were not sufficiently aware of their problems or sufficiently responsive to their needs.

The second major problem - that of finance - was directly linked to the functions of the authorities, which spent a high proportion of their revenue on primary education to the neglect of other services, particularly in the rural areas. The imbalance was striking: in 1969, for example, it was estimated that the Central District Council spent 80 per cent of its revenue (including grants) on education as against 0.64 per cent on health, 0.27 per cent on sanitation, 0.21 per cent on destitutes, and 1 per cent on community development. Three years later the district councils still bore the character of local education boards, if to a slightly lesser extent than in 1969, and development was in danger of grinding to a halt (except perhaps in the North-West District, a tourist area) if the councils had not succeeded in securing external backing for their local development projects. Eventually in 1976, after protracted discussion with a number of ministries, central government assumed responsibility for paying teachers' salaries. This enabled the councils both to give more attention to the quality of school buildings and equipment and to provide a wider range of local services.

Centralisation, reflected most obviously in the creation of a single, integrated public service, was carried less far in Botswana than in most African states; to take a minor example: whereas in multi-party Gambia the generalist administrator was (as also in Malawi) the ex-officio chairman of the district council, in Botswana he (the District Commissioner) was merely an ex-officio non-voting member of the council. However, there was some centralisation in Botswana too. In response to a recommendation of the 1979 Local Government Structure Commission relating to the appointment of a District Development Director, the Botswana government ruled that the person overseeing development at district level must also be in overall administrative charge of the district; what mattered was to appoint DCs of the right calibre. No doubt one reason for this ruling was that central government ministries and departments accounted (as they still do) for the lion's share of development expenditure in the districts.

Experiments in decentralisation did not end in the early 1980s. Nigeria's military government sought to revive elective local government, which it had established under the 1979 constitution as a third tier of government within the federation; even though the early practical results were somewhat disappointing, this innovation was against the general trend in Anglophone Africa of radical departures from the inherited English system and the adoption by a number of states of aspects of the French prefectoral model. In Zimbabwe, the government faced the uphill task of amalgamating rural councils which had serviced the needs of the white commercial farming community in the pre-independence period and the (55) district councils which were the post-1980 successors of the former (243) under-resourced African councils. In Tanzania local authorities were formally re-established in January 1984, though features of the 1972 decentralised system were retained. Extensive reforms were also undertaken in Kenya; since they were studied by Malawi government officers in 1991 and favoured by some of them as a model worth adapting to local use, I outline them briefly.

The Kenyan Experience

In October 1982 President Daniel Arap Moi announced the 'District Focus for Rural Development', a strategy which entailed making the district the centre for the planning, implementation and management of rural development. If one of the President's objectives was to raise the efficiency of rural development administration, another was clearly political - decentralisation was a means of restructuring the social base of the Kikuyu-dominated state which he had inherited from Jomo Kenyatta. It gave Moi an opportunity to redirect the flow of resources from the Central Province to the less-developed regions populated by other ethnic groups (including his own - the Kalenjin) and entailed reducing the power and role of the Provincial Commissioners and elected regional leaders who had been closest to Kenyatta. This political context meant that the decentralisation process was assured of strong presidential support.

In 1983-84 decentralisation was supposedly advanced by what came to be known as budget rationalisation; in fact, the opposite occurred since budget rationalisation strictly limited expenditure to ongoing projects and tightened central resources control. Barkan and Chege stated:

At the centre, ministries were required to prioritise what they wanted to spend during the forthcoming fiscal year, and to do so in a manner consistent with the current five-year plan. At the district level, the DDC, assisted by the DDO, was required to prepare an Annual Annex indicating all anticipated expenditures in the district for the coming year, as well as a Forward Budget for the following three [years]. These documents coupled the planning process to the budgetary

process and [should have] greatly raised the stakes of district planning. In one stroke, the activities of the DDCs and DDOs became significant in a way they had not been before. This was particularly so as the Rural Development Fund grew in the mid-1980s.

Barkan and Chege maintain that the knowledge that government finance for a project would not be forthcoming unless it was included in the Annual Annex and Forward Budget encouraged MPs, the chairmen of district and town councils, and other leading politicians to take an active part in DDC meetings. This was never really the case; what led MPs and other politicians to attend was the Rural Development Fund and other district specific funds. The standing of the DDC (which continued to be based on government directive rather than statute) increased in the eyes of civil servants posted to the districts. District departmental heads from each ministry served on the District Executive Committee which, under the chairmanship of the DC, coordinated their efforts. The technical capacity of the DDC to engage in planning and budgeting was strengthened through the establishment of a District Planning Unit headed by a District Development Officer (DDO) from 1978, supported by an Assistant DDO and a District Statistical Officer from 1988 (but only in 32 districts). Subordinate development committees were formed at the division, location and sub-location levels of government, the intention being that all proposals for government funded development projects would be initiated at the grass-roots levels and processed upwards. From 1986 all development projects submitted to the DDC required the prior approval of the Divisional Development Committee. Local government planning was subject to greater control by DDCs, but the serious understaffing of county councils meant that the number of worthwhile projects which they were able to submit was limited.

The District Focus has helped Moi politically, but its economic impact should not be exaggerated. While the district budgetary process has in theory been strengthened, the proportion of the national budget over which the districts have total control remains small, being confined to the Rural Development Fund, EEC micro-projects, and the small towns infrastructural development programmes, inappropriately named the 'District Development Fund'. (The RDF was set up initially in the mid-1970s to finance small-scale development projects out of block grants provided by the central government). Though the RDF has grown rapidly - to K£6,900,000 in 1987-88 - it accounted at that time for only some 0.5 per cent of Kenya's development budget. Basic sectoral policy is still made in Nairobi by central ministries, most of which have been reluctant to disaggregate their sectoral budgets on a district-by-district basis: they did so relatively widely in 1984-85 and 1985-86, but less and less thereafter because of the increasing unreliability of revenue. It was above all the revenue flows from the centre to the districts that were improved (by cutting out the former provincial bottlenecks) and not the budgeting process. Accounting skills in the district treasuries were enhanced and auditing was made more effective.

Decentralisation to the district level in Kenya has resulted in the deconcentration of administrative authority rather than in political devolution to elected local authorities. The autonomy of the latter, and of the county councils especially, has been further reduced. Wallis believes that local government will nevertheless survive and that the District Focus strategy may even enable it to play a more effective, if less autonomous, planning role than previously through DDC scrutiny of its development project proposals. He also points to other forms of local participation (especially through community development) which partly compensate for the erosion of formal local government.

The Impact of External Events

Certain events intervened and affected the progress of these various experiments. The first was the sharp increases in oil prices from 1973, as a result of which, said President Julius Nyerere of Tanzania in December 1981,

for the amount of money with which we used to buy thirteen barrels of oil we now only get one...the amount of tobacco which used to be sufficient for ten lorries is now only enough to buy one lorry.

For different reasons, both oil-producing and non-oil states in the Third World became heavily indebted and were forced to turn to the International Monetary Fund (IMF) and World Bank for assistance. The conditions imposed required even socialist states to become increasingly pragmatic in the policies which they pursued.

The second main event to occur was the rejection of socialism and the command economy and the demand for political freedom by the countries of Eastern Europe, in the wake of President Mikhail Gorbachev's reforms (glasnost and perestroika) in the Soviet Union. This, coupled with the poor state of the economy of many African states, leading to a fall in their people's real standard of living, and the authoritarianism and corruption of many rulers sparked off popular demonstrations in favour of multi-party systems of government and Opposition demands for the adoption of market-based economies. The reaction of incumbent African leaders varied, but the overall result, in many African states, was a move to increase the people's participation in government both at the centre and (what is our prime concern) at the local level. The effect of the wave of political and economic liberalisation sweeping across Africa in the late 1980s was therefore to reinforce decentralisation. This can be illustrated from Zambian experience.

The Zambian Experience

As a result of election campaign statements made by the Movement for Multi-Party Democracy (MMD) in October 1991 and subsequently the MMD government's commitment to political liberalisation, the leadership within the districts was led to believe that political power would be decentralised. Eventually in

the Public Sector Reform Programme (PSRP), which was approved on 8 March 1993, the Zambian Government committed itself to:

...Strengthening the management of local authorities by devising mechanisms to facilitate deconcentration of certain functions to Provinces and devolution of selected functions to Local Authorities, as their management capacities improve and in order to provide for and facilitate democratic Governance at the Local Authority level.

This political commitment was very important because, as Rondinelli has pointed out, without a 'solid base of political support', decentralisation cannot be successfully implemented.

At provincial level, several ministries and departments have already gone some way in deconcentrating their functions. The Ministry of Health has advanced furthest. Its reforms include an important element of community representation on the district health boards which have already been formed in three pilot districts; it is hoped to establish boards in all districts by 1995. This Ministry and other line ministries and departments should benefit from the creation of Provincial Development Coordinating Committees (PDCCs) and corresponding committees (DDCCs) at district level; these are technical committees which will coordinate development and prepare and approve development plans.

Decentralisation of administrative authority to provincial level is thus an ongoing process which is however slowed down by staff shortages - for example, of professional engineers needed by the Departments of Agriculture, Roads and Water Affairs - lack of financial resources (the Zambian economy is run-down and heavily burdened with debt) and defects in the organisation of the Provincial Accounting Control Units (PACUs).

As the above statement indicates, the Zambian government intends to adopt a phased approach to decentralisation at district level: selected functions will be devolved to local authorities 'as their management capacities improve.' This is a sensible and realistic approach, given the fact that all councils - city, municipal and district - are heavily indebted and are chronically short of both money and equipment, making it impossible for them to discharge the full range of their existing functions, let alone assume new ones.

The Local Administration Act of 1960 led to the politicisation of district administration and the abuse of power by local UNIP officials. It was repealed by Local Government Act No. 22 of 1991. The 1991 Act, though amended by the MMD government, is still operative and provides for a flexible and multifaceted local government system. Elections under this Act were held in December 1992; the MMD swept the board, except in the Eastern province where UNIP retained considerable support. Under section 91 of the Act

councils (which now number 61) can appoint, promote and discharge their own officers, subject to confirmation by the Local Government Service Commission (LGSC), established under the Act.

The financial difficulties facing councils are a legacy of UNIP maladministration in the 1980s. They have been compounded in 1992-93 by delayed payments (or non-payments) from the centre of amounts due in respect of local sales tax, beer surtax grant, the grant in lieu of rates, and special grants. Not only was distribution uncertain and haphazard but councils were also not informed of the amounts that they could expect from these important sources of revenue. Local budget formulation and forecasting was therefore both extremely difficult and unrealistic. The financial plight of councils was made worse because they had to bear the brunt of certain central government decisions which were taken unilaterally; thus, the councils were subject to a 1992 national agreement which entailed a substantial increase in wages and salaries. The capacity of the smaller, weaker district councils to tap local sources of revenue is strictly limited, making dependence on central government support inevitable in the foreseeable future.

Steps to remedy these defects are being taken. Though the process is likely to be a slow one, there does appear to be a firm commitment to building up strong, elected local authorities which will become the focus of development in their areas. A start is being made by building up effective accounting units within the district councils.

The Challenge in Namibia

Finally, in this review of decentralisation experience in Anglophone Africa, I refer briefly to a problem which faced the Namibian government when the country became independent in March 1990. This was the problem of race, which will also confront a democratic South Africa. At independence, Namibia inherited a country previously divided into ten population groups ('homelands') defined on a racial and ethnic basis. This arrangement had worked to the considerable advantage of the richer groups - the coloured group to an extent, but above all the whites - and was easily scrapped. The tasks facing Windhoek, the capital city with its white-dominated city council, was infinitely more demanding: this was to work out the complex institutional arrangements which would allow it to integrate into an expanded city council area the township of Katutura, heavily populated by mainly Owambo immigrants from the underdeveloped north, and the coloured township of Khomasdal.

Choices before Malawi

In deciding the shape that decentralisation should take in Malawi, the government can therefore draw upon the extensive experience in this sphere of several African states. In its Statement on Development Policies, 1987-96, the government affirmed that it was committed to a policy of decentralisation, whereby the districts would have a key part to play in national economic and

social development, necessitating the expansion of the role of the districts to include the planning, execution and monitoring of development activities. However, in the latter part of 1992 the government's decentralisation policy was still unclear in a number of respects. In particular, opinion was divided between two approaches. One favoured substantial deconcentration of administrative authority to the District Commissioner, the District Development Committee, and field officers of the line ministries. The other emphasized the importance of building up strong, elected local authorities on the ground that virtually all the eight town councils and the twenty-four district councils were chronically short of staff and finance; they needed to be strengthened in order to play a meaningful development role, either on their own account or in partnership with the district administration. The lack of clear national policy guidelines also affected the approach to decentralisation of the line ministries. A number of ministries, such as Health and Works, were in the process of implementing aspects of decentralisation, but there was little consistency of approach in the planning and implementation of their efforts.

Conclusions

1. Clear policy guidelines and firm political backing are essential to advance the decentralisation process. However, some central ministries may still be lukewarm in their commitment to decentralisation; thus, in Kenya a number of ministries failed to disaggregate their sectoral budgets on a district by district basis and this made it difficult for the DDCs to implement planning and budgetary procedures. Ministries, as in Zambia under the 1980 Local Administration Act, may also be reluctant to redeploy staff and transfer funds to the district councils. Every effort must be made to secure the agreement of key line ministries to the decentralisation measures proposed before any attempt is made to implement them.
2. Experience from all the countries surveyed suggests that the extent of decentralisation and the speed at which it can be implemented needs to be related to the availability of trained manpower and finance. A phased approach to decentralisation may yield better results than radical departures which are not realistically grounded in available resources. In Zambia, for example, the effective working of the district councils established under the 1980 Act was seriously curtailed not only by the politicisation of the administration but also by the shortage of high calibre manpower, finance, housing, office accommodation, transport and fuel. These things had not been adequately investigated in advance.
3. Sub-national planning and budgetary control were improved under the deconcentration measures introduced in Tanzania from 1972 and in Kenya from 1982. (In Tanzania, each RDD and each DDD was supported by a Planning Officer, a Finance Officer and a Personnel Officer). However, basic sectoral policy in these countries and in Botswana was still made in the national

capitals by the central ministries and responsibility for implementing major projects in the districts remained the prime responsibility of ministerial departmental heads. In Kenya and Tanzania, DDCs expected to be informed in advance of the district development proposals of the line ministries both to incorporate them in the annual plan and for purposes of coordination; the latter was a function of DDCs in all the countries examined. Only in Kenya were DDCs given executive authority to fund and implement small-scale projects. Kenya, however, never sought to achieve what a May 1972 Working Party in Zambia described as 'an essential feature of decentralised administration', namely 'the preparation by the province of its own capital and recurrent estimates for all the activities of sectoral ministries and departments which will now come under provincial rather than Lusaka-based control'. This is a major undertaking, which raises important issues of accountability. It was not achieved in Zambia in the 1980s, when executive authority remained substantially at the centre, but with the focus on the district rather than the province, it remains a major objective of the country's local government champions today. What may turn out to be a significant step in this direction has been taken in Zambia's Central Province, where successive provincial permanent secretaries have delegated their powers as controlling officers to the district councils in the province; the possibility of giving legal backing to this process and of extending it to other provinces in Zambia is under consideration.

4. Decentralisation in Kenya further reduced the autonomy of local authorities, especially the county councils, while in Tanzania the 1972 decentralisation exercise entailed the abolition of the district councils. In 1984 the Tanzanian government restored the district councils (which were to operate alongside elements of the RDD/DDD administrative structure) in the belief that something more than administrative decentralisation was required to promote meaningful political participation. Botswana has persisted in this belief throughout the post-independence period and can reasonably claim to have one of the best local government records in Africa; however, the local authorities remain over-dependent on central government for their recurrent expenditure. The local government lesson is that if representative local authorities are to have more than a symbolic development role, they must be strengthened in both staffing and financial resources. In the interests of autonomy, local authorities themselves would prefer that their officers should belong to a Unified Local Government Service (ULGS) rather than to a national public service. Some of the authorities in Zambia would like authority to appoint, promote and discipline their own staff (as local authorities did in Botswana before the ULGS was appointed in 1974); however, leaders of the Zambia United Local Authorities Workers' Union (ZULAWU) are afraid that such powers might be abused. Many local government officers believe that they could identify new sources of revenue if the central government would agree to

sanction them (for example, a cattle tax in Botswana). If steps are not taken to strengthen the rural local authorities, the question whether it is worthwhile retaining them needs to be faced.

5. To establish an effective development structure at sub-district level has proved a major problem in all the states reviewed, though Kenya is reported to have made some progress in this direction under its District Focus strategy. The lack of any resources at this level may prove to be the critical factor. Such resources are essential if the people are to decide for themselves what development projects their community needs and what steps should be taken to implement them. A district development fund, which was available to support projects initiated by non-government organisations such as the brigades and women's groups in Botswana, might give a substantial boost to local development.

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22-25 JULY 1993

GOOD GOVERNMENT, GLOBAL DEVELOPMENTS & LESSONS FOR MALAWI

Justice Michael Kirby*

Australia

ULTIMATE QUESTIONS & THE HUMAN CONDITION

We live in a time of global economic forces with universal technological changes.

The writer-philosopher-politician Vaclav Havel, President of the Czech and Slovak Republic, has cautioned against perceiving economic (and one could say technological) achievements as ends in themselves. Havel points out that these advances are but means to an end of human values. Even dictators can make trains run on time. Dictators can build magnificent highways and sometimes provide sufficient telephones: all efficiently susceptible to official interception. Thus economic progress and technological excellence must ultimately be evaluated as they contribute to human rights and individual dignity. In the words of the Founders of the American Republic: to "life, liberty and the pursuit of happiness".¹

Perceptions of democracy and fundamental rights will necessarily differ from one society to another. Each one of us is a human being first; a citizen of our respective countries second;

and a person with special skills, fourth or fifth.

We should respect the sovereign rights of our governments to determine the directions of political, economic and social life at home. But it behoves us, on the brink of a new millennium and of important developments in Malawi and in Africa, to spend at least a few minutes reflecting upon good government and social responsibility. These, after all, are amongst the important human objectives to which, it may be hoped, the global changes to democracy will contribute. They are clearly an objective in Malawi's move to democracy.

WHAT IS GOOD GOVERNMENT?

Many of the countries of Africa share a concern about the vicious cycle of under-development. Malawi is no exception. The features of that cycle include illiteracy, high population growth, malnutrition, poverty, environmental degradation and economic exploitation.² Some of the countries of the continent have begun to escape the thrall of under-development. Essentially, the escape will be achieved by the injection of technological ideas, borrowed from other countries. With those importations came cultural ideas of one sort or another.

Japan took its mighty leap after the 1850s. So spectacular was the material transformation which followed the end of the feudal period and the advent of the modern period in Japan that it prompts the obvious hope of many other societies, including in Africa, that they can go the same way. Some are certainly already upon the same path. But recent analysis has suggested that part, at least, of the success of the Japanese "miracle" has been the absence of any dichotomy between technology and culture, or the lack of divergence between invention and social utility.³ We talk about "user friendly technology". Observers have now said that the good fortune

of the Japanese people is that they could be described as "technology-friendly users". They were quick to adapt to electronic developments in the home, office, schoolroom and subway. It should not be assumed, without proof, that the same fertile cultural soil will exist uniformly throughout Africa, or elsewhere throughout the world for that matter.

In a policy statement on development cooperation in the last decade of this century, the Development Assistance Committee with the Organisation for Economic Co-Operation and Development (OECD) sought to identify the objectives to be attained as essential to underpin any system of good government. These objectives were stated⁴ to be promotion of sustainable economic growth; the provision of broader participation of all the people in productive processes and a more-equitable sharing of their benefits; and the guarantee of environmental sustainability with a slowing of population growth taken to be preconditions of the former.

These ideas can be separated neatly for an international report. But in reality, obviously, they are closely inter-connected. Without broad participation and equitable sharing, it is unlikely that there will be economic growth. Without the slowing of population growth, economic growth will be stunted up by burgeoning populations.

Self-evidently, the pre-conditions to the foregoing objectives include a better educated and better informed society with control over its own destiny. This is why the OECD report stresses the growing appreciation of:

"The vital connection ... between open, democratic and accountable political systems, individual rights and the effective and equitable operation of economic systems. Participatory democracy implies more democracy, a greater role for local organisations and self-government, respect of human rights, including effective and accessible legal systems, competitive markets and dynamic private

enterprise.

In June 1991, an OECD Ministerial Council called for cooperative effort but at a price of the reduction of "excessive military expenditures"; the slowing of population growth; the provision of environmental sustainability; and the promotion of:

*"... human rights, democratisation, open and accountable government institutions and the rule of law."*⁶

Also in 1991, a high level meeting of the Development Assistance Committee concluded, in similar terms, about the preconditions of encouraging democratisation and respect of human rights.

These repeated assertions of the pre-conditions of democracy not simply for aid but for true economic development have led, necessarily, to questions about what democracy involves. There are many, including in developed countries, who are sceptical about the features of democracy as it is now practised. One has only to view with astonishment the course of the recent election campaign in the United States to see the imperfections of "democracy" in that country. The principal candidates did not appear to be the most talented people in that talented country. The cost of running for President amounts to millions of dollars. It is beyond the potentiality of all but a handful of individuals. The media of communications dominated and trivialized the debates. Conflict about issues and national directions become debased in trivia about personal affairs, jokes and name-calling. In my own country, many of these defects of "democracy", as it is now practised, are also evident. They have led to a substantial public disillusionment with the political process. We are all living through a period of political cynicism.

So what do we mean by good government? An expert, Mr Raymond

Gastil, told the OECD that the minimum characteristics of a society which was well governed were:⁷

1. *An educated and informed populace, able to understand and participate effectively in the consideration of political issues;*
2. *A pluralistic society that allows varying interests to be represented effectively by non-governmental organisations;*
3. *A society with free, open and effective information media that are able to act as a basis for public discussion and as a check on the arbitrariness of government and other powerful forces;*
4. *A relatively tolerant society in which both leaders and followers are able to accept and appreciate those who differ from them ideologically or in other ways, and in which political opposition is not seen as treasonous;*
5. *A government whose nature, composition and general policies are determined by elections or other means that allow for peaceful transfer of power from one group to another when the people so decide;*
6. *An effective government able to draft and administer legislation and services relevant to the needs of the people; and*
7. *A legal structure able to roughly guarantee equality before the law and to provide a predictable framework for private and public decision-making."*

Clearly, the more that information about society and the world is shared, the less easy is it for authoritarian régimes to control the minds, and hence the conduct, of their people. The better educated and informed the populace, the more likely is it to demand control over its own affairs and to reject the notion that self-appointed individuals, adhering to an unquestionable dogma, know best. The more free and open are the information media, the more likely is it that a pluralistic society will emerge, respectful of the views of others. The longer a system of peaceful change of government at the ballot box is in place, the more unthinkable is the *coup* or the illegal usurpation of power by those with the guns.

The more heedful to the opinions of minorities, the more willing will such groups be to work within the legal system for accommodations which reflect majority will but also respect minority rights.

In this sense, all of the features of democracy and good government which have been listed are inter-connected. It is ironical but true that the essential feature of a modern democracy, as it works in practice, is respect for minorities. The oppressive insistence upon the transient views of majorities is a tyranny which undermines the legitimacy of that form of government. Peaceful co-existence within the one polity depends upon a willingness to accept, and seek to accommodate, the wishes of minorities. And that is where our technology comes in because a lack of respect for minorities is generally bred in ignorance. Ignorance is shielded from the knowledge of communication.

Technology can go part of the way in breaking down the barrier of that shield of ignorance. It can link individuals and peoples both by the media of telecommunications (radio and television) and by other forms of information technology (notably telephonic, telefacsimile and inter-active computers). Of course, technology cannot do everything. It is scarcely likely that a poor villager in Somalia, or Malawi for that matter, will telephone a citizen of Australia having a barbecue by the pool, to break down the tensions between peoples. Even if the technology were available, there would be too many barriers of culture, cost, language and commonality of thought and interest to make the connection useful. Indeed, one feature of recent development in media communications has been the use of local broadcasts in particular dialects or languages to whip up historical hatreds with passionate messages which instantaneously reach large and susceptible audiences: ready respondents to ancient ideas of enmity. In the closed world of the language of a particular

dialect, the information technology miracle may actually promote uncompromising conflict rather than facilitate the building of a democratic society and peaceful relations between peoples.

For all that, the general tendency of the new information technology and telecommunications is to spread information more widely. The contents of the messages which are spread are another matter. But the technology itself is overwhelmingly a potential liberator. It can bring educational messages which will help to free communities and individuals from isolation, ignorance and the features of under-development which have held back the quality of life of millions of people, including in Africa. That is doubtless why, the Secretary-General of the International Telecommunications Union (Mr Pekka Tarjanne) has called telecommunications the bridge to the 21st century.⁶ In June 1992, Mr Tarjanne declared:

*"From its very beginning, the telecommunications industry has been closely associated with certain values - most notably freedom of expression, reciprocity between individuals and universality of access. These values are at the core of the liberal-democratic economic and political institutions to which people now everywhere aspire ... The fundamental problem, as I see it, is at the very moment when telecommunications technology has given us the capacity to realise the ideals of universal access and reciprocal freedom ... changes in the industry and its environment are threatening the patterns of partnership and the traditions of co-operation which underpinned past policies for achieving these goals."*⁷

The Secretary-General finished his speech with a call to idealism:

*"I have suggested to my colleagues that the Universal Declaration of Human Rights should be amended to recognise the right to communicate as a fundamental human right. If we keep this goal firmly in sight, it seems to me that it will be easier ... to first design, and then to build, the bridges that are needed to transport us to the 21st century, so that we can begin to make real the vision of the information society as a society of universal prosperity, harmony and justice."*¹⁰

These worthy objectives of universal prosperity, harmony and

justice may be achieved in the next century. They may be stimulated by information technology. Certainly, the potential is there. If we are wise enough, the end of the Cold War should release expenditures which have been wasted in military hardware and threatening nuclear weaponry to the benefit of economic, social and individual development throughout the world, including in Africa. But already we are seeing the warning signs of negative developments. The lid of Pandora's box which was kept so firmly shut during the Cold War period has been lifted. In the place of the command economy and monolithic autocracy of the Soviet Union have emerged a myriad of warring peoples and nationalities busily soaking up armaments, sold both on the open and illegal markets. The acting out of the assertion of the peoples' right to self-determination, which is guaranteed by the United Nations Charter, is undoubtedly one of the most important phenomena facing our world at this time. We must hope that the media of communications can be mobilized to promote the futility and horrors of war, the need for compromise, the tolerant appreciation of the viewpoints of others and the personal contacts of individual citizens and business-people which, together with integrated economies, makes bloody conflict more unthinkable. After all, when we see ourselves as the human species, hurtling through space on this tiny blue planet in the middle of a black universe, we should objectively be able to find sufficient in common to live in peace together. Certainly, the technology of informatics permits and promotes this goal.

DIFFERING PERSPECTIVES OF "GOOD GOVERNMENT"

So dominant was the Anglo-American alliance at the end of the Second World War, and so shattered its enemies, that the influence of Anglophone ideas and culture was left as an indelible stamp on the

institutions of the new world order established in the United Nations. The *Charter* with its commitment to human rights was followed up shortly by the *Universal Declaration* and subsequently by the *International Bill of Rights* with its two inter-related *Covenants*. The whole body of the later development of international human rights, in the several agencies of the United Nations, reaching now even to the International Telecommunication Union, has been the consequence. There can be no doubt that the organs of the United Nations, such as the Human Rights Committee established under the *International Covenant on Civil and Political Rights* have a large and growing impact upon the protection of human rights in many parts of the world. Equally, there is no doubt that every precious individual is special. Arising out of humanity itself come basic needs which go beyond life, liberty and the pursuit of happiness, but which may be encompassed in those three words.

An important book just published in Australia and Japan by two Australian authors describes what is called *The Confucian Renaissance*.¹¹ It is a book which illustrates the difficulties of asserting universal human rights without regard for the long established differences which exist in different cultures. It suggests that certain features of the societies of the newly emerging countries of Asia (doubtless shared by other societies now on the same path) help to explain the economic miracle. But also, necessarily, fashion the perspectives of good government and the rôle of human rights and the rule of law peculiar to those countries. Amongst the reviving Confucian characteristics identified by the authors are:

- * An emphasis on obligations to society, rather than rights;
- * An emphasis on the rule of men of virtue, rather than the rule of law as such;

- * A high emphasis on ruthlessly competitive education which instills lifetime standards of excellence;
- * An acute sense of linkages between the past and present which promotes a longer time commitment than is traditional in Western pragmatism with its attention to the "bottom line" and immediate "cost effectiveness";
- * A high sense of the value of the human community and order above material possession and accumulation;
- * A high regard for logic and rationality complemented by spiritual traditions;
- * An acute awareness of the changing nature of reality; and
- * A strong instinct for institutional pragmatism and innovation, reflecting the authority and responsibility carried by officials who rule societies in a manner unthinkable in environments of the Judeo-Islamic-Christian tradition.¹²

I mention these features, which have to be understood to appreciate the communities especially of North Asia. I have an acute awareness of the differing features which may underlie other communities of this region - including Christianity (in Australasia, Papua New Guinea, the Philippines and Vietnam); Buddhism (in Thailand and Burma) and Islam (in Malaysia and Indonesia). Asia itself is not monochrome.¹³ Still more differences would affect notions of good government in Africa. But it is vital, when talking of good government and social responsibility, to be on guard against any new forms of cultural or political imperialism. The self-same cultural well-springs which have reinforced and sustained the modern economic development of Confucian societies in Asia must themselves be drawn upon to build the accountable, tolerant democracies of the rest of Asia. That will not always be easy. Racial discrimination is by no means unknown in this region.

Terrible losses of basic human rights have marred the recent history of Asia and the Pacific. Sadly, the same can be said of the African continent. The road ahead must be illuminated by a clear understanding of the historical antiquity of the cultures of every continent and the legitimacy of different paths to the same goals of good government, democratic accountability and social responsibility.

A DEFENCE OF CULTURAL DIVERSITY

Linked with this idea is the need to acknowledge the importance of preserving cultural diversity. It would be a tragedy if the movements to globalisation, encouraged by technology and economic forces were to spell the death of the great variety of languages and cultures which flourish in this part of the world. Certainly, we need common means of communications. But equal is our need to preserve, protect and sustain the marvellous variety of human languages and cultures.¹⁴

Different cultures will have their own standards and values. For example, in a country such as my own, there is an acute concern about the individual right to personal privacy. Now it is being suggested that each child at birth could be given an individual telephone number. As soon as he or she could talk a watch-like device would be assigned with ten little buttons on one side and a screen on the other. There is a suggestion that this prediction, made in *Time* magazine in 1959, could now come true.¹⁵ No doubt the next step will be actually to implant the facility at birth so that it remains with the person, like a tattoo, for life. There would be concern in Australia that this kind of development would permit the State and its organs to monitor every activity of every citizen at all times. In some crowded communities, where carrying identity passes is already compulsory, such an idea might not produce quite the same horrors. But there may be different areas of concern.

The latest issue of *Media Law and Practice* records that hardcore pornography has been "unleashed on British homes" by satellite television. The Netherlands channel, "Red Hot", has been marketed all over Europe by a Manchester based company which claims already to have won three thousand British customers in a fortnight. Objectors contend that this undermines the control of one society over the moral standards to be observed in it. Defenders contend that it provides adults with viewing of their choice, can be guarded from children by a personal identity code and in any case is unstoppable by reason of the technology.¹⁶ A recent suggestion that an Australian consortium should bring "the best of Australian television" to Asia, via the Indonesian Palapa, presents, in a much different form, the potential intrusion of Australian ideas and values into the national sovereignty and cultural identity of neighbouring countries. Yet, it was undoubtedly the "intrusion" of western television and radio into Central and Eastern Europe, which sustained the democracy movement in that part of the world during oppressive days of autocracy. The sight of the fall of the Berlin Wall and of similar events in Asia (such as the events in Tiananmen Square) have equally supported the advocates of accountable democracy and human rights in Asia. The peaceful change of government in Zambia has had a similar impact in this part of the world. Technology and economic pressure for ballot box democracy will have an impact upon notions of cultural diversity, including in Malawi. The challenge before us is to maintain and defend the survivable elements in our individual cultures whilst recognising that global pressures will undoubtedly impact them and, to some extent, erode them over time just as pop music and Ronald McDonald's hamburger chain have already done.

THE CONTROL OF FREE SPEECH

My last point concerns the technology of news reticulation. It will be remembered that this is one of the preconditions for good government which most studies assert to be essential if an accountable, responsive form of government is to be built and sustained.

At a recent conference which I attended in Madrid, Mr Jon Snow, the noted English news journalist described the tremendous changes which have come even over television news during his career. Instant communication, which is such a feature of news today, is vulnerable to superficiality and inaccuracy, according to Snow. Over-simplistic news presentation with film has replaced, for many people, the delivery of news analysis: glitz has replaced information.¹⁷ Delay, editing and reflective expert commentary previously promoted the sharing of more thoughtful messages. In their place, according to Snow, we are now increasingly receiving instantaneous coloured pictures with banal commentary, often in the form of entertainment, and often directed (at least in the case of CNN) towards its substantial American origin and content.¹⁸ Relevant to the realities of countries such as Malawi, Snow warned:

"In the developing world ... CNN is frequently unchallenged. The indigenous broadcasters simply don't have the financial or physical resources to compete with an external provider by-passing national transmissions with a global operation pumped in from outer space. Certainly it would help if more balanced service could be made available to the developing world in competition with CNN."¹⁹

The advent of a "free press" or "free media" is not necessarily socially and politically neutral. Choose topics to broadcast and you may effectively fix the agenda of the world's politics and concerns. Ignore the plight of developing countries such as Malawi and issues of over-population, food and debt and the result will be a soporific

anaesthetic, on a global scale, to undermine the endeavours to build truly accountable governments and world institutions in the age of informatics.

CONCLUSIONS: THE GLOBAL MOMENTUM OF LIBERTY

The twentieth century is now reaching its close. To a remarkable extent, the agenda of the century was fixed by the ideas of quantum physics which sprang from the mind of the German physicist, Erwin Schrödinger. From these concepts came the ideas for nuclear physics, biotechnology and informatics. These technologies present great opportunities and challenges to the world in which Malawi and its government must find a place. They also define its future.

Technology spreads knowledge and information. Inescapably, it thereby involves a political momentum. It spreads messages of liberty, personal freedom and the accountability of government. It does so by personal telecommunications but also by the broadcasting media. It is hard to control. With time, it will be harder still to manipulate and command with effectiveness. It is in this sense the technology of liberty.²⁰

That is why the long-term prognosis of our planet is the advancement of good government and the promotion of social responsibility. But we should not assume that these ends will come about through accident or simply because they are inevitable. It is incumbent upon governments, individuals and organisations to play a constructive part in promoting these ends.

Why should we do so? Because, in the end the aim of human existence is to build up good environments (including spiritual and world conditions) in which human beings can live, individually with happiness and collectively in relative harmony with other groups and peoples. That is why the transformation of Malawi to a democratic

form of government must be seen as a step towards modernisation and in the direction of the preconditions for economic advancement. It is a step in a global process which universal human rights demand and which global technology makes easier of attainment. It has thus both an African and a global dimension.

NOTES

- * President, Court of Appeal, Supreme Court of New South Wales, Sydney, Australia. Chairman, Executive Committee, International Commission of Jurists, Geneva.
1. In the United States *Declaration of Independence*.
 2. Organisation for Economic Co-operation and Development, Policy Statement on Development Co-operation in the 1990s, Press / A (89) 58, paras 2f.
 3. See W H Coldrake, Comment, "Technoculture and Technocringe: Why we Don't Understand Japan" in Australian National University, *Reporter*, 10 July 1991, 2.
 4. OECD, Policy Statement, above n 7, *loc cit*.
 5. *Ibid*, para 17.
 6. OECD Ministerial Council of June 1991 (SG/Press (91) 31, para 44.
 7. See R D Gastil, "Support for Democratic Development", Paper of the OECD, unpublished, DCD (92) 4, 3.
 8. P Tarjanne, "Telecom: Bridge to the 21st Century" in *Transnational Data and Communications Report*, July/August 1992 (vol 14 no 4) 42 at 42..
 9. *Ibid*, 43.
 10. *Id*, 45.
 11. R Little and W Reed, *The Confucian Renaissance*, Federation

- Press, Sydney, 1989.
12. *Ibid*, 54-55.
 13. S Fitzgerald, Commentary on the Asia Lecture 1992, University of New South Wales, Asia-Australia Institute, 9 July 1992, 16.
 14. G R Pipe (ed) *Eastern Europe: Information and Communication Technology Challenges*, Amsterdam, 1990, 383.
 15. The issue of *Time* was in 1959. Mr W Gosling, Technical Director of UK Electronics Manufacturer Plessey (now GPT) has been reported in 1992 as saying "Everyone born in the UK from 1992 onwards could be allocated his or her own telephone number at birth and retain the number for the rest of their lives".
 16. *Media Law and Practice* vol 13 no 3, 1992, 237. For a note on the proposed Australian use of a satellite to beam television to Asia see *Sydney Morning Herald*, 16 September 1992, 3.
 17. J Snow, "The Role of Communication and Information in Contemporary Societies: What do we Comprehend of the News?", unpublished paper for a preliminary meeting of the Cross-Cultural Debate sponsored by Fundacion BBV, Madrid, 1992, 6.
 18. *Ibid*, 10.
 19. *Id*, 11.
 20. See M D Kirby, "For 'Telecommunications' read 'Freedom'" in M Armstrong (ed) *Telecommunications Law: Australian Perspectives*, Media Arm, 1990, i at xvii ("In the light of the extraordinary developments of the year past, still unfolding, it is not too much to say that for telecommunications one should read innovation, the free flow of ideas, individual fulfilment and economic progress. In short, for 'telecommunications' read 'freedom'"). See also

P Robinson, *User Influences on the Development of IT Policies*, Tide 2000, 1992, 188.

APPENDIX 4

**EXAMPLES OF REGULATIONS ON THE USE OF THE MEDIA IN
ELECTIONS**

ANGOLA

CHAPTER II

ELECTORAL PROPAGANDA

**Article 77
(Definition)**

Electoral propaganda means any activity aiming directly or indirectly at promoting candidatures to the elections through the publication or dissemination of texts or pictures relating to them.

**Article 78
(Objectives)**

The objective of electoral propaganda is to carry out activities aiming at obtaining the votes of the electors by explaining the ideological principles, political, social and economic programmes, and governing platforms of the candidates, of the officials of the organs proposing their candidatures, their agents or any other persons.

**Article 79
(Broadcast Right)**

1. The candidates to the office of President of the Republic, and the political parties and coalitions of parties competing in the elections shall have the right to use the public radio and television broadcasting system during the official period of the electoral campaign, under the following conditions:
 - a. Radio: 20 minutes daily between 12.00 and 22.00 hours;
 - b. Television: 10 minutes daily between 18.00 and 22.00 hours.
2. The broadcast times indicated in the preceding paragraph refer to each candidate to the office of President of the Republic and, in the case of legislative elections, to each coalition of parties and to the political parties which are not part of a coalition.
3. In case of simultaneity of the official periods of the campaigns relating to presidential and legislative elections, the broadcast times mentioned in paragraph 1 shall be granted on alternate days, each day being exclusively dedicated to one type of election.
4. During the second round of voting relating to presidential elections, each candidate shall have the right to use the broadcast times indicated in paragraph 1.

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5. The regional radio and television stations shall be hooked up to the national programme during the periods dedicated to the broadcast times referred to in the present article.

6. The order in which the broadcast times are used shall be drawn by lot by the National Electoral Council.

7. After the order mentioned in the preceding paragraph has been determined, there shall be a daily rotation of the order in which the broadcast times are used, so that each candidate appears at a different time each day.

8. The use of broadcast times shall be free of charge, but the expenses relating to the recording on magnetic tapes of the broadcast material shall be borne by the candidates.

9. It shall be prohibited to broadcast live the programmes relating to the broadcast times referred to in the present article.

Article 80

(Duties of General Information Publications)

1. Public general information periodical publications shall ensure equality of treatment for the various candidatures.

2. The provisions of the preceding paragraph shall not apply to party publications.

Article 81

(Publications of the Organs Promoting Candidatures)

1. During the electoral campaign, the candidates and the organs proposing their candidatures, under the terms of the law, may, in addition to their current propaganda, publish books, magazines, pamphlets and leaflets, among other things, and use the written press, radio and television, under the terms of the present Law.

2. Any electoral propaganda shall identify the entity promoting a candidature which releases it.

Article 82

(Cession of the Right to Use)

1. The competent organs of local governments shall ensure, as far as possible, the cession of the right to use for the electoral campaign buildings and premises owned by the State or other public entities and shall distribute their use on an equal basis among the various contestants.

2. If it is confirmed that recreation halls have already been ceded, the competent organs of local governments shall requisition, for the electoral campaign, the necessary premises, and the costs shall be borne by the entities promoting the candidatures using them.

CAMBODIA

CHAPTER VII - THE ELECTION CAMPAIGN

Objective of campaign

34. The objective of the election campaign shall be to enable the parties, their candidates, members and supporters to disseminate their intended policies to the voters for discussion and consideration.

Conduct of campaign

35. All political parties, and their candidates, members and supporters shall conduct themselves during the election campaign and during polling in accordance with the rules and principles set out in this Law and the Code of Conduct, and with respect for the principles of human rights and democracy proclaimed in the Agreement.

Media

36. To ensure fair access to the media, including press, television and radio for all political parties contesting in the election, all newspapers and broadcasting media controlled by public authorities in Cambodia shall be made available at no cost to the Special Representative for the purpose of publicity and electoral education connected with the election.

Newspaper advertising

37. (1) All newspapers printed, published or distributed in Cambodia, other than those explicitly controlled by political parties, shall accept on an equal commercial basis the campaign advertising of the registered political parties for the election.

(2) The Special Representative may take any steps necessary to ensure compliance with subarticle (1).

Broadcasting

38. All broadcasting authorities shall grant broadcasting time on the basis of an allocation determined by the Special Representative to all registered political parties and their candidates for the broadcasting of their policies.

Mode of behaviour

39. (1) All registered political parties and candidates, in exercising their right of access to the media, shall refrain from promoting violence, deception or confusion, and from seeking to undermine the secrecy of the ballot, and from using offensive language.

(2) The Special Representative may suspend the right of access to the media of any registered political party or candidate failing to comply with this rule.

Access to public facilities

40. Public theatres, stadiums and other open areas and cultural houses shall be available to all registered political parties and candidates to hold campaign meetings, rallies or demonstrations on the basis of equal charges.

Notification of meetings

41. All registered political parties and candidates shall notify the District Electoral Supervisor of any planned meeting or political rally and shall comply with any direction or order of the District Electoral Supervisor made in that connection.

Election observers

42. The Special Representative may issue directives or make regulations governing the registration and activities of election observers or election monitoring organisations, whether national or international.

Campaign funds

43. (1) Every registered political party and candidate shall keep a record of all funds received for the campaign and the source of such funds, and shall on demand make that record available to the Special Representative.

(2) All such payments shall be deposited into, and all election expenses paid from, the bank account referred to in article 10, subarticle (2), paragraph (1).

(3) The Special Representative may public a record made available to him under subarticle (1).

PRESS RELEASES

PRESS RELEASE: 1

UNITED NATIONS TO HOST ROUNDTABLE FORUM ON DEMOCRATIC TRANSITION IN MALAWI

The UN Resident Co-ordinator in Malawi, Mr. Michael Heyn, announced today that the United Nations will host from 21 to 23 July 1993 a roundtable forum on democratic transition in Malawi. The roundtable will take place at Capital Hotel.

The roundtable will provide an opportunity for all participants to discuss international and, particularly, African experiences on issues of relevance to the process of political transition in Malawi. Organised in the wake of the referendum, and with funding support from the principle bilateral partners in the country, the roundtable will aim at consolidating the recent progress towards democratic change.

Participants to the roundtable will be drawn from the Presidential Committee on Dialogue (PCD) and the Public Affairs Committee (PAC). The roundtable will be facilitated by a team of internationally renowned experts in the field of democratic transition. Some of the areas to be covered during this roundtable forum will include:

- the establishment and consolidation of democratic institutions
- constitutional reform
- the role of law and the independence of the judiciary
- decentralisation, local government and development
- practical aspects of electoral reform
- Human rights consideration in elections
- the role of the media
- civic education

According to Mr. Heyn, the United Nations is sponsoring the roundtable as part of a continuing process of support to democratisation in Malawi, and plans to bring in expert teams from the UN Centre of Human Rights in Geneva following the forum to assist with legal, judicial and constitutional reform measures.

PRESS RELEASE: 2

UNITED NATIONS ROUNDTABLE FORUM
ON
DEMOCRATIC TRANSITION

21-23 JULY 1993
CAPITAL HOTEL
LILONGWE

PRESS RELEASE

Noon, Thursday, 22 July

The Roundtable Forum on Democratic Transition in Malawi, hosted by the United Nations, began its deliberations on Wednesday at the Capital Hotel, Lilongwe. The participants, members of the Presidential Committee on Dialogue, the Public Affairs Committee, and Malawian and International specialists, looked at what lessons could be learned from the experiences of other countries to ensure a smooth and peaceful political transition after the vote in favour of a switch to multi-party democracy in the Referendum of 14th June.

The following topics were covered on the first day of the roundtable:

In a session on political transition and the consolidation of democracy in Africa, Dr. Tessy D. Bakary of the Cote d'Ivoire, noted that recent experience in Africa had demonstrated that, for democracy to flourish, it was necessary for there to be strong, independent civic organisations, such as women's groups, youth groups, professional associations and trade unions, a free and independent press and an autonomous judiciary. Democracy must be seen to be a credible and desirable alternative to other forms of Government and to offer guarantees to major social and political interests, Dr Bakary said. Too often, the development of democracy was hindered by the mutual distrust of the various participants in the political game.

He identified three types of action which could be taken to further the establishment and consolidation of democratic politics: civil education programmes to promote democracy, projecting a positive image and a clearer idea of what democracy is and is not; the creation and strengthening of non-partisan organisations to encourage people with different political and ideological viewpoints to work together toward common objectives (the holding of elections, the establishment of public education programmes, etc) which will lower the barriers of distrust between participants in the political process, and, thirdly, concerted action to create independent civic organisations (women, rural groups, etc) and to strengthen the legal and

institutional framework for democracy - parliaments, political parties, the media, the judiciary, electoral codes and elections.

In the subsequent discussion it was emphasised that public support is essential if political change is to be successful.

A session on Civic Education, led by Ms Helen Hopps from the United States who has experience of work in the field in El Salvador, discussed the importance of joint efforts in educating the public in their rights and duties as citizens, the need for an unbiased presentation of issues and the difficulties of maintaining neutrality in such efforts. Ms Hopps also spoke of the need not only to educate people but also to help them to overcome their fear and encourage their active participation in public affairs.

In the afternoon, discussion turned to the sort of electoral system that might be adopted in the coming general election and the role of local government.

In his presentation, Mr Michael Meadowcroft, a former member of the British Parliament and international observer in the recent Referendum, stressed that one of the hallmarks of democracy was that people consent to be governed. This meant that they accepted the outcome of elections. It was generally agreed that an electoral system should promote: **proportionality** - the representation of political parties in Parliament should be in proportion to their electoral support; **accountability** - elected representatives should be collectively and individually responsible to their voters; **equal value of votes** - the value of the individual's vote should not be distorted by factors of geography, education, class, etc - and **effective choice** - voters should have as wide a choice as practicable between candidates and parties, towards the formation of an effective administration.

He identified three main types of electoral system:

The **Simple Majority** or "first-past-the-post" system, currently used in Malawi. The winning candidate is the one with the highest number of votes, even if he or she does not get an absolute majority of all votes cast. He argued that this cannot produce sufficient proportionality. With single-member constituencies requiring roughly equal numbers of electors, it is impossible to divide a country up without - even unintentionally - producing a political bias in the results. Given the regional differences in Malawi, and the likely number of parties contesting a first election, it may well be thought that it would be difficult for a such a voting system to produce a result sufficiently proportional, and representatives sufficiently broadly based, to encourage a high level of acceptance of the overall result from the people, Mr Meadowcroft said.

In the Party List system, registered parties draw up lists of candidates in a pre-determined order, either nationally or at a regional or district level, to fill multi-member constituencies. The electors vote for the party and candidates are elected from each list in proportion to votes cast. There can be a "threshold" percentage, as in Germany, below which a party gets no representation, thus discouraging very small parties from fighting separately. The drawback with list systems is that they give considerable influence to the political parties, and particularly to their central leadership, in that the party determines the list through which candidates secure election. Lists do, however, produce a high level of proportionality.

The Preferential or "single transferable vote" (STV) system requires multi-member constituencies of reasonable size. Electors vote by marking the candidates in their order of choice - within parties and across parties, and for independents if they so wish. To be elected, candidates must obtain a quota of the votes cast. In the view of the UK Electoral Reform Society, this system best maximises the key objectives of an electoral system and gives voters the most effective choice.

The timing of an election in MalaWi may affect the choice of electoral system, Mr Meadowcroft said. Using the first-past-the-post system would presumably require a re-division of constituencies within Districts. Otherwise an election would run the risk of failing to be seen as democratic. To be done fairly, and without bias, this will require a separate, independent Boundary Commission and the opportunity for public representations, published proposals open for inspection and objections, and a quasi-judicial means of resolving disputes. The length of time required would seem to militate against using the first-past-the-post system, quite apart from possible objections of principle.

Mr Meadowcroft pointed out that there are ways and means of using preferential systems (STV), even with substantial voter illiteracy, but the field tests required to ensure that individual voters could cope with the required ballot papers would take time. He hoped that such field tests could be carried out for future elections but it is probably not feasible to use STV for the first election in MalaWi.

A party-list system could be adapted reasonably quickly for use on a District basis in MalaWi, he said. If the first election is to be for a shorter term Assembly rather than for a full-blown legislative Parliament, then some of the political objections would not be as significant.

He argued that MalaWian leaders should think through, and ideally agree, on the purposes of the next election, and a feasible timetable for it, before determining the desired

electoral system. The best electoral system in the world is flawed and undermined if the administration of the whole democratic process is not unbiased, efficient and independent. He thought it imperative to have an independent Electoral Commission in place at an early stage to tackle issues such as the voting age, constituency boundaries, etc.

It was stressed in the ensuing discussions that Malawi could learn from the experience of other countries, that the electoral system adopted should be acceptable to, and understood by, the people of Malawi, and that there should be the widest possible consultations to ensure that this was the case.

In the session on decentralisation, local government and development, Professor William Tordoff, from the UK, defined decentralisation as the process of transferring power from the centre to sub-national levels, either to officials of the central government in the field - administrative decentralisation or the deconcentration of administrative authority - or to elected local governments - political devolution.

He noted that the former British Colonies in Africa had sought to adapt the English model of local government to the post-independence situation. During the 1970s and early 1980s, there had been moves towards decentralisation, with most African governments favouring a shift in emphasis from representative local government to local administration.

However, in some countries there had been a subsequent move back towards increasing the functions and powers of local representative bodies: in Tanzania the district councils, abolished in 1972, were restored in 1984, in the belief that something more than administrative decentralisation was required to promote meaningful political participation, and in Zambia, President Chiluba's MMD government proposes to devolve selected functions to local authorities 'as their management capacities improve' - at present, all councils (city, municipal and district) are heavily indebted and are chronically short of both money and equipment.

In Malawi, the Government has been committed to the districts playing a key role in the planning, execution and monitoring of development activities. Two alternative strategies have emerged: to deconcentrate administrative authority to District Commissioners, District Development Committees and the Field Offices of line Ministries, or to strengthen Local Authorities. It is important that clear policy guidelines should emerge through discussions between the interested parties.

Professor Tordoff argued that if representative Local Authorities are to play an important development role, they must be strengthened in both staffing and financial resources.

The roundtable discussion considered who should handle the provision of services and development activities at the local level - should Malawi rely on greater political devolution to District Councils, in which case what functions should be devolved and what financial arrangements made, or should it rely on the existing structure of District Commissioner, District Development Committee and Ministry field offices. The need to improve the resources and staff available to District Councils and to widen their financial base for raising revenue to provide services was noted.

It was also noted that the experience of other countries demonstrated that the relations between central government and local government could pose problems when central government provides many of the funds used by local government and when, in a multi-party democracy, it is likely that some District Councils will be run by the party or parties who form the opposition at the central level. Professor Tordoff argued that conflict between central and local government could be minimised by central government exercising restraint and local government exercising responsibility and by providing local government with legal protection through constitutional provisions.

Professor Tordoff concluded the session by stressing that, learning from the experience of other countries, in Africa and Europe, Malawi has an opportunity to develop, through discussions with all interested parties, a viable decentralised system of government.

PRESS RELEASE: 3

UNITED NATIONS ROUNDTABLE FORUM
ON
DEMOCRATIC TRANSITION

21-23 JULY 1993
CAPITAL HOTEL
LILONGWE

PRESS RELEASE

Noon, Friday, 23 July

On the second day of the Roundtable Forum on Democratic Transition in Malawi, at the Capital Hotel, Lilongwe, members of the Presidential Committee on Dialogue and the Public Affairs Committee, together with specialists from Malawi and the United Nations, continued their discussions on what lessons from other countries and what internationally accepted principles might prove useful to Malawi in the transition to multi-party democracy. The United Nations specialists emphasised that although outsiders could contribute to the debate on the political future of Malawi by providing information on principles and examples, the decisions regarding the future of the country will be made internally through negotiations and discussions between all interested parties.

Justice Michael Kirby, President of the Court of Appeal of New South Wales, Australia, and Chairman of the Executive Committee of the International Commission of Jurists conducted sessions on the importance of the independence of the judiciary and of basic human rights.

He introduced the discussion by outlining the minimum standards a society should meet for it to be considered "well governed". They are: an educated and informed population, able to understand and participate effectively in the consideration of political issues; a pluralistic society that allows varying interests to be represented effectively by non-governmental organisations; a society with free, open and effective information media that are able to act as a basis for public discussion and as a check on the arbitrariness of government and other powerful forces; a tolerant society in which both leaders and followers are able to accept and appreciate those who differ from them ideologically or in other ways, and in which political opposition is not seen as treasonous; a government whose nature, composition and general policies are determined by elections or other means that allow for the peaceful transfer of power from one group to another when the people so decide; an effective government, able to draft and administer legislation and services relevant to the needs of the people, and a legal structure able to guarantee equality before the law and to provide a predictable framework for private and public decision making.

It was recognised that in a democracy the rule of law, to which all, including the Government, must be subject, is of vital importance. It is the duty of the judiciary to uphold the rule of law. In order for it to discharge that duty effectively and efficiently it must be free from parliamentary control, from the dictates of the executive and from any pressure from other powerful bodies or the parties to any particular case.

Safeguarding the independence of the judiciary is thus an essential element in the upholding of democratic norms and values. It was noted that, although the current constitution in Malawi assigns great importance to the independence of the legal process, it makes no mention of guaranteeing the independence of the judiciary, and some of its provisions appear to be inconsistent with that independence. This situation should be rectified in any constitutional settlement.

Democracy depends, in part, on the freedom to have different opinions. It also relies on the duty to respect the opinions of others and to seek to alter opinions through dialogue rather than seeking to prevent the expression of alternative views. The right to differ, so important for democracy, is enshrined in the United Nations Universal Declaration of Human Rights.

Although the constitution of Malawi specifically commits the Government and people of Malawi to recognising the sanctity of the personal liberties enshrined in the Declaration, only its general principles are accepted, not the specific and detailed wording, and no provision is made for an individual who feels their rights have been derogated from to take action in the courts to enforce those rights. Nor has Malawi ratified the core international conventions adopted to give greater content to the Declaration. Ratification of such instruments opens up the laws and practices of a country to international scrutiny to ascertain to what extent national laws and practices are in harmony with internationally-determined human rights.

In the steps taken towards the multi-party election, and in the final constitutional settlement, Malawi should decide what steps to take to put the principles of fundamental human rights into practice so that they become a part of the living law and culture of the country. What will it want to include within the constitution, or other laws, and how will it set about including the appropriate provisions in the law?

Open and effective information media that are able to act as a basis for public discussion are essential for the flourishing of democracy. A discussion on the role of the media in democratic politics was led by a panel of international experts, headed by Dr Robin Ludwig, Senior political Affairs Officer in the UN Electoral Assistance Unit, who had acted as co-ordinator of the UN Electoral Assistance Secretariat for the referendum in June, considered the role that will be played by the media, both before and after the coming multi-party elections.

It was stressed that the free flow of information was essential for the proper functioning of democratic processes. The population must be as fully informed as possible about public issues and the different views of the various parties.

What was of concern in Malawi was access to the media, the financing of the media and the type and level of control required to monitor and regulate their conduct, particularly in the run up to the election. Given the low literacy rate in Malawi, radio broadcasting will continue to be the most significant medium.

Access to the press and radio should be as free as possible and they should be encouraged to serve, not as the exclusive mouthpiece of any particular party, group or interest, but as a forum for the balanced presentation and discussion of different viewpoints as fairly as possible and without undue bias. Care should be taken to avoid what was of increasing concern in many countries -- the growing trivialisation of political issues by some sectors of the press, but, in particular, by radio and television.

In certain circumstances, ensuring the freedom and fairness of elections might involve the exercise of controls over the media. For example, in many countries (i.e. Yemen) various bodies, such as electoral commissions, have been given power to control the media and the time allocated to various groups on radio and TV to present their views. Control over access might also be justified in circumstances in which it was felt that, due to their financial resources, some groups had much more access to the media than others. A key consideration in the exercise of such control is who is to decide the composition and degree of independence of the controlling body.

The media has a duty to report fairly and accurately. The need to improve the training of journalists was recognised, as was the importance of maintaining journalistic standards - possibly through some sort of code of conduct that every member of the profession would be expected to adhere to.

NOTES ON INTERNATIONAL CONTRIBUTORS

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Professor in Department of Political Science, Laval University, Canada. Has undertaken a wide range of research projects and held professorships in Cote d'Ivoire, France and USA. Has actively participated in the democratisation process and election monitoring in Benin, Burundi, Congo, Cote d'Ivoire, Mali, Niger, Rwanda and Togo.

MS. HELEN HOPPS (USA)

Human rights observer and educator with ONUSAL.

MR. WILLIAM TORDOFF (UK)

Professor of Government at the University of Manchester (1971-1990). Long experience of teaching African Politics and Administration at the Universities of Ghana (Lagon), Dar es Salaam and Zambia, as well as at Manchester and as Visiting Professor at the University of California, Los Angeles (1973).

MR. MICHAEL MEADOWCROFT (UK)

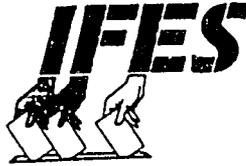
Writer and journalist. President of the Electoral Reform Society (UK). Member of the Joint International Observer Group in Malawi (1993). Previous positions held include member of Leeds City Council, Member of UK Parliament, President of the Liberal Party, Chairman of the Liberal Party Assembly Committee.

JUSTICE MICHAEL KIRBY (AUSTRALIA)

Judge of the Supreme Court, Judge of Appeal and President of the Court of Appeal, Supreme Court of New South Wales. Previous positions held include Judge of the Federal Court of Australia, Deputy President Australian Conciliation and Arbitration Commission, member of the Permanent Tribunal of Peoples, Member of the ILO Fact-Finding and Conciliation Commission on Freedom of Association, Commissioner and Chairman of International Commission of Jurists.

ANNEX H

Annex H



International Foundation for Electoral Systems

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NYALI MEANS CHANGE: THE JUNE 14, 1993 REFERENDUM IN MALAWI

FINAL ACTIVITY REPORT

IFES MONITORING, VOTER EDUCATION, AND POLLWORKER TRAINING PROJECT
April 23 - July 3, 1993

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July 30, 1993

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- B. February 5 Referendum Regulations
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- D. Guidelines for the Conduct of Training Sessions
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EXECUTIVE SUMMARY

From April 23 until June 20, 1993, the International Foundation for Electoral Systems (IFES) conducted an election assistance project in Malawi. The project was designed as part of the United Nations Electoral Assistance Secretariat's program and was financed through USAID/Malawi mission funds.

The objectives for the Malawi Referendum Support Project were specified in the Scope of Work section of PIO/T No. 612-0234-3-20030 and 612-0234-3-30002. These objectives, matching those in IFES' project proposal, were the following:

- to inform voters in Malawi of the importance and implications of the June 14, 1993 referendum;
- to train polling officials so the referendum is efficient and fair;
- to monitor compliance with referendum regulations and international standards for a free and fair referendum; and
- to inform USAID/Malawi of appropriate approaches/activities to support in future democracy/governance efforts.

To achieve these objectives, IFES designed a comprehensive technical assistance project composed of three elements. A team of monitors would travel to Malawi several weeks prior to the referendum to evaluate the ongoing preparations and environment leading to the exercise. A voter education consultant would work with the Malawi National Referendum Commission to ensure wide dissemination of relevant information covering the referendum. Finally, a team of trainers would work with election officials to create a group of individuals who could train the bulk of the thousands of pollworkers needed for the referendum.

Each of the project elements carried its own set of objectives. These are discussed in the chapters relating to specific project activity. In addition to carrying out the stated objectives, the IFES project team provided assistance in the areas of election equipment design and distribution, referendum procedures and international observer activities.

The process of registration, whose period was extended to May 8, was generally fair and efficient. Everyone who cared to register was able to do so. Extraordinarily high registration figures were due in part to voters registered in 1992 re-registering or registering at different locations, and in part to the increased desire of the people to vote in the referendum. The campaign period saw a rapid improvement of the playing ground for opposition pressure groups, increasing their ability to take their message to voters all around the country. Biases in state radio reporting and in the granting of permission for holding public meetings, however, kept the atmosphere from being completely fair.

Working throughout the three regions of Malawi, four IFES monitors provided the UN Electoral Assistance Secretariat with ongoing information about political group activity, the general atmosphere surrounding the referendum, the level of information provided to Malawian citizens regarding the referendum, and the effect of these elements on Referendum Day. The monitors were able to visit hundreds of registration and polling centers throughout the three regions of the country, keeping records of observations and continuously following up on suspected election infractions. The monitors also served as resources for international observers and others interested in the referendum process. This monitoring effort is noteworthy for its length and provokes discussion about the larger role international monitors can play without interfering in a country's election process.

The voter education component provided an opportunity for the Referendum Commission to work with an experienced educator who could assist the Commission in its obligation to inform citizens of Malawi about their rights and responsibilities as voters. The IFES consultant and the Commission developed not only a mechanism for distributing information about voting procedures, but also a forum for dialogue regarding the related issues of democracy, governance and public participation

**IFES/Malawi Project
Final Activity Report**

in civil society. Together, they designed a diverse voter education program using radio, posters, town hall meetings and theater to bring the information to as many Malawians as possible.

Four IFES trainers, the Referendum Commission and several hundred election officials collaborated in preparation for the administration of the June 14 referendum. The design and implementation of the pollworker training project was a challenge from the beginning, as less than a month before the referendum, there existed no consensus on the procedures or regulations that would be in force. The training team designed a manual and a training program to distribute procedural information as soon as it was available. The manual, printed in two languages, served as the definitive document for the administration of the referendum.

The four IFES monitors and two pollworker trainers remained in Malawi to become part of the UN's Joint International Observer Group for the June 14 Referendum. On the balance, the majority of stations that the 210 observers visited on Referendum Day were administered by trained officials, using their training manuals and voter education posters as references. Counting went on into the afternoon of June 15 for the larger districts. On Wednesday, June 16, the official announcement of the referendum results was that the multiparty option had received 63% of the vote to the MCP's 34%, with 3% null and void ballots. Consistent comments regarding the completion of the Official Report - the form used to record the results of the voting and counting procedures and any related complaints - demonstrate a need for election workers to pay special attention to this crucial part of the process.

As stated above, the IFES project was conducted in coordination with the UN Electoral Assistance Secretariat. The IFES team shared the offices, coordinators, support staff and transportation of the Secretariat throughout the project period. The success of all components of the IFES project is largely attributable to the cooperative relationship between IFES and the Electoral Assistance Unit.

The completion of the project provided an opportunity for all of the team members to make observations and recommendations regarding future areas worth attention in the changing Malawian

political and electoral context. A new voter registry, a permanent election commission, and a code of conduct for political parties were seen as the most immediate and obvious needs. More long-term areas included fundamental changes in the Malawi Broadcasting Corporation's news broadcast content, voter and civic education programs, ensuring accountability in campaign and election practice, and increasing the role and visibility of women in Malawi's political development. Many of these objectives can be achieved with the continued interest and support of the international community.

I. INTRODUCTION

On 18 October 1992, Dr. Hastings Kamuzu Banda, Life President of Malawi announced a national referendum for the country to determine whether or not it would continue to be governed in a one-party political system. The question, which designated the Malawi Congress Party as the only party that would inherit a one-party political system, also implied that the President would remain the head of state. Malawi was almost unique in Africa by autumn of 1992, having undergone none of the national conferences, cease-fires or legalized multiparty elections of its neighbors. As a result, international attention toward the Malawian government's human rights record (specifically in terms of its treatment of self-described and de facto multiparty advocates) as well as the legitimacy of its claim to be a one-party democracy increased markedly during that year. The question split the Malawian political terrain into two general camps: the ruling Malawi Congress Party, which has been the only legal party since 1964, and several churches, organizations and pressure groups (organizations not legally recognized as political parties) - the Episcopal Conference of Malawi, the Christian Council of Malawi, the General Synod of the Church of Central Africa Presbyterian, the Anglican Dioceses of Lake Malawi and Southern Malawi, the Associated Chambers of Commerce, the Muslim Association of Malawi, the Malawi Law Society, the Alliance for Democracy (AFORD) and the United Democratic Front (UDF) - which focused on the need for a change to a multiparty political system.

BACKGROUND

The Government of Malawi requested United Nations assistance in the organization, financing and monitoring of its referendum process. In November 1992, a team of five technical experts including Keith Klein, IFES Director of Programs for Africa and the Near East, and Horacio Boneo, Director of the UN Electoral Assistance Unit, traveled to Malawi for seven days to undertake a preliminary assessment of the government's state of preparedness for an internationally recognized, fair and legitimate exercise.

The team made a number of observations on the current state of affairs in Malawi. It suggested several factors that would contribute to the overall fairness of the referendum: a) an independent,

neutral referendum commission; b) organized, competitive groups in support of both sides of the referendum issue; c) the guarantee of free opinion and expression, assembly and movement of political groups; d) assurance that the electorate is able to make an informed decision about the issue; e) registration of all eligible voters; f) a balloting system that utilized one ballot box and other security measures; and g) the presence of international observers.

Dr. Banda announced on 31 December 1992 that the referendum would take place on 15 March 1993. A follow-up visit by a UN team in January recommended, among other things, that the referendum date be rescheduled to facilitate the participation of pressure groups (also referred to as special interest groups, who supported the change to a multiparty system, but under the constitution were not legally entitled to form political parties). It again recommended, in a departure from previous election procedures in Malawi, that the referendum be conducted using only one ballot box, after the voter made his or her choice in secret.

As a result of these and other recommendations, on February 5, the government rescheduled the referendum for 14 June, 1993. It waived the requirements for pressure groups to obtain police permission to conduct campaign activities. A Referendum Commission was created to oversee the referendum operations. The President's Committee on Dialogue (PCD), a group made up of representatives supporting the one-party option, was created to negotiate the procedures and conduct of the referendum campaign, monitoring and administration with the already-existing Public Affairs Committee (PAC), a coalition of multiparty advocacy groups and churches. Responding to concerns of the PAC that the Referendum Commission included no multiparty supporters, the government increased the size of the Referendum Commission from twelve to twenty members to include supporters on both sides of the question. However, it did not alter the balloting system of using one box per opinion, nor did it directly accept other UN recommendations at that time. The Referendum Commission took no role in the interpretation of the regulations on this point. While the Commission was authorized by the regulations to establish or revise procedures, it would only do so in making the decision that military personnel would not be eligible to vote.

By the end of the first week in May, the status of the referendum was uncertain. Current referendum regulations required the use of two ballot boxes, whereas the Public Affairs Committee, relying on the recommendation of the United Nations Technical Assistance teams, stated that it would boycott the referendum unless a one-ballot-box system was employed. The position of the UN Electoral Assistance Secretariat, on site to support the referendum process and coordinate international observers since March 24, was that unless consensus was achieved between the Public Affairs Committee and the President's Committee on Dialogue - either to use two ballot boxes or one box - the UN election assistance project would be canceled. The PAC extended its deadline to decide to boycott the referendum until May 8; however, no formal decision to boycott was made when the day arrived.

During the week of May 10, a UN special envoy arrived in Malawi to negotiate an end to the ballot box stalemate between the PAC and the PCD. As the discussions continued, the PAC's deadline was informally extended to May 23.

On May 17, it seemed possible that the PCD would insist on two boxes and the PAC would boycott the election. That evening, Life President Banda made a speech on Malawi Broadcasting network regarding the final ballot box decision. One box and one voting booth would be used; however, two ballot papers were to be issued to each voter. The voter would discard the ballot he or she did not prefer inside a box located in the voting booth; then deposit the favored ballot into an envelope, placing the envelope into the ballot box. The decision, in addition to facilitating the voter and civic education efforts of all of the pressure groups, sent a signal to those groups and the authorities that the campaign could enter its intensive stage. Although the end of registration marked the official start of the campaign, political activity in support of both sides of the question increased markedly following the President's decision. With the decision also came the final physical requirements of the referendum. The Referendum Commission would have to design a ballot and envelope ensemble that would be easy to understand, use and fit into the ballot boxes used in previous elections. It would also have to revise, approve and promulgate the current Regulations prior to the referendum.

The ballot box decision was the largest obstacle to the progress of the referendum. Once this hurdle was cleared, members of PAC and PCD were able to devote their attention to rallies, civic education demonstrations, printing of literature, and otherwise encouraging voters to support their side.

PROJECT DESIGN

Within this context, the UN Electoral Assistance Secretariat (UNEAS) was created as part of the Electoral Assistance Unit's continued involvement in the Malawian political process. The UNEAS served as the coordinator of a multifaceted project to facilitate the bilateral, international contribution to a free and fair referendum process. The Secretariat shared the offices of the UN Development Programme to manage the combined donor assistance to the referendum process. Dr. Robin Ludwig, the Secretariat Coordinator, and Leticia Martinez, Logistics Coordinator, met regularly from late March with members of PAC, the PCD and the donor community to determine the progress and needs of the referendum preparations. The IFES project, under the umbrella of UNEAS, was to provide assistance to the Referendum Commission with the dual goals of ensuring an informed electorate as well as a trained election staff. The project was designed according to the following scope of work:

- to inform voters in Malawi of the importance and implications of the June 14, 1993 referendum;
- to train polling officials so the referendum is efficient and fair;
- to monitor compliance with referendum regulations and international standards for a free and fair referendum; and
- to inform USAID/Malawi of appropriate approaches/activities to support in future democracy/governance efforts.

To achieve these goals, IFES designed the following three project activities:

- Long-Term Monitoring: IFES would provide four individuals to function as monitors of the political and campaign process during the two months prior to the referendum. These monitors would track referendum-related activities throughout the country, observing compliance with referendum regulations and international standards for a free and fair exercise as part of a larger UNEAS-coordinated team. The IFES monitors would serve as part of the UNEAS Joint International Observer Group (JIOG).
- Voter Education: IFES would provide a Voter Education Advisor to the Referendum Commission, whose mandate was to assist the Commission in developing a comprehensive voter and civic education program reaching all segments of the Malawian population with essential, impartial information regarding the referendum. The program would include information on the importance and implications of the referendum question, ballot secrecy and the details of the voting procedure.
- Pollworker Training: IFES would provide three trainers to implement a program for the effective training of the thousands of election workers administering the referendum. The trainers would develop a cadre of pollworkers with a thorough understanding of the referendum regulations and their duties.

II. THE REGISTRATION AND CAMPAIGN PERIODS

THE REGISTRATION PERIOD: APRIL 3 - MAY 8

The registration period, originally scheduled to run from February 8 through 13, was reopened following the postponement of the referendum to June 14, from April 3 to May 8. While the IFES monitors arrived late in the second registration period, the Joint International Observer Group deployed observers within the second week of April.

Section III of the Referendum Regulations sets out the rules for voter registration. Registrars, selected from the Malawian civil service (consisting mostly of teachers and headmasters) were given one-day training sessions by the Referendum Supervisor. Representatives of all special interest groups were legally entitled to place monitors at individual registration centers. At the time of the IFES team's arrival at the end of April, compliance with the regulations on the part of registrars and monitors was fairly consistent. In those areas where the regulations are ambiguous, the registrars decided generally to err (with the consent of the local monitors) on the side of inclusion rather than exclusion of voters whose eligibility was questionable. As a result, the following situations were noted by the observers during the period:

- Potential voters under the age of twenty-one, particularly women, were accepted as eligible upon the presentation of "mother's cards" - an identity document issued by relief agencies for the purpose of issuing food and health rations. In many cultures, girls and women are regarded as adults as soon as they bear children, their biological age notwithstanding. Using this rationale, a female with at least one child is an adult and therefore should be eligible to vote. Some registrars asked how many children a woman had in order to determine her approximate age and eligibility.
- Voters who registered at their home (or work) location in 1992 registered at different locations in 1993. With no cross-referencing of the list, it was possible for voters to obtain more than one registration certificate. Similarly, the reopening of the voters' register caused voters to think that 1992 registration certificates were invalid, so they attempted to register again. Not until two weeks before the referendum did the Commission publicize the news that both '92 and '93 certificates were valid.
- Monitors from the special interest groups were active participants in the registration process at some centers. They challenged decisions made by the chief registrar, in some cases harassing the staff in their eagerness to ensure adherence to procedure.

- Certain registrars and monitors expressed dismay at not having received duty allowances for the time spent at registration centers. Some indicated that they would be unwilling to turn in their registration books or their monitors' notes, or to be present on the referendum day, until they were paid.

While not directly related to the registration process, the activities of the special interest groups as well as the role of the media at this time were also monitored. Each special interest group has the right, by law, to conduct political rallies after obtaining permission from the local police. However, rallies for multiparty supporters were often cancelled on the day they were scheduled, or were denied permission entirely, in areas considered to be MCP strongholds. Although the MCP was also required by law to request permission to conduct rallies, the representatives that the monitors interviewed had no problem obtaining that permission. Rallies were attended on a voluntary basis by multiparty supporters; on a more compulsory basis for the MCP. Members of the Young Pioneers continued to close marketplaces and bus stops in order to force people to attend an MCP rally. In addition, several monitors received complaints regarding violent assaults that were suspected to be politically motivated. There was insufficient evidence during the registration period to attribute the assaults to any one pressure group. However, the hometowns of known MCP-supporting MPs, as well as bases for the Malawi Young Pioneers, were sites of a higher concentration of such assaults.

The regulations governing the referendum give the Referendum Commission the duty to publicize information on the referendum. Some posters were printed during the registration period. Opposition newspapers were freely available in areas around urban centers. However, Malawi law regarding the radio prohibits anyone other than the studio personnel, when presenting news, information or advertising related to the referendum to be heard in his or her own voice, in addition to leaving the determination of news and program content to the Malawi Broadcasting Corporation. As a result, radio programming showed no noticeable improvement between the issuance of the regulations and the end of the registration period. The top news stories consisted of the travels of the Life President, his disparaging comments regarding multiparty politics and MCP activities.

The situations described above occurred throughout the country. Of the 2,070 registration centers, the long-term members of the Joint International Observer Group used the experience of visiting 275 centers to draw their conclusions about this period. Overall, the IFES monitors reported that the referendum regulations pertaining specifically to the registration period were being followed. IFES monitor Christian Nadeau commented in one of his reports, "Yet, especially in rural areas, [people] did not know exactly for what they were registering. Voter education has been dramatically lacking. The main sources of information in the rural areas are MCP officials and state radio. Thus, people think they vote against the MCP and HE (His Excellency [President Banda]) if they vote for the multiparty option. They do not know they are choosing a system of government." The final registration figures (Appendix A) indicate a registration rate more than double previous rates in many areas, as much as a fivefold increase in some centers. Several reasons were offered to explain the higher numbers: double-registered voters who were already eligible based on '92 registration; dead voters or voters who relocated who were not removed from original rolls; refugees from Mozambique; and a markedly increased desire to participate in this particular electoral exercise.

THE CAMPAIGN PERIOD: MAY 8 - JUNE 12

The rule of the MCP during the last thirty years has been enforced by laws that restrict personal freedom, freedom of speech and expression. It has been reinforced by laws that allow detention without charge, blatant censorship, traditional courts to deny its defendants legal representation, and a social reward to those citizens close to the President and his associates who are willing to expose the activities of their neighbors. This martial-style legislation and enforcement of Malawi's unity are underpinned by a traditional desire for harmony and consensus above all else.

In this atmosphere, the campaign period began during the second week in May. The primary campaign instruments available to all interest groups were printed material, either newspapers, posters or flyers - or political rallies.

Restrictions on Freedom of Assembly - Intimidation

Gradually, through the end of March and April, the police in all regions allowed more and more rally activity to take place. One rule of thumb followed throughout the country was that no pressure group rallies could be held on days that the President was also scheduled to speak. In the Northern region, freedom of pressure groups to campaign varied by district. For some districts, such as Mzimba, pressure groups had no difficulty securing the necessary police permission for meetings. In other districts, such as Mzuzu and Rumphi, police limited the number of meetings that could be organized and canceled meetings at the last minute. However, the pressure groups were able to respond to the more egregious intimidation tactics through the legal system. "Legal suits by AFORD have been very effective in reducing the difficulties they face in Karonga and to a lesser extent in Rumphi District. Mr. Bazuka Muhango, a well-known lawyer who represents Chakufwa Chihana, comes from Karonga. He can speak directly to the Inspector General about police-related problems in Karonga. A judgement by the High Court against the Officer-in-Charge in Rumphi District (the home of Chakufwa Chihana) has had some beneficial effect there." (Susan Wynne, IFES monitor in Mzuzu)

In the Central Region, as all over Malawi, the risk of threats to individuals on the basis of suspected political affiliation decreased dramatically in the past twelve months. This region is home to both the President and John Tembo, and severe physical violence has been concentrated around their respective home towns and MYP camps. Intimidation has included threats of job suspension or involuntary transfers throughout all sectors of the economy on the basis of suspected political affiliation, and beatings. In addition to arrests and charges, many multiparty supporters wearing T-shirts or distributing literature were detained and then released on "police bail", to avoid the embarrassment of obviously trumped-up cases being brought to trial and subsequently dismissed. Following the decision regarding the use of one ballot box and two ballots, supporters from each side of the question encouraged their supporters to bring their discarded ballots to show on the day after the referendum, rather than discarding them in the box provided for this purpose inside the voting booth. Church leaders known to support the multiparty option were alleged to have threatened their

members with excommunication if they did not come to church with the discarded ballot. The Commission issued a press statement around June 3 emphasizing that the amended regulations stipulate jail and penalties for voters not discarding their ballots properly.

In the Southern Region, intimidation took the form of suspension of teachers, many of whom had served as registration officers, for suspected multiparty support. All civil servants involved in the registration process faced the prospect of being dismissed, transferred or suspended for assisting the pressure groups indirectly through any neutral action on their part which was deemed unfavorable to the MCP.

The following excerpts of Sam Gibson's (IFES Monitor in Blantyre) interim report are referenced to the February 5 Referendum Regulations, attached as Appendix B, and reflect the experience in all three regions of Malawi.

Reg. 32: Campaigning by Special Interest Groups. All special interest groups did not enjoy equal treatment under Reg. 32. Pressure groups in each region were required to obtain permission from police before holding any public meeting, while MCP meetings required no prior permission... In the first part of the campaign, pressure groups were often denied permission to hold rallies, or police delayed notifying pressure groups of their decision until the date of the proposed rally had passed. In addition, all political activity in the region, and often in the whole country, was suspended whenever the head of state gave a public address. This situation improved during the final weeks prior to the referendum. Nevertheless, police attended rallies until two days before the referendum, their presence intimidating but making no attempt to stop the proceedings.

Reg. 33: Period of Campaigning. During the campaign period, as stated above, the increased ability of pressure groups to conduct rallies facilitated their development as viable political organizations. Outside of the MCP-stronghold Central Region, both UDF and AFORD coordinators were able to refute the allegation that multiparty supporters were troublemakers out to "confuse" the population. Their continuous presence and generous use of distributing literature, wearing

propaganda clothing, flashing hand signals to passers-by, etc., made citizens feel more confident in expressing their own political beliefs. This in turn led to an atmosphere of open political discussion unprecedented in the experiences of even elder Malawians. Campaigning closed Saturday, June 12 at 1800 hours. While no campaigning went on between Saturday and Monday morning, on referendum day each regional monitor reported at least one person, in one case a Member of Parliament, campaigning in line with the voters. In each case, the polling staff ushered the campaigner away from the polling station.

Reg. 35: Freedom of Expression and Information. ... Regulation 35 states that "no person shall... be subjected to any criminal prosecution for any statement he made or any opinion he held or any campaign material he produced or possessed while campaigning in the referendum." While none of the cases detailed criminal prosecution, loss of employment because of association with a pressure group is in clear violation of the spirit of the freedom of expression and information as described in the first phrase of the regulation.

Reg. 37: Ethical Norms During Campaigning. Section 1 - The section prohibiting use of language which is "inflammatory, defamatory or insulting" is vague, and each side of the referendum question accused the other of being liars, of harboring guerrilla armies and other unpleasant remarks. This does not seem to be a serious problem, however, as both sides have been in violation, at least to some degree. Section 2 - A code of conduct was suggested by the United Nations and requested of the Referendum Commission (which is entitled to draw up and approve such a code) by members of all special interest groups, but was never published.

Reg. 40: News Broadcasts and Reports. The regulation requires that "Every special interest group shall have the right to have the substance of its campaign propaganda reported on radio news broadcasts of the MBC and any newspaper in circulation in Malawi." The print media, both the government, and the opposition, were published and distributed widely in urban areas throughout the registration and campaign periods. In contrast, the Malawi Broadcasting Corporation was in consistent violation of the spirit of Reg. 40, sections a and c, throughout the campaign.

- Section a: The requirement that "no person shall be reported or be heard in his own voice" was violated whenever the head of state addressed a public meeting, because the speeches always included an endorsement of the single party system. Not only was the President's speech broadcast, but the whole day's events pre-empted all other programming. Up to seven hours of songs, speeches and dances praising the President and the MCP and condemning multiparty advocates as warmongers and thieves, were broadcast live each time the President held a function. In the last month of the campaign, the President held at least seven rallies that monopolized the electronic media, and allowed MCP officials and supporters to be heard in their own voices.
- Section b: "The content of the news shall be professionally determined by the Malawi Broadcasting Corporation." This clause worked only against the opposition, as the MBC saw no obligation outside the Referendum Commission's voter education programming to provide balanced coverage of the daily events. The Referendum Commission, designated as a monitoring body of the MBC by regulation, in fact did not exercise any control over the content of the programming (outside its voter and civic education work) between the registration and campaign periods.
- Section c: The monitors consistently listened to the 7:00 news broadcasts on MBC. In no way did the MBC "maintain neutrality in the manner of reporting the news of the campaign period..." Only beginning late in April were pressure groups' meetings announced, and then without mention of the meetings' agenda. MCP meetings were consistently announced in advance, with meeting content reported after the events.

Opposition groups faced several obstacles that the MCP did not, including difficulty in obtaining access to government vehicles and public address equipment. Obtaining permission to hold public meetings was also unnecessarily difficult for much of the campaign, but improved in early May. Despite these obstacles, UDF and AFORD held meetings in all districts on a regular basis. Despite the MCP's significant advantages in these important areas and their organizational experience, pressure group meetings were generally much better attended than those of the MCP.

The level of interest in the referendum was very high throughout the country, and by the last few weeks of the campaign, public awareness and civic education efforts had reached even the most remote villages. Malawians appeared to be aware of the question posed on June 14, and most were well aware of the meaning of the two symbols. Confidence in the secrecy and security of the election increased with the well-publicized decision to use only one ballot box.

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III. LONG-TERM MONITORING

IFES provided the UN Electoral Assistance Secretariat with four individuals to serve as monitors of the Malawian referendum process from April 23 until June 20, 1993. The monitors' tenure would achieve a number of objectives:

- increase the electorate's confidence that the referendum regulations would be respected and that any violations would be reported by credible, disinterested witnesses;
- ensure increased compliance with referendum regulations by all participants;
- increase the awareness of the international community of observance and violations of the regulations and internationally recognized rights and freedoms, providing an increased ability to respond diplomatically to such violations;
- report and record events prior to the referendum that would assist in international observer briefings as well as provide a basis for recommendations on future electoral processes in Malawi; and
- strengthen Malawian institutions and individuals dedicated to human rights, the rule of law, and grassroots participation in national political affairs.

The four individuals selected for the monitoring component came from diverse backgrounds and experiences. Sam Gibson, a staff member in Senator Paul Simon's office, had followed developments in Malawi for the past year. Christian Nadeau, a graduate student at Johns Hopkins School of Advanced International Studies, monitored local elections in Canada for several years. Ted Sneed and Susan Wynne returned to Malawi after serving as Peace Corps Volunteers there from 1964-66 and 68-70, respectively.

MONITORING ACTIVITIES - APRIL 25 THROUGH JUNE 13

Upon arrival in Malawi on April 25, the monitors were briefed by Dr. Robin Ludwig, Coordinator of the UN Electoral Assistance Secretariat and the Joint International Observer Group. Following a two-day orientation, the monitors were deployed to two of Malawi's three regions. In addition to the objectives described above, the monitors were requested to report on the conduct of the registration process, extended until May 8. Their activities included attendance at political rallies,

interviews with political leaders, monitoring of radio broadcasts and working with local police to investigate complaints regarding referendum violations. Each monitor was asked to request that persons with specific complaints fill out prepared forms including the name, location and date of the incident, plus any remedial or follow-up action taken.

During the first two weeks of the project, the monitors observed the registration process at over 100 sites in the Central and Northern Regions. Registration center visits were the main focus of observation activity in this stage of the referendum. Observers also met with District Commissioners, Members of Parliament, and church and political leaders. Topics for interviews included the interviewee's sense of the political climate, the process of registration, the assistance of registration workers, the role of monitors and information about local rallies. Returning to Lilongwe on May 9, the monitors debriefed with the JIOG coordinator. The monitor teams' written observations were submitted to the JIOG coordinator, who in turn made to IFES and representatives of the international donor community a confidential summary report on May 21.

Beginning on May 10, the monitors were redeployed for the duration of the project. Sam Gibson was stationed in Blantyre (Southern Region), Susan Wynne in Mzuzu (Northern Region), while Ted Sneed and Christian Nadeau remained in Lilongwe (Central Region). Their next assignment was to continue monitoring activities, this time focusing completely on the campaign and referendum process, investigating complaints as they were received. For the monitors in the Central Region, remaining in their original region allowed them to further develop relationships with persons interviewed during the registration period, obtaining more specific information and continuing reports. Susan Wynne provided the first continuous presence in the Northern Region. All of the monitors reviewed newspapers, more occasionally radio broadcasts, as these latter were mostly in Chichewa. During the month of May, Gibson and Wynne were the only international monitors operating in their respective regions.

As the date of the referendum approached, the JIOG coordinator recruited international observers from local relief agencies, from the UNDP and other foreign nationals. These observers, mostly

available on weekends, were deployed to observe rallies in Lilongwe and Blantyre. Christian Nadeau and Ted Sneed, the two IFES monitors in Lilongwe, assisted with the deployment, briefing and frequently the logistics coordination of the observers. As the international observers began to arrive, approximately ten days before the referendum, Sneed and Nadeau deployed them to the Northern and Southern regions, teaming them respectively with Gibson and Wynne. Each IFES monitor took on the responsibility of briefing and orienting new observers, determining areas for deployment, and reporting their findings to the JIOG. In the Northern and Southern regions, the continuous presence of IFES monitors meant that the Lilongwe base operation was constantly updated on events as they occurred throughout the country. The IFES monitors provided up-to-date information for new arrivals as well as Lilongwe-based members of the JIOG.

On Saturday, June 12, the IFES monitors returned to Lilongwe to brief the full international observer delegation, consisting of over 200 members. They were asked to give a summary of their activities to date, describing their experiences, reviewing the role of international observers, providing examples of observer technique, and identifying "trouble spots" within each region. As the delegation was grouped by district and region, the IFES monitors assisted with the deployment of each team where it was required. Each IFES monitor served as a Senior District Observer in the district where they were assigned. Senior District Observers, in addition to their regular observer duties, were responsible for deploying observers to polling stations within the district to observe the closing and counting process. Each Senior District Observer then spent the evening in the District Commissioner's office, watching the results as they were brought in from each polling station. The Observer reported the results at periodic intervals, if possible, to the JIOG office throughout the evening of the referendum. This procedure, combined with the quick-count procedure implemented by the UN, provided the Electoral Assistance Secretariat with data from which they extrapolated a projected vote total on Tuesday morning that varied less than one percentage point from the Referendum Commission's results, which were not announced until Wednesday morning. Those IFES monitors who were to be deployed outside Lilongwe left the city on Sunday June 13, returning to Lilongwe on June 17 for the national debriefing and issuance of the JIOG delegation statement.

The IFES monitors left Lilongwe beginning on June 18. Christian Nadeau remained in Lilongwe until July 3 to assist the Electoral Assistance Secretariat with the drafting of the JIOG final report.

REVIEW OF PROJECT OBJECTIVES

Increase the electorate's confidence that the referendum regulations would be respected and that any violations would be reported by credible, disinterested witnesses.

During the two-month duration of this project, the IFES monitors were able, through personal interviews and presence at political gatherings throughout the country, to develop relationships with the Malawian people. They responded to complaints regarding infractions of the regulations, transmitted those complaints to the UN coordinator, and saw those complaints addressed by the Referendum Commission, PAC and the PCD. They were also able to gain the trust of the voters, who from the beginning of the project expressed their relief that monitors were physically there.

Ensure increased compliance with referendum regulations by all participants.

The ongoing reports in the field from IFES monitors to the JIOG coordinator enabled her to make their observations known immediately to the Commission, PAC and PCD. In some cases, the monitors were able to overcome violations of the regulations simply by having the matter in question drawn to their attention. The information transmitted from the monitors regarding the awareness of the public about the voting procedure and related concepts was used effectively by the Voter Education Subcommittee of the Commission to improve the voter education program content.

Increase the awareness of the international community of observance and violations of the regulations and internationally recognized rights and freedoms, providing an increased ability to respond diplomatically to such violations.

By meeting formally and informally with members of the donor community in Malawi, the IFES monitors were able in many cases to express their concerns and their observations directly to the representatives. Their contact provided support to the JIOG coordinator's regular situation reports.

Report and record events prior to the referendum that would assist in international observer briefings as well as provide a basis for recommendations on future electoral processes in Malawi.

The IFES monitors remained in country for a total of two months, or 32 monitor-weeks - longer than any other observer or monitor. Their continuing presence enabled them to make essential contacts among political and government leaders in two regions not yet covered by the JIOG; to follow up their own observations and to make eyewitness reports of improvements; to enhance the knowledge of the entire observer delegation; and to quickly identify those areas of the country which would need the closest observation on Referendum Day.

While the monitors did not make specific recommendations regarding future elections in Malawi, their observations regarding the content of the majority of the Malawi Broadcasting Corporation's programming, in addition to notation regarding compliance with the referendum regulations highlight areas for improvement in coming elections.

Strengthen Malawian institutions and individuals dedicated to human rights, the rule of law, and grassroots participation in national political affairs.

The IFES monitors did not directly work with specific institutions or individuals or obtain their information in only one manner. It was through a combination of interviews in the office and at the water pump, meetings in the market and at meals, rallies and impromptu conversations that the monitors were able to hear the comments of Malawians of all ages and social levels. Their high level of visibility and recognition reassured large numbers of the electorate. Such "strengthening" as is described in this objective cannot be measured quantitatively; it may be assessed by reviewing the large numbers of people who continued to attend rallies, to demonstrate election procedures and

educate the public at rallies, to discuss issues that would have landed them in jail less than a year ago, and who showed up to vote.

Comments on Long-Term Monitoring Efforts

Long-term monitoring of a country's political process has been viewed in the international community as a luxury only the citizens can afford. The cost of keeping an international observer delegation of any size for a period much prior to or following the election is prohibitive for any one country. Nevertheless, the IFES monitors were able to counter the most outstanding criticism of the work of international observers - that of not being in the country long enough to make an objective decision about the election procedures. The IFES monitors were present and highly visible eight weeks prior to the referendum. All of their observations made during that time were transmitted on an ongoing basis to the pressure groups, the Government of Malawi and the Referendum Commission through the JIOG coordinator, making the presentation of those observations perhaps less abrupt and confrontational than an observer delegation statement released upon arrival and a final statement released just prior to departure.

Long-term monitors are a logical response component to the increasing importance of "free and fair elections" as a possible obstacle to foreign aid, increased ties, removal of sanctions, or other major foreign policy changes. The climate in which election-day oriented observation developed was one in which neither the concept of internationally acknowledged human rights, respect for the rule of law, nor any other contributing factors which create an atmosphere of fairness were in evidence. As the process of election observation became more refined, the countries' leaders refined the election process in their countries. By making "free and fair elections" the price for continued international support, the donor community gives many leaders the opportunity to acquiesce to, call and conduct elections that meet only empirical standards of freedom - often in an atmosphere that is hostile to free political activity until days before the election. If the international community requires an election and an atmosphere that is conducive to a free and fair election, it should also be prepared to enlist long-term assistance to achieve the second set of conditions as well as the first.

Long-term monitors can view the country's situation more objectively than can short-term observers. This does not necessarily mean that the monitors, by spending so much time in country, become involved in local political activity such that they can no longer make a nonpolitical judgement. They are in a good position to notice improvement in political conditions, such as freedom of movement or assembly or expression, during the campaign period. They may even be responsible, by their presence alone, for those improvements. In Malawi, the monitors did not control the process by their presence. No representatives of the MCP or any other interest group mentioned in interviews that its activities were significantly restricted simply because monitors were traveling throughout the country.

The IFES Project Manager debriefed with the monitoring team prior to its departure from Lilongwe. As this project was the first of its kind, the monitors were requested to make their own assessments of the value of the project. Overall, the monitors made the following observations and recommendations:

- The number of people on the long-term delegation should increase - depending on the size of the country, maybe to two or three people per large administrative unit. Frequently, monitors felt they were unable to cover the territory assigned to them.
- The tenure of the mission was felt to be adequate to the needs of the project. Frequently, monitors had to conduct interviews with the same people more than once before the interviewees felt comfortable enough to speak candidly. With some further initial information on what and who to look for, long-term monitors can make the most of the first ten days of their missions by setting up political and government contacts that will be increasingly useful as the election date approaches, especially as those contacts are unlikely to have much free time right before the election.
- Long-term monitors may be asked, by virtue of their value as a practical resource, to assist in deployment and logistics arrangements of later-arriving observers.

IV. VOTER EDUCATION

IFES was requested to assist the National Referendum Commission in developing a comprehensive voter and civic education program to reach all segments of the Malawian population with essential information about the question on the ballot, about voting and about the fundamentals of democracy. To carry out this component of the project, IFES selected Eugenie Lucas, a former Foreign Service Officer who implemented the IFES Civic Education in the Comoros as well as serving on an election observer delegation to Congo last year. Her scope of work assigned to her the following tasks:

- work directly with the Referendum Commission chairman and Executive Committee to develop a broad outline of voter education campaigns;
- administer a budget of \$45,000 in IFES funds to be used during the campaign; and
- assist in the design, production and distribution of video, audio and print education materials for use in the government's voter education campaign.

BACKGROUND

Even in countries where nonpartisan civic education institutions exist, the government is responsible for providing the voter with essential information about the nature of any electoral exercise. The Malawi government had this responsibility, as well as the duty to inform its citizens about the general implications of the question to be decided. In the case of the Malawi referendum, the United Nations assessment reports stated that unbiased information should be disseminated as part of a voter education campaign conducted under the auspices of the Referendum Commission. A voter education campaign to provide unbiased information about the nature of the referendum and about the general implications of the question to be put before the voters was thus a crucial element for a free and fair referendum in Malawi.

The UN reports emphasized the importance of establishing an independent Referendum Commission as a "critical characteristic" in enabling the government to carry out the function of administering the referendum process with integrity and without bias or the appearance of bias. Once appointed,

the Referendum Commission was to have been empowered with complete authority in the administration of the registration and referendum processes.

The Malawi National Referendum Commission was created by presidential decree on February 5, 1993. Most of the twelve members appointed by the president to the Referendum Commission were well-known members of the Malawi Congress Party (MCP). McDonald Banda, Secretary of the Commission, continued concurrently to serve as Secretary to the President and Cabinet. When the Public Affairs Committee (PAC) threatened to suspend the referendum negotiations because of the apparent bias of the Commission, eight additional members representing AFORD and UDF were appointed. The Referendum Commission's mandate was to provide general direction and supervision over the conduct of the referendum. However, the Referendum Commission was perceived by most Malawians from the date of its creation as ineffective, powerless and not entirely independent of the President. Several major decisions had been taken by the chairman of the Commission without consulting the members of the Executive Committee, most notably the decision not to allow members of the armed forces to vote in the June 14 referendum. The Commission did not intervene in or arbitrate the dispute over the number of ballot boxes to be used in the referendum. As the referendum date approached, the opportunity for the UN Election Assistance Secretariat to take a more active role in such areas as codifying the amendments to the referendum regulations or identifying and procuring election equipment allowed the Commission to simultaneously take a more passive role in the administration of its own referendum, although it may be argued that the increased registration figures combined with the delay of the ballot box decision presented the Commission with tasks sufficiently formidable to prevent it from organizing the referendum on June 14 without the UN's assistance.

In the area of voter education, the Referendum Commission was charged with the following responsibilities:

- Establish, in consultation with interested parties, a code of conduct for persons conducting public information campaigns on the issues to be decided by the referendum, and to monitor adherence to that code of conduct by all participants; and to

- Establish and monitor a policy of equal access to media outlets, particularly the government radio station, by proponents of both sides of the referendum question.

As of the end of April, little had been done in the area of voter education, nor had any concept of how the Referendum Commission should carry out its responsibility of implementing a voter education campaign been developed. One unwritten, important objective of IFES' participation in the referendum process in Malawi was to empower the Referendum Commission (to the extent possible) as an independent and effective body responsible for the administration of the referendum. One means of empowering the Commission was to put the resources of the IFES project - the consultant and the budget - at the disposal of the Commission.

When Lucas arrived in Malawi on 25 April, the Referendum Commission had met only infrequently. The Chairman was traveling abroad and the next meeting was not scheduled until May 4. Dr. Robin Ludwig, arranged for Lucas to attend meetings between the PAC, the donor group and the PCD. She also met McDonald Banda, the Secretary of the Commission. The PAC announced at the donor group meeting on April 26 its intention to boycott the referendum if the government continued to insist that two ballot boxes be used in the referendum.

Lucas attended another donor group meeting on April 29 and presented an outline for a civic education campaign, modeled after a similar IFES program in the Comoros Islands. She briefed the representatives of the donor countries on the meeting with Mr. Banda as well as on the use of radio, posters and flyers and a traveling theater troupe as a means of conveying important messages on the referendum, with emphasis on reaching people in the rural areas.

On May 4, Lucas met and briefed the 20 members of the Referendum Commission and proposed a working outline for a voter education campaign which relied extensively on radio, which reaches the majority of the Malawian population. She recommended that a Commission working group consisting of representatives of each of the special interest groups be named to a voter education Subcommittee. She also requested that the General Manager of the Malawi Broadcasting Corporation

(MBC) be appointed to the Subcommittee to facilitate access to and to serve as a liaison between the MBC and the Subcommittee on voter education.

PROJECT DESIGN

Mr. Andrew Hamisi (AFORD), Mr. Matiya Msosa (AFORD), Mr. Sam Mpasu (UDF) and Mr. Nyemba Mbekeani (MCP), all members of the executive committee, were named by the Referendum Commission to serve on the voter education Subcommittee. The first of a series of meetings of the Subcommittee was held on May 6. IFES assumed the transportation and per diem expenses for each Subcommittee member to meet with Lucas. Henry Chirwa, General Manager of MBC, was also present. He assured the members of the Subcommittee that they would have total access to MBC. A format and topics for several panel discussions, as well as a concept for a jingle and radio drama, were developed at this meeting.

Lucas presented several ideas regarding the dissemination of referendum information to the Voter Education Subcommittee of the Referendum Commission. One idea was the retention of a playwright to compose a drama that could be performed by a traveling theater group. A second idea was that some of the current radio programming directed at women include, on a temporary basis, information on the referendum. Neither of these ideas were encouraged by the Commission, which commented that the audience that either idea would attract was not worth the expense. This sentiment as expressed by the Commission left IFES with the decision either to comply exclusively with its scope of work (financing only those activities developed and sanctioned in cooperation with the Referendum Commission) or to deviate from this direction.

The main definition of a voter education effort is that it is a series of activities sponsored by a country's government, designed to provide basic information on the electoral process. In contrast, a civic education effort may be defined as a series of activities which provide information about citizens' roles in a democracy. While the IFES scope of work specified voter education, the Project Manager noted that some of the information sanctioned by the Commission and disseminated by the

project (such as sponsorship of radio debates) carried civic education overtones. In addition, the ideas cited above, rather than attracting the wrong audience, serve in IFES' experience to institutionalize the value of citizen participation in groups that have previously been overlooked and/or marginalized. For this reason, the Project Manager, after consultations with USAID/Malawi and IFES/Washington, included in the voter education budget a line item entitled "Other Project Activities" and encouraged Lucas to seek out such opportunities. As a result, IFES financed the production of a traveling theater piece, as well as radio programming which specifically addressed the meaning of women's participation in the political process. Ultimately, while the efforts directed at women's participation were implemented through the Referendum Commission, the theater production was neither endorsed nor designed in cooperation with the Commission.

PROJECT IMPLEMENTATION

Radio

Lucas met regularly with the Voter Education Subcommittee of the Commission, presenting several possible topics around which a series of programs would be developed, recorded and broadcast on Malawi Broadcast Corporation (MBC) radio. Since most of the members were not connected with the MBC, she, the Subcommittee and the MBC General Manager reviewed the previous programming, determined subsequent program themes, and drew up guidelines for the radio drama segments to be conducted in a roundtable discussion format. Programs were produced on the following themes:

- The Referendum
- Secrecy of the Ballot
- The Role of the Security Forces
- The Role of Monitors and International Observers
- Symbols and Their Meaning
- Casting Your Ballot on June 14

The format of the show consisted of a panel discussion with the four members of the Referendum Commission's Voter Education Subcommittee responding to questions on one of the themes. The

discussions were recorded in both Chichewa and English, for broadcast at prime time, following the evening news. Listeners were invited to send in questions at the end of each program. As of June 13, the MBC had received approximately 50 letters from listeners asking questions pertaining to a wide range of issues on the referendum.

Radio dramas on the same theme as each panel discussion were taped and broadcast in "Pa Majiga," a popular drama program, as a means of reinforcing the message. The Subcommittee controlled the content by providing a written outline of the issues to be dramatized prior to each recording.

A drama bringing together all of the above themes was commissioned to be aired the final week before 14 June. Isaac and Jacob, a drama group which had performed a number of radio skits for UNICEF on family planning, was selected to write and perform a twenty-minute radio drama on the referendum. The drama provided an explanation of the one-party and multiparty systems of government and emphasized the following themes: (1) secrecy of the ballot, (2) the use of ink and other precautions against election fraud, and (3) voting procedures. It concluded with a message encouraging people to vote their conscience.

A sixty-second jingle was developed and broadcast in Chichewa during peak listening times throughout the day. The content and final production of the jingle was approved by the members of the voter education Subcommittee. The jingle, aired four times daily from the period June 1 through June 12, went as follows:

*Malawians, this is your chance to choose the system of government you want.
Do you want a one-party system of government?
Or do you want a multiparty system of government?
Ladies and gentlemen, you have the freedom of choice to choose the system of government
you want.
Preferences differ; a lizard liked the veranda [reference to Chewa proverb].
Vote Wisely.
This is your chance to choose the system of government you want.*

Following are the dates and times of MBC broadcast of civic education programs:

"Talking Point," Chichewa, May 20 at 2025
"Talking Point," English, May 21 at 2110
"Pa Majiga," Chichewa, May 25 at 1745
"Pa Majiga," Chichewa, May 26 at 0545
"Pa Majiga," Chichewa, May 26 at 1745
"Pa Majiga," Chichewa, May 27 at 0545
"Talking Point," Chichewa, May 26 at 1910
"Talking Point," English, May 28 at 2110
"Talking Point," English, June 6 at 1810
"Isaac and Jacob," Chichewa, June 7 at 0700
"Isaac and Jacob," Chichewa, June 8 at 1930
"Isaac and Jacob," Chichewa, June 10 at 0730
"Isaac and Jacob," Chichewa, June 11 at 0730
"Isaac and Jacob," Chichewa, June 12 at 0615
"Talking Point," English, June 12 at 1000
"Talking Point," Chichewa, June 12 at 1000

Woman-Oriented Programming

The MCP mobilized support among women through the party's women's organization, the Chitukuko Cha Amai M'Malawi (CCAM). The CCAM was created ostensibly to teach women crafts and other skills. One of its main functions, however, has been to organize the thousands of women, called *mbumbas*, who sing and dance the President's praises during public appearances and at political rallies.

The PAC has alleged that school authorities have threatened pupils with loss of their place in school if their parents did not vote for the continuation of the MCP. Such subtle threats were directed primarily against women, mainly in the rural areas, to intimidate them into voting for a continuation of the one-party system.

The University of Malawi radio listenership survey found that, despite the fact that females actually outnumbered males 51% to 49%, a larger percentage of men were regular listeners of MBC than women. The survey of listenership also found, however, that one of the most popular programs on

MBC listened to by both men and women was Zokonda Amai, the women's program. Lucas worked with the MBC General Manager to ensure that at least one of these programs was designed specifically to address the issues of particular concern to women, emphasizing the importance of women as a voting bloc. Lucas and the Subcommittee designed a message which aimed to: (1) clarify the distinction between a one-party and a multiparty form of government, (2) disabuse women of the notion that the referendum was a vote for the CCAM, and (3) encourage women to vote freely for the system which best represented their interest. The program, scheduled to air during the week prior to the referendum, was pre-empted and replaced on June 8 with a re-run of "Isaac and Jacob".

Town Hall Meetings

Despite the wide coverage given to objective, referendum-related programming, many Malawians were accustomed to simply tuning out the MBC as a propaganda tool. Lucas and the voter education Subcommittee conducted public meetings in all three regions the final week before the referendum. Public service announcements were aired on MBC informing the public of these meetings and inviting them to attend. IFES financed the travel costs of the town hall meetings for each Subcommittee Commissioner. The town hall meetings were approved by the entire Referendum Commission and organized through the offices of the District Commissioners in the following locations:

Monday, June 7 in Nchalo at the Open Football Field

Wednesday, June 9 in Mzimba at the Community Football Field

Thursday, June 10 in Mponela at the Community Center

The meeting in Mponela was cancelled as the District Commissioner failed to arrange a public address system.

These public meetings provided Malawians with an alternative to the MBC programming, particularly during the final week of the campaign, during which an inordinate amount of MBC coverage was devoted to the president's travels and MCP political rallies.

The four members of the voter education Subcommittee each gave a presentation on a referendum-related issue of his choice. These were usually on ballot security, voting procedures, penalties for infraction of the referendum regulations and the meaning of the two symbols. In addition, the Subcommittee conducted vote simulations using the equipment provided for the referendum. Following the presentations, one member acting as the moderator would invite questions from the audience. While concerns varied by audience and by region, the questions most often asked related to ballot secrecy, personal security on referendum day, and occasional questions of a political nature which the Subcommittee declined to answer. All of the town hall meetings were conducted in Chichewa.

The public meetings drew large crowds (1,000 in the South; approximately 1,500 in the North) and provided an opportunity for the Referendum Commissioners to take their message directly to the voters. It also provided an opportunity for the public to bring issues and problems to the attention of the Referendum Commission. This dialogue strengthened the reputation of the Referendum Commission as a body committed to presenting the referendum issue as clearly as possible. The public meeting at Nchalo, for example, presented a forum for the workers at the Sucoma sugar factory to discuss a problem in the registration procedures which had affected many of the factory's 5,000 employees. The employees had been on vacation during the registration period and therefore had registered in their home districts. Since the day of the referendum was not a public holiday, many of the workers were unable to travel the long distances from Nchalo to their home districts to vote. The District Commissioner, who was present, agreed to issue transfer certificates to allow the employees to vote at polling stations in Nchalo.

Flyers and Posters

Lucas designed posters and flyers with educational messages which were approved by the full Referendum Commission. Sixty thousand posters with the cock and the lantern, the registration certificate, and the message in Chichewa, VOTE IN THE NATIONAL REFERENDUM ON 14 JUNE, were printed for the Referendum Commission (Appendix C). Posters were distributed by

the Ministry of Information through their normal distribution channels - the District Commissioners and Information Officers in the various districts. The Referendum Commissioners requested that the posters be displayed in hospitals, post offices, schools, markets and other public places.

Once the government made the decision to use one ballot box, some means had to be devised for informing the voters of the steps to follow in casting a ballot. Working with an artist in Blantyre, Lucas designed a flyer showing the voting procedure using a one ballot box system with captions in Chichewa (Appendix C). Three hundred thousand flyers were printed and distributed equally to the leadership of UDF, AFORD, MCP and PAC for distribution at political rallies, church services and through government channels of distribution. Flyers were also distributed at the public meetings on voter education held by the Commissioners.

Since the print media reaches primarily the well-educated, urban elite, which comprises only 25% of the population, less emphasis was placed on newspapers as a means of disseminating information on the referendum. Articles reflecting the various political perspectives on the question of a single-party versus a multiparty system of government were regular features in the independent as well as government-controlled newspapers. Nevertheless, a number of people stressed the importance of including the print media as part of a civic education campaign. The Referendum Commission Subcommittee on Voter Education held a press conference with the Association of Journalist in Malawi (JAMA) on May 28. The hour-long press conference was aired in its entirety on MBC on Tuesday, June 1.

Traveling Theater Troupe

According to a survey on radio listenership conducted by the Center for Social Research of the University of Malawi in August 1992, only 35% of households in the country had one or more radio receivers. This translated into 2.8 million listeners with direct access to radio. An earlier survey conducted in 1971 found that, at that time, as many as one-third of all radios in the rural areas were inoperable.

Though radio reaches a large proportion of the population, there remains a significant percentage of people in the villages who do not own radios or whose radios are inoperable and who, therefore, could not be reached by a radio voter education program. Reaching this segment of the rural population with a civic education campaign would require more traditional means of communication.

Upon her arrival, Lucas was referred by one of the UNEAS logistics assistants to a small theater group. She discussed with them the concept of creating and performing an educational drama in as many of the 24 districts as possible in the two weeks remaining before the referendum. Du Chisiza, Jr., the 1992 national "Entertainer of the Year," and the director of Wakhumbata Ensemble Theater, a popular performing group, was engaged to write and perform the play, covering themes Lucas devised: the right of each person to make his or (especially) her own decisions, the meaning of the referendum, secrecy of the ballot, the role of the security forces, monitors and international observers, symbols and their meaning, and how to cast a ballot on June 14. IFES reserved the right to review and edit the play, to ensure an evenhanded treatment of the issues, which it exercised as the voting procedures became definite. IFES financed the production and travel costs of the troupe; Mr. Chisiza was responsible for locating the space. The resulting production, about an hour and a half long, featured an old man who rather blindly favored the multiparty system, his young impudent son, an objective, informative teacher, and the old man's MCP-oriented wife. Using humorous exaggerations of common assumptions about women, children and politics, the characters raised and dealt with issues regarding the referendum, including the inflammatory statements made by supporters of both sides of the question.

As stated in the Project Design section, the idea of a traveling theater group disseminating a civic education message was not endorsed by the Commission. The messages that the group portrayed could be construed to have exceeded a government's obligation to provide basic election-related information to its citizens. Moreover, the director of Wakhumbata Ensemble Theater, in addition to his national recognition as "Entertainer of the Year", was infamous for his outspoken political views. Understandably, the Referendum Commission would have been reluctant to associate itself

in any way with the group, whose intentions and subsequent theatrical production were objective, but whose members could quickly be associated with one side of the referendum question.

Given the time and logistical constraints, the troupe decided to concentrate on areas with the largest percentage of rural voters. The Wakhumbata Ensemble Theatre performed "Referendum, My Right To Choose" before large audiences in the following locations:

Thyolo - May 27th
Zomba - May 28th
Balaka - May 30th
Mchinji - May 31st
Lilongwe - June 1st
Kasungu - June 2nd
Mzuzu - June 3rd
Chilumba - June 5th
Karonga - June 6th
Mangochi - June 9th
Blantyre - June 10th
Mwanza - June 10th
Ntcheu - June 11th

A few hours prior to each show, the cast members posted announcements in the towns. Even on such short notice, each performance attracted at least 700 people. Some performances took place in old warehouses; others in amphitheaters. No admission was charged.

One performance in particular was scheduled for the evening of June 10 in Dedza. After the play began, members of the local police interrupted the performance. The police reasoned that the performance constituted an unauthorized political rally. The play was allowed to resume after the police referred the matter to the District Commissioner, who relayed it to a member of the Referendum Commission, who had no knowledge of the play. Mr. Chisiza invited the police to watch the performance, asking the audience after the play concluded whether what they had just witnessed was a politically slanted message. The audience emphatically denied that that was the case.

GENERAL OBSERVATIONS

The members of the civic education Subcommittee - Sam Mpasu, Andrew Hamisi, Matiya Msosa, Nyemba Mbekeani and the Very Rev. Killion Mgawi - were sincere in their commitment to collaborate with Ms. Lucas and to educate the voting public on the issues pertaining to the referendum in a manner which was balanced and nonpartisan. They were totally involved in the voter education campaign from beginning to end. Despite the time constraints and other impediments, IFES successfully implemented an intensive four-week voter education campaign under the auspices of the Referendum Commission.

Likewise, the Referendum Commission as a whole was extremely supportive of this endeavor. Mr. McDonald Banda and Mr. David Bandawe, the Referendum Supervisor, in particular, deserve special mention for their cooperation and assistance.

The General Manager of MBC, Henry Chirwa, was very cooperative and offered the members of the Referendum Commission and the Subcommittee complete access to radio. However, the content of all programming as well as the broadcast times remained under the control of MBC. There was no permanent time slot for broadcast of voter education programs, which made regular listening impossible. Programming on voter education was often preempted by coverage of MCP rallies. During the final week of the campaign, MBC programming was devoted almost exclusively to coverage of MCP rallies and presidential visits to the various regions. This coverage was broadcast uncensored, despite its clearly political and partisan nature. There was no attempt on the part of MBC throughout the registration or campaign periods to distinguish between factual, balanced coverage of the issues and political propaganda.

Outside of the programming initiated by the Subcommittee and IFES, the MBC provided little balanced, impartial discussion of the issues being put before the voter on 14 June. No effort on its part was made to present opposing points of views to continued partisan coverage. In fact, MBC officials were so reluctant to allow a discussion of the MCP slogan that multiparty politics leads to

war - an issue discussed at length by members of the Referendum Commission during the taping of one of the panel discussions - that that part of the discussion was deleted from the program by MBC in both the Chichewa and English versions of "Talking Point," which aired on May 26 and 28, respectively.

Overall, however, it was generally agreed that allowing the members of the Referendum Commission access to MBC for purposes of civic and voter education was a major breakthrough. Henry Chirwa, the General Manager and Verson Idi, who served as the producer and moderator of "Talking Point," deserve special mention for sharing their considerable knowledge and expertise of the broadcast media in support of the voter education campaign.

RECOMMENDATIONS FOR FUTURE ACTIVITIES

Once a decision is reached on the process for a transition to multiparty democracy, an ongoing civic education campaign is necessary to inform all Malawians on a broad range of topics including the meaning of multiparty democracy, information on the procedures for revising the constitution, the responsibilities of political parties, their formation and function, and the procedures for voting in future presidential and parliamentary elections.

Freedom of the press is a fundamental element of a democratic nation's underpinning. Broadcasting power is a weapon which, in the case of Malawi, has always been a propaganda tool of the Malawi Congress Party. The MBC, however, is the most effective means of reaching the majority of the population with any voter education campaign. An agreement on the creation of an impartial, multipartisan body to oversee the operations of MBC should be reached before any future elections take place. An independent media commission could be established by representatives of PAC and the PCD during the current transition process to begin drafting a charter which mandates and protects the independence and integrity of the MBC. At the time of this writing, it was uncertain whether any member of the Referendum Commission would be nominated to serve as part of the body that administers general elections. IFES suggests that the government of Malawi make the most use of

its referendum experience by re-nominating those members who participated on the voter education Subcommittee, if there are no objections to those individuals.

Once a permanent Electoral Commission has been established, it would be useful to have a consultant work with the commission to establish rules and regulations governing the formation of political parties, establishing guidelines and standards of conduct for political parties and other ballot access issues.

REVIEW OF PROJECT OBJECTIVES

Work directly with the Referendum Commission chairman and Executive Committee to develop a broad outline of voter education campaigns.

IFES successfully suggested the creation of a Subcommittee, including members of the Executive Committee, specifically charged with the implementation of the voter education project. This Subcommittee functioned as Lucas' primary counterpart throughout the referendum period. The outline of the voter education campaign was presented on May 4, following discussions with the Secretary of the Commission, representatives of PAC and PCD, and the donor community. All of the elements of the project, with the exception of the theater group production, were endorsed by the Commission. The campaign and its information reached the majority of Malawians of all intellectual levels through radio, posters or town hall meetings.

Develop a budget for \$45,000 in IFES funds to be used during the campaign.

The IFES Voter Education Program Budget was developed and revised according to the types of programs that the Referendum Commission wished to produce. Approximately \$21,400 of the budget was spent on printed materials, \$11,400 on the traveling theater production and the rest for the per diem and transportation expenses of the Subcommittee.

Assist in the design, production and distribution of video, audio and print education materials for use in the government's voter education campaign.

IFES was successful in producing educational print materials and posters in a period constrained by the delayed ballot-box decision. No video materials were developed, as Malawi has no television service, and consequently few citizens in possession of a TV. However, the largest contribution that IFES made to ensuring that the Malawians knew when and for what they were voting was its work with the voter education Subcommittee with the Malawi Broadcasting Corporation. Those members of the Referendum Commission who worked on the MBC programs were able to introduce elements of a new style of broadcast journalism to a government radio station. It is hoped that future programming will increase in diversity and objectivity in coverage.

V. POLLWORKER TRAINING

BACKGROUND

The pollworker training component of the IFES technical assistance project was implemented from May 4 through June 20, 1993. Four trainers traveled to Malawi to conduct an intensive series of training sessions from May 28 through June 8. Mariela Lopez, the lead trainer, and Laurie Cooper, the Project Manager, arrived in Malawi on May 4. Juan Rial, a Uruguayan electoral systems specialist, and George Smith, the Returning Officer for Somerset District Council in the UK, came to Malawi on May 17 and May 23, respectively. The team was assigned the following tasks:

- Train a core group of 80 to 100 trainers in their basic duties, as outlined in the Electoral Law;
- Provide assistance in training techniques;
- Develop simple training materials that may be used in conjunction with the Electoral Law;
- Ensure that an adequate representation of women among the core training group is achieved;
- Identify a need for and conduct all-female trainings as necessary; and
- Travel with core trainers as they conduct regional trainings, offering advice on training techniques as appropriate.

At the time of the team's arrival, the pace of the referendum process was disturbingly slow. As stated in the Introduction, the stalemate occurred when the PAC, supported by the UN Assessment team's recommendations, threatened to boycott and effectively cancel the referendum unless the PCD agreed to the use of only one ballot box. The PCD, feeling that it had already made enough concessions to opposition pressure groups, was unwilling to take this final step. The February referendum regulations clearly provided for two ballot boxes to be used. Compounding this delay was the fact that the Referendum Commission was not scheduled to meet as a body until May 18, as it had just convened and recessed the day before the team's arrival. This missed opportunity meant that a large part of the training design would have to be developed outside the meetings of the Commission and presented as a project to be approved or rejected.

Upon arrival in Malawi, the trainers were briefed by IFES monitors, Eugenie Lucas, the UN Electoral Assistance Secretariat and USAID Project Officer Tom Lofgren.

PROJECT DESIGN

Between May 4 and May 8, the pollworker training team met with Mr. David Bandawe, Referendum Supervisor, to discuss project objectives and to develop a schedule for training. Mr. Bandawe was requested to provide IFES' pollworker trainers with the information required to develop training strategies and materials. The general outline of the training program, modeled on the IFES cascade training methodology, consisted of the intensive training of a small group of election workers who would in turn train other election workers in the time remaining before the referendum. The trainers developed a tentative schedule to meet with the twenty-five District Commissioners throughout Malawi with the purpose of discussing and designing the training project, beginning the following week.

By May 10, the ballot box issue was no closer to resolution. Key amendments to the referendum regulations, such as the change of the vote counting location from the District Commissioner's office to the polling station, were not yet officially approved or gazetted. The training team experienced considerable difficulty in project design because of these delays.

The trainers met again on May 10 with Mr. Bandawe. He had been unable to make the necessary arrangements for the team to travel throughout Malawi during the week. The team decided to travel to Blantyre to meet the local District Commissioner and to thereafter make its own arrangements with individual District Commissioners, advising Mr. Bandawe as appropriate. The team also decided to begin drafting the training manual, based on the current regulations and unofficial comments from the Referendum Supervisor on the anticipated amendments. Meanwhile, as a result of a visit of a special envoy from the UN, sent to meet with the President, the Referendum Commission and PAC/PCD during the second half of that week to negotiate an end to the ballot box stalemate between the PAC and the PCD, the PAC boycott deadline was informally extended to May 23.

Thomas Kevorkian, a consultant with the National Democratic Institute, arrived mid-May to implement a local monitor training program. The IFES team and the JIOG briefed him of the current overall situation, the needs that the team anticipated that local monitors were going to have in terms of their training and the impact that monitors could have on pollworker performance on Referendum Day. All parties agreed to keep each other informed about their activities.

The pollworker training team attended the Referendum Commission meeting convened on May 18, one day after the ballot box announcement was made. With almost the entire Commission present, the team outlined the three components of the IFES project. The Commission recognized the need for more information to develop regulations for this new style of voting and requested that the IFES training team provide it. Several of the team's suggestions appear later in this section. While the team was not allowed to remain for the entire meeting, it felt confident enough to reschedule the meetings with District Commissioners, to finish drafting the manual and to plan the training phase. The team stated to Mr. Bandawe that the training manual would be ready for review and approval by the Commission on May 24.

The team rescheduled its meetings with District Commissioners, working through the three Regional Administrators for the Northern, Southern and Central Regions. Briefing sessions with the District Commissioners in each region were conducted on May 20 in Blantyre and in Mzuzu on May 21. The meeting in Central Region took place on May 26.

Training Session Layout. With little time remaining before the referendum, the pollworker training team made several modifications to the project. First, the length of the training sessions was reduced from three days to one six-hour day. Second, the target number of core trainers was increased from 100 to 400. The training sessions were defined as a one day program to be conducted by the four trainers in all districts. The District Commissioners had expressed their interest in having all Presiding Officers trained by IFES, a total of approximately 1700 people. However, the IFES team decided that each of the four trainers would be responsible for training up to 20 core trainers (with a limited flexibility in session size, depending upon the number of people with whom each trainer

felt he or she could effectively work) in 6 or 7 districts. The core trainers would be selected by the District Commissioners, who were responsible for nominating all of the Presiding Officers in their respective districts. The IFES trainers would work simultaneously in the three different regions. The responsibility for training the remaining Presiding Officers (based on the final figure of polling stations) would be that of the District Commissioners and those Presiding Officers designated as trainers.

Documentation/Materials Design. The bulk of the project budget was devoted to producing a comprehensive training manual, whose production and wide distribution was the priority of the training project. The training manual, given the absence of revised referendum regulations, was the only source of referendum procedures to polling staff. This absence provided an opportunity for IFES trainers to make suggestions regarding the voting procedure to increase secrecy and the efficiency of the process.

George Smith, the fourth pollworker trainer, arrived in Lilongwe on May 23. Over the next two days, he and the rest of the team refined and augmented the training manual, presenting more issues for clarification by the Referendum Commission. The final draft of the training manual including the illustrations was presented to the Referendum Commission on the morning of May 25. As the amendments to the referendum regulations had still not been ratified or gazetted, the training manual was approved to be the official Presiding Officers' Manual, to be used as a model by the Commission as it developed the amendments to the referendum regulations.

PROJECT IMPLEMENTATION

The IFES team briefed Dr. Ludwig of the UNEAS on the questions that had arisen during the team's meetings with the District Commissioners, asking that she bring them to the attention of the Commission. These issues, still unresolved one month before the referendum, needed to be addressed before the training manual was completed and the training sessions began. The main issues, with the Commission's responses, are raised below:

- How would voters' registration certificates be handled? How would multiple certificates, presented by one voter, be dealt with? IFES recommended that they be returned to the voter after he or she cast a ballot. The Referendum Commission decided that all certificates (and their duplicates) would be kept by polling officials.
- When should ink be applied to the voter's finger to prevent him or her from voting a second time? IFES recommended that this procedure take place after the vote had been cast. The final decision was that the inking procedure would take place prior to voting, to reduce the possibility of a voter leaving the polling station without the benefit of ink.
- How should ballot papers be packaged and controlled? IFES recommended that the ballots be bound as books, perforated at the counterfoil margin and in the center, with a serial number on the counterfoil. The Commission decided to print the serial number on the ballots themselves as well as on the counterfoil.
- How should the official distributing ballots issue them to the voter? IFES recommended that the two ballots should be separated as one piece from the counterfoil, then given to the voter to separate the ballots from each other. Based on the language used in the President's speech regarding the voting procedure, the Commission directed the officials themselves to separate the ballots before handing them to the voter.
- How should the voter dispose of the ballot with the choice that he or she does not favor? The IFES team recommended that voters be instructed to tear up the ballot that they did not favor before depositing it in the discard box. This procedure would ensure, in part, that voters made an active decision about the choice they favored. It would also reduce the number of discarded papers visible to any voter who cared to look through the slit in the discard box. The Commission directed that voters should be instructed only to place the ballot with the symbol that they did not favor into the discard box. (Most pressure groups suggested that voters tear the discard ballot nonetheless.)
- How should results from polling stations be communicated to the district level? IFES suggested that officials use phones to call in their results, bringing the election materials later, to speed up the overall reporting process. The Referendum Commission discouraged the use of any electronic transmission of the results, thereby delaying the release of even partial results until the Commission was ready.
- IFES further recommended that the results of the poll be recorded at each station on an Official Report Form. The training team developed a prototype form, including a certification of receipt of equipment (to be signed on the day that the Presiding Officer picked up the equipment); the opening and closing times of the station; record of results and of incidents, complaints and the final decisions. This form was accepted and a facsimile printed for distribution to each polling station.

During this week, the UN agreed to solicit donor contributions based on the procedures presented in the training manual. Approval of the manual was therefore the condition on which the UN would seek election equipment assistance. Final approval was communicated verbally to the IFES team by Mr. A.K. Tembo, the Referendum Operations Secretary, on the evening of May 27 with a written confirmation received on the 28th. With Mariela Lopez and Juan Rial already in Blantyre ready to begin training sessions the next day, the camera-ready arts were taken to the printing facilities for production. Supervision of the darkroom work was done on Friday night so that printing could start immediately.

A poster depicting the voting procedure in panels was produced under IFES supervision. This document was designed for distribution to all polling stations as a reference tool that election workers could use on the referendum day in explaining the procedure. In addition, George Smith developed an outline with suggested topics and techniques for each training session participant to use in organizing his or her own training sessions.

Training Session Implementation. IFES trainers prepared simulation kits to set up a polling station for each trainer to use in the field. The kits included ballot boxes, ink jars, ballots and envelopes, and models of the Official Report and Register. The trainers conducted sessions according to the following schedule:

FINAL SCHEDULE FOR MAY 29 - JUNE 7

<u>Date</u>	<u>Trainer</u>	<u>Location</u>	<u>#Centers/Stations</u>	<u>#Trainees/Women</u>
May 29	Lopez	Machinga	107/344	104/4
	Rial	Mangochi	108/394	109/3
May 30	Lopez	Blantyre	94/315	20/3
	Rial	Mwanza	59/98	49/3
May 31	Cooper	Chitipa	78	18/2
	Lopez	Thyolo	78/223	79/6
	Rial	Mulanje	91/231	120/6
	Smith	Dowa	86/230	20
June 1	Cooper	Karonga	140	45/0
	Lopez	Chikwawa	70/215	63/2
	Rial	Nsanje	57/127	42/3
	Smith	Salima	47/116	20
June 2	Cooper	Rumphi	108	20/0
	Lopez	Zomba	88/301	85/4
	Rial	Chiradzulu	57/121	20/1
	Smith	Nkhotakota	80/164	20
June 3	Lopez	Ntcheu	103/186	20/2
	Smith	Ntchisi	59/83	20
June 4	Cooper	Mzuzu	135	20/3
	Lopez	Dedza	90/223	94/0
	Smith	Kasungu	104/271	61
June 5	Cooper	Nkhata Bay	135	20/2
	Lopez	Lilongwe	198/653	20/3
	Smith	Mchinji	71/225	23
June 7	Cooper	Mzimba	210	110/4

4/2/04

The standard procedure on training session days was for the trainers to meet with the District Commissioner for a few minutes to explain the session agenda. Following the meeting, the DC and trainer would proceed to the location of the training. While individual training sessions differed slightly according to each trainer's style, the notes prepared for Presiding Officers ensured consistent introduction of concepts, simulations, and question-and-answer periods.

Each District Commissioner was notified at least one week prior to the training sessions that IFES would assume per diem and travel costs for only 20 participants. Despite this information, several DCs invited between 30 and more than 100 participants. Many expressed their reluctance to select, therefore show favor to, a small group of the total number of Presiding Officers within their districts. The IFES team and the DCs agreed that any additional trainees would be present to observe the sessions, participating to a limited extent. The amount of money budgeted for each session could then be issued as a lump sum or divided equally among the twenty participants. The IFES trainers each had different experiences working with large versus small groups. Frequently, the enthusiasm and spirit of cooperation in any one training experience were determining factors of the success of the sessions.

The number of female trainees, as can be seen from the preceding schedule, was consistently low. No training session included more than five women. While the trainers' mandate included identifying and training groups of women, it found as a whole that the selection of Presiding Officers had already been made, reducing IFES' possible influence in that area. However, the large number of registered voters created a need for thousands of additional polling stations and staff. On referendum day, observers confirmed that a relatively good nationwide representation of women inside the polling station was achieved.

The format of the training sessions began with a brief description of the IFES pollworker training project, with an introduction of the IFES trainer conducted by the District Commissioner. Each participant, where possible, received a copy of the Presiding Officers' Manual. After reviewing the glossary and instructions for opening and administering a polling place, the trainer would conduct

simulation exercises, repeated playing the scene of a voter (frequently an elderly or handicapped voter) approaching the polling station, turning in his or her registration certificate, dipping the finger in ink, receiving ballots and the envelope, and going to the voting booth to make his or her decision. Repeating the voting procedure gave the training session participants the opportunity to experiment with different polling station floor plans, how to deal with "incapacitated" voters, and how monitors and observers can play a constructive role in the referendum day process.

The training sessions each took between 3 and 4½ hours. The sites were mostly school classrooms, traditional courtrooms or district conference rooms. All of the participants were civil servants, either teachers, health officers or agricultural officers. One journalist attended a session in Rumphi district in the Northern Region. His presence visibly intimidated the group. With that exception, however, the discussions were productive, enabling each trainer to interact with trainees without interrupting the flow of the session.

Several questions were posed to the members of the training team; some were asked at every station.

The Presiding Officers were most concerned about the following issues:

- Why do polling station officials have to explain the voting procedure, including the referendum question itself, to individual voters? It takes a long time, and besides, haven't the political parties been doing that?
- What is the relative authority of monitors and Presiding Officers in a dispute in the polling station?
- What constitutes propaganda and at what time or in what form is such material unacceptable in or around the polling station?
- How do we protect ourselves at the end of the referendum, following the count and posting of the results, from monitors and/or party activists?
- Who is responsible for transporting the materials to and from the polling station?
- What is the significance of the Official Report?

REVIEW OF PROJECT OBJECTIVES

Train a core group of 80 to 100 trainers in their basic duties, as outlined in the Electoral Law.

The cascade training methodology provides a good framework within which to design appropriate training programs. While the target core group specified in this project scope of work was 100, the four IFES trainers trained over 1200 people in ten days, providing the trainees with the tools to train up to 60,000 pollworkers before the referendum. The IFES trainers conducted a total of twenty-five sessions, traveling throughout the country, adapting quickly to the unpredictable size of the classes. The delay in the decision regarding ballot boxes, in addition to the significant increase in registration figures, created a crisis situation for the Referendum Supervisor that diverted his attention from training such a large number of Presiding Officers. In addition, the number and location of the training sessions that the Supervisor could have conducted alone was severely limited. Even with his assistant, he would not have been able to travel on a regional level in enough time to provide opportunities for follow-up training before the referendum.

Provide assistance in training techniques.

As part of each training session, the trainers orally reviewed and presented trainees with guidelines for conducting training sessions, attached as Appendix D.

Develop simple training materials that may be used in conjunction with the Electoral Law.

Approximately 400 copies of the final draft of the Presiding Officer's Manual were produced in order for the trainers to begin their sessions during the weekend of May 29. The copies were distributed for training purposes only, substituted later by the final version of the Manual. Eleven thousand English-language copies of the Official Presiding Officer's Manual plus 3,000 Chichewa copies were distributed during training sessions and later through the Referendum Supervisor, who was responsible for the delivery of all election equipment to each polling station. Fifteen thousand

posters with step-by-step graphics of the voting procedures were also distributed through the Referendum Supervisor's office. Observers confirmed that manuals and posters alike were used throughout the country to assist pollworkers in their duties.

Ensure that an adequate representation of women among the core training group is achieved; Identify a need for and conduct all-female trainings as necessary.

Of the objectives and tasks listed under this project, two which were not satisfactorily achieved concerned the presence and targeted training of women. The disagreement over the number of ballot boxes certainly delayed implementation and curtailed the length of the training. A longer training period, increasing the time spent one-on-one with the District Commissioners, might have provided an opportunity for the IFES trainers to facilitate the recruitment of female trainees.

Travel with core trainers as they conduct regional trainings, offering advice on training techniques as appropriate.

During the week prior to the referendum, the Presiding Officers trained by the IFES team conducted their own sessions. The second-tier sessions were more oriented towards lecture than simulation style; however, Presiding Officers expected to use the simulation method in training their individual staffs. Informal feedback solicited by IFES trainers was positive - the manual was seen to be clear and comprehensive. One criticism that the Presiding Officers expressed was that the importance of each polling station's Official Report was not sufficiently stressed - a circumstance that on Referendum Day led, according to many observers, to too little attention given to the proper recording requirements of the Report. This was due in part to the fact that the Official Report had not been approved by the Commission prior to the training. IFES trainers worked with a prototype report that had to be shared among many trainees. As a result, the reporting section of the training was not as intensive as it should have been. This objective could have been more successfully achieved had less time been spent waiting for the ballot box decision. The limited number of trainers present in the last week prior to the referendum prevented thorough follow-up of training sessions.

Conclusions and Recommendations

The Malawi referendum accomplished more than the return of a verdict on the type of political system most Malawians preferred. It established new techniques in registration and voting procedure, it introduced new equipment, and it made fundamental policy changes in the way future electoral exercises will be conducted. These changes go a long way to ensuring and institutionalizing a fair, transparent electoral process. In addition to the recommendations cited earlier in this chapter, the pollworker training team adds the following suggestions:

- The current negotiations defining the transition process should include the creation of a **permanent electoral commission**, with definitions of its composition, role, functions, and authority. This commission will have to accomplish a great deal of tasks in a short time, whether general elections take place in five or ten months. Creating, convening and authorizing the commission now would enable its members to take a more active and responsible role in organizing the elections. The commission should have, among others, the following authority:
 - a) to design and enforce rules on the registration and activities of political parties; to review any code of conduct that the parties develop;
 - b) to ensure that all political parties ratify the code of conduct as a prerequisite for registration; to take disciplinary action against those parties that violate the code.
 - c) to regulate access to the media for parties; to advise (at least in the short term) the Malawi Broadcasting Corporation leadership on its meeting the standards for fair politically-oriented programming.
- A new registration process should begin, after firm rules establish eligibility and determine the optimum polling stations for individual voters (either where they live or where they work), which includes an ability for officials to crosscheck lists and eliminate duplicates, including sufficient time prior to the election to review and correct the lists.
- The election commission should have a voice in the devising of an election calendar, with the right to reject politically strategic but logistically challenging proposed dates.
- Above all, the election commission should be composed of neutral members with the authority to make decisions that will be respected as coming from a neutral body. Except in the case of a national emergency, the election commission, not the Parliament, Cabinet or President, should be the principal and final authority on election matters.

VI. REFERENDUM DAY OBSERVATIONS

Members of the IFES team remaining in Malawi on Referendum Day were deployed to all three regions. The long-term monitors served as regional coordinators, while the pollworker trainers conducted less formal observations in and around Lilongwe.

Monitors and observers received their deployment assignments on the evening of June 12, following an all-day briefing chaired by Dr. Ludwig. Beginning at 7 o'clock the next morning, the delegation of 210 observers, divided into teams of two to three persons, left Lilongwe for their assigned regions. This early deployment gave the observers time to locate a number of polling stations in their districts, to meet local pressure group representatives, church leaders, and the police, and to complete a dry-run of results transmission.

On the morning of June 14, most observers arrived at the polling stations between 5:00 and 5:30 am. They were preceded by voters who in some cases had been waiting since 4. Based on the delegation's observations, the vast majority of stations had all of the equipment assigned to them and were able to open polling at 6:00. Equipment was to have been distributed on Sunday by each District Commissioner to each polling station. In isolated cases, polling stations opened by 6:40. In one station in Mzuzu, Northern region, the District Commissioner was contacted by the Presiding Officer on the evening of June 13 regarding a shortage of ballots, but gave no response. No observer reported any polling stations that did not open.

PROCEDURE

The voting procedures, as specified in the Presiding Officers' Manual and the amended Referendum regulations, were as follows: a voter would approach the polling station or polling center, be directed to that part of the voter registry that had his or her name entered, present his or her certificate for verification and to be kept by the polling staff, have fingers checked for ink and the right index finger dipped in ink, receive two ballots, an envelope and an explanation of the voting process, be directed to the voting booth and cast the ballot with the preferred symbol in the ballot box after discarding the ballot not preferred in the cardboard box located inside the voting booth.

Disabled voters were to be assisted by persons of their choice. Monitors and observers were permitted to be present throughout the process.

Variations on the polling station procedures were the exception rather than the norm in all three regions. For example, some Presiding Officers refused to allow monitors to enter the polling station because they arrived after the poll opened; others refused local monitors entry because they could not produce letters of accreditation. In a few polling stations, polling officials who did not wish to turn away voters who possessed certificates but whose names did not appear on the list simply added the voters to the current register, collected the certificates, and issued ballots. Other Presiding Officers refused to use the 1992 register at all and turned away voters whose names did not appear on the '93 list. Less-than-optimal arrangement of polling station furniture slowed the voting process down in some stations. The design of the ballot (two papers separated with different destinations) complicated the process for some voters, who were unsure which ballot went into which box. The presence of more than one box confused many citizens, including the Presiding Officers. During the training sessions as well as on Referendum Day, the Presiding Officers asked how to deal with those voters who voted with their discard ballot by mistake.

The Official Report seemed to produce the most problems for polling staff during the counting process. After the ballots were separated and counted, there seemed to be little incentive to fill the form out. Polling stations where the vote had obviously gone one way were less likely to complete the form. A disturbing phenomenon was recorded in the Northern Region where an unofficial report form was inserted in the polling materials for each district: "Form A", which included a space for polling officials to enter the number of votes each pressure group received - although this was not a parliamentary election. The form was not printed by the Commission, but international observers were unable to determine who was responsible. Most of the Presiding Officers ignored the form, after explaining the form's partisan nature to the monitors present.

The examples described above are isolated cases out of more than 5,000 polling stations. Except for the last case mentioned, the observers noted no significant, systematic attempt on the part of anyone to influence the outcome of the referendum.

VII. REVIEW OF PROJECT ACTIVITIES

COOPERATION WITH UN ELECTORAL ASSISTANCE SECRETARIAT

The extended IFES presence in Malawi facilitated its cooperation with the Electoral Assistance Secretariat. All personnel worked well together, collaborating on several occasions. On May 10, the IFES Project Manager and the JIOG coordinator discussed the reporting requirements of the IFES monitors. The monitors' scope of work included biweekly activity reports to IFES and workplans for coming weeks. However, the content of those reports was determined in part by the responsibilities of the JIOG to prepare comprehensive reports at key phases in the referendum process. The JIOG coordinator felt that some of the information contained in the individual observer reports was sensitive enough to affect the referendum negotiation process between the UN, PAC and the PCD should any report be taken out of context. An agreement was reached that observer reports would be given simultaneously to the JIOG coordinator and IFES but that the reports to IFES would be classified as not representative of the entire JIOG.

Three weeks prior to the referendum, the Election Assistance Secretariat received a request for election equipment procurement assistance from the Referendum Commission. The Secretariat requested information from IFES personnel on site and in Washington. Based on those recommendations, the Secretariat procured election material including flashlights, large plastic envelopes for ballots, ballot paper envelopes, and badges for election workers and monitors. Christian Nadeau assisted in the assembling of the equipment packages in Johannesburg. Mariela Lopez and Laurie Cooper took part in the labeling and distribution of over 5,300 packages well into the evening of June 10.

IFES Trainer George Smith assisted in the observer deployment and reporting activities by creating a senior level of observers who would monitor the proceedings at the district level, reporting them throughout the evening of the referendum.

None of the achievements of the IFES team would have been accomplished without the outstanding support of the Electoral Assistance Secretariat. Dr. Robin Ludwig and Leti Martinez were essential

to all members of the team in opening doors with Malawian election personnel and reporting individual concerns as well as ensuring that the team had appropriate transportation and lodging. The entire IFES team expressed a wish that more administrative staff had been available, in addition to more computer equipment. These needs were most acute when each team member was in Lilongwe, all needing space to compile reports. The arrival of more observers, while providing a welcome increase in regional coverage, also took a good deal of the logistics time that IFES monitors could have spent on their own activities. Nevertheless, the atmosphere of assistance made all of the team members eager to help whenever and wherever they were needed.

REVIEW OF PROJECT OBJECTIVES

To inform voters in Malawi of the importance and implications of the June 14, 1993 referendum.

This objective was achieved through the presence of each member of the IFES team. While the focus of each monitor's activities was not specifically oriented to voter education, the number of interviews, meetings attended, and exchanges with different Malawian citizens during the two months prior to the referendum was instrumental in bringing a voter education message to Malawi. Specifically, the voter education program delivered these messages by radio, public town-hall meetings, posters and traveling theater. The program was the result of consistent cooperation between the IFES team, the Electoral Assistance Secretariat, the Referendum Commission and the MBC. Building on the relationship established between the Secretariat and the Commission, the IFES team was comfortable in making suggestions regarding topics for discussion and program format. It is impossible to estimate the number of people reached directly by radio; however, the town hall meetings drew an average of 1250, while each of the thirteen traveling theater performances attracted audiences in excess of 700. The pollworker training program delivered the messages by inviting discussion not only of the procedures involved in voting, but the concept of the referendum itself.

To train polling officials so the referendum is efficient and fair.

The IFES pollworker training team was able to train 1200 polling officials in the new procedures to be used for this referendum, providing a clear, concise manual as well as information on how to set up similar training sessions.

The relationship between Eugenie Lucas, the voter education consultant, and the Referendum training team and the Referendum Commission was positive from the project's inception. Without distracting the Commission or being forced to work alone, Ms. Lucas was able to assemble a group within the Commission which could be counted on to meet regularly, participate fully in the voter education program and contribute valuable ideas to the program's implementation. By contrast, the relationship between the IFES pollworker trainers and the Commission consisted was limited to direct work with the Referendum Supervisor. The infrequent meetings of the Commission, in addition to the items previously on the Commission's agenda, prevented the training team from meeting with the Commission on a regular basis prior to the training sessions. Cooperation increased near the end of May, as the full Commission reviewed, edited and ultimately approved the IFES Presiding Officers' Manual. Despite the infrequent schedule of the Commission's meetings, those recommendations made by the IFES team and accepted by the Referendum Commission contributed to the transparency and fairness of the process.

To monitor compliance with referendum regulations and international standards for a free and fair referendum.

The IFES monitors, pollworker trainers and voter education advisor were all familiar with the February regulations as well as their amendments. They were cognizant, based on previous experience, of international standards regarding fair election practice. The IFES team made every effort to correct errors in procedure, whether committed in ignorance or by design, and reported all of these errors to the UN Electoral Assistance Secretariat. Dr. Ludwig regularly brought the concerns of the team to the attention of the Referendum Commission, the PCD and PAC. For example, the relaxing of rules regarding the pressure groups' rallies was directly related to the EAS' continued reporting of intimidation and harassment of multiparty supporters by police.

To inform USAID/Malawi of appropriate approaches/activities to support in future democracy/governance efforts.

At the time of this writing, political changes are occurring in Malawi at the fastest rate since independence. On June 23, PAC and the PCD agreed to the creation of two councils to oversee the activities of the Malawian government until the elections. The National Executive Council will be charged with the administration of coming elections, with the ability to make substantive recommendations to Parliament regarding existing election law and practice. IFES offers the following recommendations in addition to those offered elsewhere in this report to the Government of Malawi as it prepares for its first and future elections.

- The National Executive Council should review the current laws governing media, both print and broadcast, with a commitment to objectivity and equal access by all citizens on election matters. The existing law provides little opportunity for changing the partisan nature and perception of MBC or the government newspapers. One way to improve MBC's image would be to continue the panel discussions developed for the referendum, continuing to invite and answer questions from listeners, in a regularly scheduled program.
- The PAC and PCD (or individual parties) should develop, as soon as possible, a code of conduct for political parties that reflects consensus between existing parties and pressure groups as well as setting standards for future parties. The election commission, should be obligated to approve and enforce any such code.
- The National Executive Council should ensure that the next election commission, whether provisional or temporary, performs its duties in a transparent manner as soon as it is convened. The independence of the commission must be stated in law and demonstrable in practice. All procedures and major decisions from setting the dates for election and registration to releasing of correctly attributed partial results throughout election night should be made by the Commission in an atmosphere of public service and cooperation.
- The election commission should develop a task-oriented election calendar that provides all parties with sufficient campaign and organizational time, that respects the logistical problems noted in the referendum exercise, and that takes into account the rainy season and times of highest migration for employment/seasonal purposes.
- A new registration period and drive should begin as soon as materials become available. Although the date for elections is not yet fixed, this process should begin and be completed

well before the elections, reducing the number of tasks that must be completed at that time. Some related tasks include redrawing district boundaries, identifying appropriate quantities and types of election equipment, and designating sufficient polling stations. The Referendum Commission indicated a commitment to develop a new register by collecting all previous certificates. There are several methods for creating and maintaining a voter registry, involving varying degrees of voter and registration office involvement. Some countries, such as Canada, conduct a house-to-house enumeration for each national election. The United Kingdom, in addition to most states in the U.S., use a permanent register that is periodically purged of deceased, transferred, lapsed (through failure to participate in a minimum number of election exercises) or otherwise ineligible voters. Neither method is foolproof. The will of the electorate to keep their registration status current is the ultimate determinant of how the election commission develops a system whose upkeep depends mostly on the voter or on the commission.

Other factors to be considered in the registration process are whether the certificate is a permanent, renewable document or a disposable document issued prior to each election, how the voters' information can be stored in a database for crosschecking and easier purging, or how such a database can be used to prevent voters from registering and voting more than once.

The recommendations listed above answer many of the immediate needs of the Malawian population as it prepares for elections in December or later. While many of these recommendations could be implemented with the assistance of the donor community, the initiative for such sweeping changes in the operations of the Malawian governing bodies must come from Malawi. Below, IFES presents needs that its team members identified based on its two-month project as well as experience acquired around the world.

Voter and Civic Education. In addition to the short-term goal of providing sufficient information to the electorate to enable it to make an educated decision in the voting booth, voter and civic education programs provide an opportunity for all citizens to learn about the value of participation in a democratic society. Such programs may be targeted to specific groups (elementary and secondary school students, women's associations) to maximize a limited opportunity to reach the whole population at the same time. The election commission should be supported, in the spirit of transparency, in its efforts to use the methods at its disposal, such as MBC programming or government printing facilities to publicize the election process as it continues. This support may take

the form of advice to the commission's publicity secretary, or financing the publication of voter education information.

Training of the Election Commission and Staff. The number of changes to be made in election procedures, rules and regulations, in addition to the regulations governing political party activity will pose a challenge even for experienced election officials. A specialist in election administration could work directly with the election commission to organize the registration process, to set priorities among the pre-and post-election tasks, to set in place a series of mechanisms for efficient organization of future elections, to identify training and staffing needs, and to make recommendations for improvements in procedure based on the experience of the referendum.

Rule of Law. The authority of the Malawian government, as stated in Chapter III, has been characterized by the administration of rules which deny basic personal freedoms and which elevate the power of law enforcement officials relative to ordinary citizens. A democratic form of government, constitution and laws ensure that each citizen is guaranteed equal protection under the law; it furthermore states that no government agent or official is exempt from following those laws by virtue of the office he or she holds. A constitutional law specialist should work with the National Consultative Council to develop recommendations to abrogate those laws which restrict personal freedoms or which provide heretofore freely exercised opportunities for abuse by members of the government. While many aspects of the Malawian Constitution will be reviewed following elections, this step is integral to creating the kind of environment in which a fair campaign and election process may take place.

Accountability in Election and Campaign Practice. Similar in concept to the recommendation listed above, the election commission should be able to draft rules regarding political participation that it will be legally qualified to enforce, which no political party or person would be able to overrule. The election administration specialist could offer assistance in this area, or a separate specialist could work with the commission to develop these rules and procedures for enforcement.

Increase Women's Participation and Representation. Women in Malawian society have occupied two fairly strict roles where political affiliation is concerned: they are either mbumbas or token members of Parliament; or they remain as far from political involvement as they can to avoid being mistakenly identified with the former. USAID/Malawi is currently conducting several programs which focus on the education of girls and women, especially post-elementary education. A specialist in women's political development can work with women at all educational levels as well as function as a liaison to the election commission, demonstrating ways in which women may contribute positively to the Malawian democratic transition.

The evolution of the political process in Malawi has taken a figurative quantum leap during the past eighteen months. Conflict between members of the current government (who would state that they are concerned with ignoring elemental legislative changes in the rush for reform) and its opposition (who would argue that the deliberations of the government represent its last, illegitimate effort to maintain power) on all of the issues described in this report is inevitable. The international community would do well to recognize the validity in both arguments, and to support those projects which contribute to the institutionalization of reform at an acceptable pace. With each passing day, it is less likely that that pace will ever again be backward.

APPENDIX A

1993 REGISTRATION FIGURES

DISTRICT	REGISTRATION CENTRES			POPULATION 21 AND OVER	REGISTERED 1992	% OF ELIGIBLE	REGISTERED 1993	TOTAL VOTERS 1993	% INCREASE OVER 1992
	TOTAL	OLD	NEW						
NORTH	53	42	11	52200	26945	0.52	*	26945	1.0
CHITIPA	62	45	17	70300	38000	0.54	69319	107319	2.8
KARONGA	52	33	19	46500	26016	0.56	*	26016	1.0
RUMPHI	53	43	10	65700	26356	0.40	*	26356	1.0
NKHATA BAY	61	40	21	--	43897	--	110980	154877	3.5
(M.ZUZU)	142	93	49	215200	117470	0.55	155777	273247	2.3
SUB TOTAL	423	296	127	449200	278584	0.62	336076	614760	2.2
CENTERS VISITED: 63 (PERCENT: 15%)									
CENTRAL	104	78	26	182600	161222	0.85	163551	321773	2.0
KASUNGU	86	60	26	151500	113015	0.75	102113	215128	1.9
DOWA	59	54	5	57400	44423	0.77	34072	78495	1.7
NTCHISI	80	52	28	86800	70010	0.81	*	70010	1.0
NKHOTAKOTA	46	43	3	97500	69258	0.71	*	69258	1.0
SALIMA	71	50	21	128400	104853	0.82	95181	200334	1.9
M'CHINJI	90	61	29	198000	127923	0.65	142476	270399	2.1
DEDZA	198	155	42	477100	320321	0.67	*	320321	1.0
LILONGWE	103	56	47	181800	89429	0.49	100017	189446	2.1
SUB TOTAL	837	610	227	1561100	1100454	0.70	634410	1734864	1.5
CENTERS VISITED: 111 (PERCENT: 13%)									
SOUTH	108	58	50	275900	118422	0.43	*	118422	1.0
M'ANGOCHI	107	70	37	265500	121033	0.46	*	121033	1.0
M'ACHINGA	68	47	41	215500	96800	0.45	190353	287153	2.9
ZOMBA	94	43	51	305600	61040	0.20	*	61040	1.0
BLANTYRE	59	34	25	61900	31712	0.51	40726	72438	2.7
M'WANZA	70	53	17	163100	76644	0.47	*	76644	1.0
CHIKWAWA	76	44	34	205100	65055	0.32	*	65055	1.0
THYOLO	54	25	29	98100	85484	0.90	78326	166910	1.8
CHIRADZULU	91	75	16	305100	156979	0.51	*	156979	1.0
M'ULANJE	57	40	17	113800	56873	0.50	*	56873	1.0
NSANJE	806	489	317	2002600	672942	0.43	309405	1192347	1.3
SUB TOTAL	2066	1395	671	4020600	2252080	0.56	1279891	3531971	1.5
CENTERS VISITED: 91 (PERCENT: 11%)									
TOTAL	2066	1395	671	4020600	2252080	0.56	1279891	3531971	1.5

APPENDIX B
FEBRUARY 5 REFERENDUM REGULATIONS

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The Malawi Gazette Supplement, dated 5th February 1993, containing
Regulations, Rules, etc. (No. 4A)

GOVERNMENT NOTICE No. 5

CONSTITUTION OF MALAWI
CONSTITUTION (REFERENDUM ON MALAWI'S POLITICAL SYSTEM)
REGULATIONS, 1993

ARRANGEMENT OF REGULATIONS

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FIRST SCHEDULE

The Referendum Question

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THIRD SCHEDULE

Oath of Office of a Member of the Commission

WHEREAS in exercise of the powers conferred by subsection (1) of section 8A of the Constitution, I, NGWAZI DR. H. KAMUZU BANDA, Life President of Malawi, have called a referendum by which eligible citizens of Malawi shall be asked to cast their votes to determine the question set out in the First Schedule to these Regulations on the political system of Malawi, hereinafter referred to as the "referendum question":

NOW THEREFORE, in exercise of the powers conferred by subsection (2) of section 8A of the Constitution, I make the following Regulations—

PART I—PRELIMINARY

1. These Regulations may be cited as the Constitution (Referendum Question on Malawi's Political System) Regulations, 1993, and shall apply in relation to the conduct of the referendum to determine the referendum question.

2. In these Regulations, unless the context otherwise requires—
 "Commission" means the Referendum Commission established under regulation 3;

"irregularity", in relation to the referendum, means non-compliance with the requirements of these Regulations;

"national result of the referendum" means the final result of the referendum determined in accordance with regulation 74;

Interpretation

"polling station" means a place established as such under regulation 44;

"polling station officer" means an officer appointed as such under regulation 45;

"polling day" includes any other day to which voting is adjourned;

"presiding officer" means a polling station officer at a polling station who is designated by the Commission under regulation 45 as the presiding officer of that polling station;

"registration" means the registration of persons to vote or as voters in the referendum;

"referendum" means the entire process regulated by these Regulations;

"Referendum Supervisor" means the officer of the Commission designated as such under regulation 5;

"special interest group" means a group specified in the Second Schedule;

"voter" means a person registered to vote in the referendum;

"voters register" means the register of voters established under regulation 21;

"voters registration certificate" means a certificate issued to a voter under regulation 24.

PART II—THE REFERENDUM COMMISSION

Establishment of the Commission

3.—(1) For the purposes of the referendum, there is hereby established a body to be known as the Referendum Commission (in these Regulations otherwise referred to as the "Commission") which shall consist of such number of persons as the President shall deem appropriate to appoint; and the President shall cause notice of the appointment of the Commission to be published in the *Gazette*.

(2) The Commission shall have power to determine its own procedures.

(3) The Commission may appoint such number of its own committees as it considers necessary for the performance of its functions and may assign to any of such committees any of its functions.

Functions of the Commission

4. The Commission shall exercise general direction and supervision over the conduct of the referendum and, without prejudice to the generality of such power, it shall have the following functions:—

- (a) to organize and direct the registration of voters;
- (b) to devise and establish voters registers and ballot papers;
- (c) to print, distribute and control ballot papers;
- (d) to approve ballot boxes;
- (e) to establish and operate polling stations;
- (f) to take measures for ensuring that the entire referendum process is conducted under conditions of complete freedom and fairness;
- (g) to establish security conditions necessary for the conduct of the referendum in accordance with these Regulations;
- (h) to promote through the media and other appropriate and effective means the civic education of the citizens on the purpose of the referendum;

Second Schedule

(i) to ensure that there is no hindrance to free and open discussion for or against either side of the referendum question;

(j) to ensure compliance with these Regulations and to adopt measures necessary to guarantee that the referendum is free and fair.

5.—(1) The Commission may appoint, on such terms and conditions of service as it shall determine, such number of officers and servants as it considers are required for the proper conduct of the referendum. Referendum officers

(2) There may be seconded to the service of the Commission such number of public officers as the Commission may request by writing to the Secretary to the President and Cabinet and a public officer so seconded shall perform his duties in relation to the referendum solely under the directions of the Commission.

(3) The Commission shall designate one of the officers appointed or seconded to its service as the Referendum Supervisor who shall be the chief executive officer of the Commission and shall supervise the affairs thereof subject only to the general or special directions of the Commission.

6. A member of the Commission shall hold office from the date of his appointment to a date occurring thirty days after the publication in the *Gazette* of the national result of the referendum but may sooner resign his office by notice in writing to the President. Term of office of members of the Commission

7.—(1) In discharging the functions of the Commission, the Commission and every individual member thereof shall act, and strive to be seen to act, independently of— Independence of the Commission

- (a) any public officer;
- (b) any organ of the Government;
- (c) any special interest group; or
- (d) any person whatsoever or organization whatsoever,

but for the purpose only of accountability, the Commission and every individual member thereof shall be answerable, and shall report, directly to the President at the end of the entire referendum process on the overall fulfilment of the functions of the Commission.

(2) Upon assuming his office or immediately thereafter, every member of the Commission shall take oath of office before the President in the form set out in the Third Schedule. Third Schedule

8. Every member of the Commission, whether appointed by virtue of office or in personal or other capacity, shall receive such allowance as the President shall determine. Allowances

9. The Attorney General shall provide legal representation to the Commission in any court proceedings concerning appeals against its decisions on complaints and other issues about the referendum process and shall also be competent to provide general legal advice to the Commission. Legal representation

10. The Commission shall publish a notice in the *Gazette* specifying— Principal office, etc., of the Commission

- (a) the location of its principal office; and
- (b) its address or addresses, telephone numbers and other means of communication or contact with the Commission.

Publicity	11. The Commission shall establish its own publicity machinery and shall be free to communicate openly and equally with each special interest group or any person or organization.
Funds	12. The funds of the Commission shall consist of such sums as Parliament shall appropriate for the purpose and such other sums as may otherwise be received by the Commission.
Duty to co-operate	13.—(1) It shall be the duty of every relevant or competent public officer and public or private entity to co-operate with the Commission in its activities and to contribute towards the success of the referendum process and not to do any thing that might hinder such process. (2) It shall be the special duty of— (a) all District Commissioners, in their respective districts, to give the Commission and its officers the support and collaboration deemed by the Commission or its officers to be necessary for the execution of the activities connected with the conduct of the referendum; (b) officers-in-charge of police, in their respective areas of operation, to take all necessary measures for the maintenance of law and order and stability necessary for the conduct of the referendum.
PART III—REGISTRATION OF VOTERS	
Eligibility	14. Every citizen of Malawi residing in Malawi and who, on or before the polling day, shall have attained the age of twenty-one years shall be eligible to register as a voter in the referendum.
Right and duty to register	15. It shall be the right and the civic duty of every eligible citizen to present himself for registration as a voter in the referendum and further he shall have the right to verify with the Commission or its officers that he has been registered and to request that any error or omission with respect to his registration be corrected.
Duty to promote registration	16. The Commission shall, in accordance with these Regulations, create the necessary conditions and take all necessary actions for promoting awareness among the citizens of Malawi of the purpose of the referendum and of the need for their full participation in it.
Single registration	17. An eligible citizen shall be registered only once.
Places of registration	18. A person shall be registered as a voter in the area where he ordinarily resides.
Temporary registration officers	19.—(1) The Commission may employ temporary staff as registration officers who shall register voters in the referendum throughout Malawi. (2) No person shall be employed as a registration officer with respect to any local area of Malawi, unless— (a) he is a citizen of Malawi and has attained the age of twenty-one years; (b) he has attained the minimum educational qualification of Junior Certificate of Education or its equivalent; and (c) he has knowledge of the local language of the area. (3) Every registration officer shall, before commencing his duties, receive vocational training in the identification and registration of voters

and generally in the requirements of these Regulations with respect to the registration of voters.

(4) In the performance of their duties, registration officers shall be under the supervision of the Referendum Supervisor and such of the other officers of the Commission as he shall designate for the purpose.

20. The Commission shall establish centres throughout the Republic as places where voters are to be registered and for this purpose the Commission shall endeavour to adopt the current centres established for the registration of voters in presidential and parliamentary elections under the Registration of Voters Act in addition to establishing new centres. Registration centres
Cap. 2:03

21. The Commission shall establish and acquire registration books or sheets for the registration of voters (in these Regulations referred to as "voters registers") and for that purpose may adopt and, as necessary, update the existing voters lists used for the registration of voters for presidential and parliamentary elections under the Registration of Voters Act. Voters registers
Cap. 2:03

22. An eligible person wishing to be registered as a voter in the referendum shall in person present to a registration officer sufficient and cogent proof of his eligibility and may do so by producing—

(a) a passport, driver's licence, whether valid or not, tax certificate, marriage certificate, employment identity card or employment discharge certificate, birth certificate or other similarly authentic document of identity;

(b) written, verbal or visual testimony of another person, including personal recognition by the registration officer.

23. A person registered as a voter for presidential and parliamentary elections under the Registration of Voters Act and holding the voters registration certificate issued to him under that Act shall, without further procedure, be accepted as validly registered to vote in the referendum. Automatic eligibility of registered voters in elections
Cap. 2:03

24.—(1) Upon a registration officer being satisfied with proof of eligibility of a person to vote, he shall—

(a) issue to that person a voters registration certificate in the form of that issued to voters in parliamentary elections under the Registration of Voters Act;

(b) register that person in the voters register by entering the particulars of that person as prescribed therein.

(2) If a voters registration certificate issued to voter is lost, destroyed, defaced, torn or otherwise damaged, the voter shall notify the registration officer or other officer duly authorized in that behalf in writing giving proof thereof, and upon such officer being satisfied with such proof he shall issue to the voter a duplicate copy of that voter's original voters registration certificate with the words "DUPLICATE" clearly marked or printed on such copy.

25.—(1) In updating a voters register the registration officer shall do so by— Updating of voters registers

(a) adding the names and other prescribed particulars of the voters resulting from new registration;

(b) drawing a line, without affecting legibility, over the particulars of the persons who have lost eligibility to vote in the referendum and indicating in the margin the reasons therefor.

(2) The registration officer making new entries in a voters register or deleting entries therefrom shall initial every such new entry or deletion.

(3) Upon the registration officer being satisfied with proof of loss of eligibility of a registered voter, he shall immediately update the voters register in accordance with the procedure under this regulation.

Initiating of pages in voters registers

26. In the case of registration in a new voters register, the registration officer shall initial both sides of every page at a point where registration on the page ends.

Monitoring of registration by special interest groups

27.—(1) Every special interest group shall have the right to monitor the registration of voters and shall do so through its designated representatives assigned to a specified registration centre and whose names shall be notified in writing to the Commission, and in the absence of such notification by any special interest group it shall be presumed that such group does not desire to monitor the registration of voters at such registration centre.

(2) The Commission shall issue to every person designated as a representative under subregulation (1) a document of identity which the Commission shall devise for the purpose.

(3) There may be assigned to one registration centre more than one representative of a special interest group.

Rights and duties of representatives of special interest groups and others

28.—(1) Representatives of special interest groups shall have the following rights—

(a) to be treated with due respect and consideration by all persons administering the referendum process and by the representatives of other special interest groups;

(b) to request and obtain information on activities relating to the registration of voters;

(c) to submit to the Commission, in writing, complaints and appeals about any irregularities in the registration of voters;

(2) It shall be incumbent upon the representatives of special interest groups in exercising their rights under subregulation (1)—

(a) to monitor the registration activities conscientiously and objectively;

(b) to co-operate in order to ensure that the registration activities proceed normally by avoiding unjustified interference in and obstacles to the work of registration officers;

(c) to refrain from submitting complaints or appeals in bad faith or with the purpose of paralysing the registration process.

(3) In addition to special interest groups and their representatives and international observers, any person eligible to be registered as a voter and any registered voter may, in writing, submit to the Commission complaints and appeals about any irregularity in the registration of voters.

(4) The Commission shall endeavour to determine every complaint or appeal relating to registration of voters before the polling day.

Period for registration of voters

29.—(1) Subject to subregulation (2), the period for the registration of voters shall be determined by the Commission and notified in the *Gazette*, being a period of not less than fourteen days expiring not less than seven days before the first polling day.

(2) The Commission may permit registration after the expiry of the period notified in the *Gazette* but before the first polling day of an eligible person who—

(a) has become eligible for registration since the expiry of the period;

(b) was temporarily unable to register on account of the duties of his office as confirmed in writing to the Commission by his superior or as otherwise sufficiently proved to the Commission;

(c) was unable to register for reasons of ill health as confirmed by the medical practitioner or medical officer who attended him.

30. At the close of registration, the registration officer shall sign off the voters register assigned to him and shall forward it for custody to the Referendum Supervisor or to such other officer as is designated by the Commission for the purpose and shall submit to such officer a summary of the total number of voters registered at the registration centre assigned to him.

Closing of registration

31. A voters register shall be open to inspection, for purposes of verifying the entries therein, by persons eligible to vote, representatives of special interest groups and international observers.

Voters register open to inspection

PART IV—CAMPAIGNING

32.—(1) All special interest groups shall have the right to campaign for or against either side of the referendum question and each group may conduct its campaign severally or jointly with any other.

Campaigning by special interest groups

(2) Campaigning by or in the name of any special interest group shall not be conducted in any public place unless the group has obtained the prior written permission of the relevant officer in charge of police who, upon granting such permission, shall notify the relevant District Commissioner.

(3) Permission of the officer-in-charge of police under subregulation (2) may be granted for one or several campaign meetings, and where there are competing requests for permission, he shall grant the permission in the order he has received the requests.

33. Campaigning in public by every special interest group under this Part shall close two days before the polling day.

Period of campaigning

34. Every public officer and public entity or authority shall give and be seen to give equal treatment to all special interest groups to enable each of the groups conduct its campaign freely.

Equal treatment of special interest groups

35. Every special interest group and every representative, member or supporter thereof shall enjoy complete and unhindered freedom of expression and information in the exercise of the right to campaign under these Regulations and no person shall, during or after the referendum period, be subjected to any criminal prosecution for any statement he made or any opinion he held or any campaign material he produced or possessed while campaigning in the referendum.

Freedom of expression and information

36. Subject only to regulation 32 (2), every special interest group and any representative, member or supporter thereof shall, either alone or in common with others, enjoy complete and unhindered freedom of peaceful assembly in campaigning in the referendum.

Freedom of assembly

Ethical norms during campaigning

37.—(1) Notwithstanding guarantees of freedom of expression, information and assembly under regulations 35 and 36, no person shall, in campaigning in the referendum, use language which is inflammatory, defamatory or insulting or which constitutes incitement to public disorder, insurrection, hate, violence or war.

(2) The Commission may prescribe a code of conduct to be complied with by every special interest group in conducting its campaign in the referendum.

Prohibition against disclosure of results of opinion polls

38. During the period of campaigning and until after the declaration of the results of the referendum, no person shall publish in any form the results of an opinion poll conducted amongst voters on the likely result of the referendum.

Prohibited places for campaigning

39. No person shall hold a campaign meeting under these Regulations in or within the premises of—

- (a) military units or police stations;
- (b) public institutions and workplaces during normal working hours;
- (c) educational institutions during periods of classes.

News broadcasts and reports

40.—(1) Every special interest group shall have the right to have the substance of its campaign propaganda reported on radio news broadcasts of the Malawi Broadcasting Corporation and in any newspaper in circulation in Malawi:

Provided that in the case of radio broadcasts—

- (a) no person shall be reported or be heard by his own voice;
- (b) the content of the news shall be professionally determined by the Malawi Broadcasting Corporation;
- (c) the Malawi Broadcasting Corporation shall maintain neutrality in the manner of reporting the news of the campaign propaganda of special interest groups and in its commentaries;
- (d) the Commission shall monitor such news broadcasts and shall ensure equal news coverage of the campaigning by all special interest groups;
- (e) no special interest group shall be entitled to make commercial advertising for its campaign.

(2) For the purposes of this regulation, "campaign propaganda" means any activity, statement or any other form of expression aiming directly or indirectly at promoting votes for or against either side of the referendum question.

Publication of books, pamphlets, etc.

41. During the campaign period any special interest group may, either alone or in common with others, publish campaign materials in the form of books, pamphlets, leaflets, magazines or newspapers and shall, in such publication specify particulars sufficient to identify the group or groups as the case may be.

Campaign posters

42. The District Commissioner shall, in consultation with the Commission, designate places or spaces in parts of his district on which may be posted or affixed campaign materials of special interest groups and every such group shall be entitled to equal access to such place or space, and in the absence of such designation every open or public place or space shall be deemed to have been so designated.

43. Every special interest group may, for the purpose of financing its campaign, appeal for and receive voluntary contributions from any individual or any non governmental organization or other private organization in or outside Malawi.

PART V—POLLING STATIONS

44.—(1) The Commission shall establish polling stations throughout the Republic and there shall be one polling station for every centre for the registration of voters.

(2) All polling stations shall be established and located in public buildings, including schools, community or social halls, administrative offices of the Government or local authorities, but not—

- (a) at a military unit or police station;
- (b) in a residential building;
- (c) in a building occupied by a special interest group;
- (d) in premises where alcoholic drinks are ordinarily sold or consumed;
- (e) places of worship or dedicated to worship;
- (f) hospitals or other health centres.

(3) The Commission shall, before the polling day, publish in the *Gazette* and in more than one issue of a newspaper in general circulation in Malawi and by radio announcements and by any other appropriate means the names of all places throughout Malawi at which polling stations have been established.

45.—(1) The Commission shall appoint polling station officers in its service whose duty shall be to administer the proceedings at polling stations, including more particularly the casting of votes.

(2) The Commission shall post to every polling station a sufficient number of polling station officers one whom the Commission shall designate as the presiding officer for that polling station and at least one of whom shall be a person able to speak the local language of the area of the polling station.

(3) Polling station officers may be appointed from amongst persons who served as registration officers and every person appointed as a polling station officer shall receive vocational training in his duties.

46. Every polling station officer shall, on the polling day, report for work at the polling station not later than thirty minutes before the opening time for the casting of votes at that polling station and at any given time of the polling day there shall be a majority of polling station officers attending to their business at the polling station.

47.—(1) The Commission shall ensure, in due time, that polling station officers at every polling station are supplied with all necessary items, namely—

- (a) an authenticated copy of the voters register of the voters registered at the centre served by the polling station;
- (b) the ballot papers;
- (c) the ballot boxes;
- (d) the seals, sealing wax and envelopes for the votes; and
- (e) indelible ink.

Campaign financing

Polling stations

Polling station officers

Working hours for polling station officers

Work items for polling station officers

Security of work items at polling stations

48. The presiding officers at polling stations and, in general, the Commission shall be responsible for creating and guaranteeing all necessary and indispensable conditions for the custody, conservation, security and inviolability of the items specified in regulation 47, including more particularly the ballot papers and ballot boxes.

Monitoring of voting by special interest groups

49.—(1) Every special interest group shall have the right to monitor the voting process at polling stations and shall do so through one or more of its designated representatives who shall be notified to the Commission in writing specifying their names and the polling stations to which they are to be assigned and in the absence of such notification by any group it shall be presumed that the group does not desire to monitor the voting process at that polling station.

(2) The Commission shall issue to every person designated as a representative of a special interest group under subregulation (1) a document of identity which the Commission shall devise for the purpose.

Rights and duties of representatives of special interest groups

50. Representatives of special interest groups shall have—

(a) the following rights—

(i) to be present at the polling stations and to occupy the nearest seats or positions to the polling station officers so as to be able to monitor all the operations relating to the casting of votes;

(ii) to verify and inspect, before the beginning of the casting of votes, the ballot boxes and the polling booths;

(iii) to request and obtain from the polling station officers any information which they consider necessary relating to the voting process;

(iv) to be consulted about any question raised on the operation of the polling station;

(v) to consult the voters registers at any time;

(b) the following duties—

(i) to act conscientiously and objectively in the exercise of their rights under this regulation;

(ii) to co-operate with polling station officers;

(iii) to refrain from interfering unjustifiably and in bad faith with the duties of the polling station officers.

PART VI—THE VOTE AND THE VOTING PROCESS

Characteristic of the vote

51.—(1) Voters shall be required to cast their votes to determine the referendum question which shall be put to them in such manner as shall be determined by the Commission.

(2) The right of a person to vote in the referendum shall be exercised individually by him and he shall be required to be physically present.

(3) Voting shall be by secret ballot.

(4) A voter may cast his vote only once.

Place where to cast the vote

52.—(1) Subject to subregulation (2), a person shall be allowed to exercise his right to vote at a polling station located at the registration centre where he is registered.

(2) If it is not possible for a person to vote at a polling station located at the registration centre where he is registered, the registration officer of that centre or other duly authorized officer may, at the request of such person, grant him written authorization in the form approved for the purpose by the Commission to vote at a polling station located in the place where he will be present on the polling day and in that case the polling station officers at such other polling station shall record in the manner prescribed by the Commission his name, the number of his voters registration certificate and the registration centre where he is registered:

Provided that the registration officer or other authorized officer may, on reasonable grounds, refuse to grant the request.

53.—(1) The Commission shall arrange for the printing of ballot papers in sufficient quantities according to the following requirements, that is to say, that each ballot paper—

(a) shall be in a bound batch or book of ballot papers with serial numbers;

(b) shall be in two parts, both bearing the same serial number separated by a perforated line, with the outer part being larger than the inner part and bearing distinct marks or features as safeguards against counterfeit and other fraudulent reproduction thereof.

(2) The outer part of the ballot paper shall be used by voters for casting their votes in accordance with these Regulations.

54. The Commission shall establish one voting booth or more at each polling station and a voting booth shall be constructed in such a way as to completely screen a voter from observation while he is casting the ballot paper in the ballot box.

55.—(1) The Commission shall procure ballot boxes of suitable material, specification and design for use in the casting of votes by voters.

(2) Subject to satisfying the requirements of these Regulations, on the polling day the presiding officer shall place in each voting booth at that polling station two ballot boxes, separately positioned and distinctly marked with colour or symbol or with both colour and symbol, one for votes in favour of one side of the referendum question and the other for votes in favour of the other side of the referendum question.

(3) The positioning of the two ballot boxes in a voting booth shall be such that when a voter is casting his vote in a ballot box he is completely screened from observation by any other person.

56. Notwithstanding any provision to the contrary in any contract of employment, all persons in paid employment, including those working by shift, shall have the right to be released for the necessary time to exercise their right to vote.

57. On the polling day voting shall begin at 6 o'clock in the morning and close at 6 o'clock in the evening, but before voting begins the presiding officer, together with the other polling station officers and representatives of special interest groups, shall verify that there are no irregularities with any voting booth and the working documents and other work items of the polling station officers and, shall, in particular, exhibit in front of all present each of the two ballot boxes to verify that it is empty.

58. Upon verification in accordance with regulation 57 that there are no irregularities, the first persons to be allowed to vote shall be the

The ballot paper

Voting booths

Ballot boxes

Right of employees to be released for voting

Hours of voting

Order of voting

presiding officer, the other polling station officers, representatives of the special interest groups and all officers responsible for ensuring order and security at the polling station after whom all other persons shall vote according to the order of their arrival at the polling station and, to this end, they shall form a line; but subject thereto, the presiding officer shall exercise general authority for keeping order at the polling station and for regulating the number of persons to be admitted to vote at any time and may, if circumstances so require, use his discretion to allow certain persons to vote inconsistently with the order of priority required by this regulation.

The President may not vote

59. The President may not vote in the referendum.

Continuity of the voting process

60. Subject to regulation 61, voting at every polling station shall continue uninterrupted until closed.

Adjournment in certain cases

61.—(1) Voting at any polling station may be adjourned to another day to be fixed by the Commission if—

(a) the polling station officers are unable to assemble at that polling station in accordance with these Regulations;

(b) there occurs some commotion which causes voting to be interrupted for more than three hours;

(c) in the area where the polling station is located there has occurred some public disaster or a serious disturbance of public order, not being death of any person, which affects the voting.

(2) Where voting has been adjourned to another day under sub-regulation (1) —

(a) the hours of voting on that day shall be the same as for the original day;

(b) the voting process shall be conducted afresh and not as continuing from the original day;

(c) the votes cast on the original day shall be null and void and shall be classified as such in the records of that polling station prepared under regulation 71.

Prohibited presence, etc., at polling stations

62.—(1) No form of propaganda, campaign material or advertisement shall be exhibited inside a polling station or within a radius of one hundred metres outside a polling station.

(2) Unless his presence is otherwise permitted under these Regulations, no person shall be allowed within the premises of a polling station or to remain within the premises of a polling station if—

(a) he is not a registered voter;

(b) he has already voted at that polling station or at any other polling station.

(3) A person who is present at a polling station as an agent of a media organization shall—

(a) identify himself to the polling station officers by presenting his credentials from the organization he represents;

(b) refrain from taking pictures close to a polling booth.

(4) No person shall be present at a polling station in the capacity of a member of the armed forces or the police or as a member of any paramilitary force or a uniformed organization, unless he is employed in the service of the Commission or has been invited by the presiding officer for purposes of keeping order.

(5) The presiding officer shall take all necessary steps to effectively bar or expel from within a radius of one hundred metres of a polling station any person who is evidently drunk and disorderly or is carrying a weapon of any kind or is disturbing the order and the peace at the polling station.

63. For a person to be allowed to vote he must first present to the polling station officers his voters registration certificate and must not yet have exercised his right to vote.

Requirements for exercising the right to vote

64.—(1) To be able to cast a vote at any polling station, a voter shall present himself to the polling station officers and hand to them his voters registration certificate whereupon the polling station officers shall proceed to verify his identity by examining the voters register.

Manner of casting the vote

(2) If the polling station officers are satisfied with the identity of a voter in accordance with subregulation (1), they shall—

(a) mark his voters registration certificate and record his name and registration number;

(b) dip the right index finger of the voter in indelible ink provided for the purpose to the polling station officers after which the presiding officer or other polling station officer authorized in that behalf shall hand to the voter the outer part of a ballot paper perforated from the inner part and direct him to a voting booth.

(3) In a voting booth the voter shall cast the ballot paper into the ballot box corresponding to the side of the referendum question which he favours.

(4) If, inadvertently or for any reason whatsoever, the voter does not use the ballot paper handed to him he shall ask for another from the presiding officer and return the first ballot paper to the presiding officer who shall write on the returned ballot paper a note indicating that it is unused to be dealt with as an unused ballot paper.

65. A voter who is blind or is affected by disease or other physical disability may vote accompanied by a polling station officer or another registered voter of his own choice who shall assist such person in casting his vote and shall act faithfully to the wish expressed by such person and with absolute secrecy regarding the vote cast by such person.

Voting by blind and disabled persons

66.—(1) A vote cast is null and void if—

(a) the ballot paper has been torn into two or more parts; or

(b) has been classified as such pursuant to regulation 61 (2) (c) or 69 (3).

Null and void votes

(2) A null and void vote shall not be regarded as valid and shall not be counted in determining the results of the referendum.

67.—(1) In addition to representatives of special interest groups, any voter present at a polling station may raise doubts and present in

Doubts and complaints

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writing complaints relating to the voting at the polling station and shall have the right to obtain information from the polling station officers and from relevant documents available at the polling station.

(2) No polling station officer shall refuse to receive a complaint presented to him under subregulation (1) and shall initial every such presentation and annex it as part of the official record of the polling station.

(3) Any presentation received by polling station officers under this regulation shall be deliberated upon among, and be resolved by, the polling station officers who may, if necessary in their opinion to enable the voting process to proceed, postpone such deliberation or resolution until the end of the voting process.

Procedure
at close
of the poll

68.—(1) At the close of the poll at any polling station, the presiding officer shall—

(a) proceed by first collecting together all unused ballot papers and batches or books containing stubs of used ballot papers and placing them in a separate envelope or in separate envelopes provided to him by the Commission for the purpose and then sealing the envelope or envelopes and stamping and initialling over the sealed area;

(b) in full view of other polling station officers and, if any be present, representatives of special interest groups, seal, in the manner prescribed by the Commission, the two ballot boxes with the votes therein uncounted and legibly mark on each box the name of the polling station;

(c) dispatch the two boxes and the envelope or envelopes so sealed to the District Commissioner of his district by the quickest and most secure means possible;

(d) cause to be prepared by the polling station officers a record of the entire polling process at his polling station containing—

(i) the full particulars of the polling station officers and representatives of special interest groups;

(ii) the number of unused ballot papers;

(iii) complaints and responses thereto, if any, and the decisions thereon taken by the polling station officers;

(iv) any other occurrence which the polling station officers consider to be important to record;

(e) prepare a summary of the record under paragraph (d).

(2) The record and summary prepared under subregulation (1) (d) and (e) shall be legibly signed by the presiding officer and each of the polling station officers. Representatives of special interest groups shall be entitled to receive a copy of such duly signed summary.

(3) Representatives of special interest groups shall have the right to—

(a) observe the transportation and the handling of the ballot boxes and the envelopes from a polling station to the office of the District Commissioner until they are opened for counting under Part VI and, for that purpose, to be carried in the vehicles or vessels transporting the ballot boxes; and

(b) observe the counting of votes under Part VI.

PART VI—DETERMINATION OF RESULTS

69. Counting of the votes shall be done at the office of the District Commissioner and under his supervision or under the supervision of a duly authorized officer of the Commission and, unless the Commission otherwise directs, shall not commence until ballot boxes from every polling station in the district have been received at the office of the District Commissioner.

Opening of
ballot
boxes and
counting
of votes

(2) To begin the counting of votes, the District Commissioner or a duly authorized officer of the Commission shall open one ballot box at a time in full view of all persons present after verification by all such persons that the box has not been materially tampered or interfered with and shall order the counting of the votes in that box to proceed.

(3) Where it is determined that a ballot box has been materially tampered or interfered with, the votes in that box shall be counted but shall be classified as null and void votes.

(4) Counting of votes shall continue uninterrupted until concluded.

70. The votes counted shall be classified into—

(a) votes for the one-party system of government with the Malawi Congress Party as the sole political party;

(b) votes for the multiparty system of government; and

(c) null and void votes.

Classifica-
tion of
votes
counted

71.—(1) At the close of the counting of the votes, the District Commissioner or a duly authorized officer of the Commission shall prepare a record of the result of the referendum for his district showing—

Record of
the counting
of the votes

(a) with respect to each polling station—

(i) the total number of the persons who voted;

(ii) the total number of votes for or under each classification of votes as specified in regulation 70; and

(iii) the discrepancies, if any, between the votes counted and the number of persons who voted;

(iv) the full particulars of the polling station officers and the representative of the special interest groups who accompanied the ballot boxes from each polling station to the office of the District Commissioner and of the vehicles or vessels used as means of conveyance.

(b) with respect to the entire district—

(i) the total number of votes of persons who voted;

(ii) the total number of votes for or under each classification of votes as specified in regulation 70;

(iii) the discrepancies, if any, between the votes counted and the number of persons who voted;

(iv) the complaints thereto received by him with respect to the transportation and handling of ballot boxes from polling stations and to the counting of the votes and his decisions thereon.

(2) The record prepared under subregulation (1) shall be legibly signed by the District Commissioner or other officer supervising the counting and representatives of special interest groups shall be entitled

to receive a copy of the duly signed record or a duly signed summary thereof.

Announcement of the district result of the referendum

72. At the close of the counting of votes, the District Commissioner or other officer supervising the counting shall announce aloud to all present the result of the referendum in his district as recorded under regulation 71.

Delivery of records, etc., from districts

73. The District Commissioner or a duly authorized officer of the Commission shall deliver to the Referendum Supervisor under conditions of absolute security against loss, tampering or interference—

- (a) the record prepared under regulation 71;
- (b) all the ballot papers collected in separate lots corresponding to the classification under which they were counted;
- (c) all unused ballot papers received from polling stations;
- (d) the records of the polling process received from polling stations;
- (e) all voters registers returned from polling stations.

Determination of the national result of the referendum

74.—(1) The Commission shall determine and publish the national result of the referendum based on the records delivered to it from the districts.

(2) The determination of the national result of the referendum shall begin immediately after the Commission has received records from all districts and shall, subject only to sub-regulation (3), continue uninterrupted until concluded.

(3) If a record from any district or other element necessary for the continuation and conclusion of the determination of the national result of the referendum is missing, the Chairman of the Commission shall take necessary steps to rectify the situation and may, in such case, suspend the determination for a period not exceeding forty-eight hours.

(4) Representatives of special interest groups designated in writing to the Commission shall be entitled to observe the determination of the national result of the referendum.

Analysis of complaints prior to determination of the national result

75. At the beginning of determining the national result of the referendum, the Commission shall take a decision on any matter which has been a subject of a complaint and shall examine the votes which have been classified as null and void and may affirm or correct the determination thereof at the polling stations and at the offices of District Commissioners but without prejudice to the right of appeal conferred under regulation 93.

Records of the national result of the referendum

76. The Commission shall summarize its determination of the national result of the referendum in a written record, indicating—

- (a) the national result of the referendum as determined;
- (b) complaints and responses thereto and the decisions taken on them.

and the Chairman of the Commission shall under his hand submit the summary to the President and send copies thereof to each of the special interest groups.

77. The Commission shall publish in the *Gazette* and by radio broadcast and in at least one issue of a newspaper in general circulation in Malawi the national result of the referendum within eight days from the last polling day and not later than forty-eight hours from the conclusion of the determination thereof and shall, in such publication, specify—

Publication of the national result

- (a) the total number of voters registered for the referendum;
- (b) the total number of voters who voted;
- (c) the total number of null and void votes; and
- (d) the total number of valid votes cast for each side of the referendum question.

PART VIII—INTERNATIONAL OBSERVATION

78. For the purpose of these Regulations, international observation means the verification of the various stages of the referendum process by international organizations, non-governmental organizations, foreign governments and foreign personalities duly recognized for the purpose in accordance with this Part.

Meaning of international observation

79.—(1) International observation shall consist of the following activities—

Scope of international observation

- (a) to verify and monitor the impartiality and the functioning of the Commission and its officers in conformity with these Regulations;
- (b) to verify and monitor the impartiality and legality of the decisions taken by the Commission and its officers in settling referendum disputes;
- (c) to verify and monitor the registration of voters;
- (d) to observe the course of the referendum campaigning;
- (e) to verify and monitor the voting process;
- (f) to verify and monitor the determination of the referendum results; and
- (g) to observe the access to and the use of the media.

(2) Any irregularities noted by international observers shall be reported to the Commission or to the competent officers of the Commission and the Commission or such officers shall examine the activities reported as irregularities and shall, where the irregularities are confirmed, take corrective measures necessary to bring the referendum process into conformity with these Regulations.

80. International observation shall begin with the appointment of the Commission and end with the determination of the national result of the referendum or the settlement thereafter of all referendum disputes.

Beginning and end of international observation

81. A citizen of Malawi, wherever ordinarily resident, shall not qualify to serve as an international observer.

Citizens not to be international observers

82. It shall be the duty of the Commission, every officer thereof and every competent public officer or other competent authority in Malawi to co-operate with international observers in their role and to offer to them the guarantees and other facilities necessary to fulfil their role.

Co-operation by competent authorities

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Invitation to international observers 83. The Commission may send invitations for international observation and may do so on its own initiative or on request by the President or by a special interest group or by any government, organization or person competent under these Regulations to undertake international observations.

Categories of observers 84.—(1) For purposes of recognition under these Regulations, international observers shall be categorized as follows—
 (a) observers from the United Nations Organization and its agencies, the Organization of African Unity and its agencies, the Commonwealth Secretariat and other international organizations;
 (b) observers from non-governmental organizations constituted and operating in any foreign country;
 (c) observers from foreign governments; and
 (d) individual observers.
 (2) A person shall not be recognized as an international observer unless—
 (a) in the case of the first three categories specified in sub-regulation (1), he has been designated by the relevant organization or foreign government in writing to the Commission disclosing his particulars and credentials;
 (b) in the case of the category of individual observers, he is a person of recognized international experience and prestige.

Recognition and identification of international observers 85. Recognition of international observers on arrival in Malawi shall be granted by the Commission which, for that purpose, shall—
 (a) establish adequate procedures for the proper and timely recognition of the observers;
 (b) devise an identity card for each category of international observers and issue to every recognized observer the card corresponding to his category;
 (c) devise a common and easily identifiable badge for all international observers and issue the badge to every recognized international observer.

Compulsory use of identity cards and the common badge 86. Every international observer recognized under these Regulations shall, while exercising his functions, use the identity card and the badge issued to him.

Rights of international observers 87. International observers shall, in Malawi, have the right—
 (a) to obtain a multiple entry visa to enter Malawi for the duration of the referendum period;
 (b) to have unimpeded access to all referendum events and to observe all aspects of the civic education programmes, the registration of voters, the campaigning, the voting, the counting of votes and the settlement of referendum disputes.
 (c) to enjoy freedom of circulation throughout Malawi;
 (d) to seek and obtain information on the organs involved in the referendum process and regarding the process itself;
 (e) to communicate freely with all special interest groups and with any organization or person;

(f) to have access to information transmitted by or to the Commission and its officers;

(g) to have access to complaints and responses thereto about any occurrence or matter relating to the referendum process;

(h) to open offices within Malawi for the performance of their functions;

(i) to communicate any specific concerns they may have to members and officers of the Commission; and

(j) to communicate to the local and international media.

88.—(1) International observers shall have the following obligations—

(a) to exercise their role with impartiality, independence and objectivity;

(b) to respect the Constitution and the laws of Malawi;

(c) not to interfere in, or to impede, the normal course of the referendum process;

(d) to provide to the Commission copies of written information and statements which they have produced; and

(e) to return the identity cards, the badge and any other identification material issued to them by the Commission after the end of their mission as observers.

(2) The Commission may revoke the accreditation of any international observer who persistently violates the obligations laid down in subregulation (1) and thereupon his status as an international observer shall cease.

89. Diplomats accredited to Malawi who are designated and recognized as international observers under these Regulations shall exercise their functions as such international observers without prejudice to their status and positions as such diplomats.

90. International observers may operate separately or jointly with other international observers of the same or a different category.

PART VIII—DETERMINATION OF THE REFERENDUM QUESTION

91.—(1) The referendum question shall be considered to have been determined in favour of that side of the referendum question favoured by more than 50 per cent of the national result of the votes.

(2) If the votes for each side of the referendum question are equal, voting shall be repeated on a new polling day which the Commission shall determine and the process subsequent to voting as provided in these regulations shall also be repeated until a majority of the votes for either side of the referendum question is obtained.

PART IX—COMPLAINTS AND APPEALS

92. Any complaint submitted in writing alleging any irregularity with any aspect of the referendum process at any stage, if not satisfactorily resolved at a lower level of authority, shall be examined and decided by the Commission and where the irregularity is confirmed the Commission shall take necessary action to correct the irregularity and the effects thereof.

Obligations of international observers

Position of diplomats

Separate and joint operation of international observers

Determination of the referendum question

Commission to decide on complaints

15

Appeals
to the High
Court

93.—(1) An appeal shall lie to the High Court against a decision of the Commission confirming or rejecting the existence of an irregularity and such appeal shall be made by way of a petition, supported by affidavits of evidence, which shall clearly specify the declaration the High Court is being requested to make by order.

(2) On hearing a petition under subregulation (1), the High Court shall make such order as it thinks fit.

Parties not
liable to pay
costs

94. No party to proceedings before the High Court under regulation 93 shall be condemned to pay costs.

PART X—OFFENCES AND PENALTY

Offences

95. A person who—

(a) in relation to registration of voters—

- (i) obtains his registration by giving false information;
- (ii) gives false information to obtain his registration or the registration of another person;
- (iii) obtains registration at more than one registration centre;
- (iv) registers another person knowing that that other person is not eligible for registration;
- (v) prevents the registration of another person knowing that that person is eligible for registration;
- (vi) having the authority to do so, does not delete a registration which he knows to be incorrect;
- (vii) falsifies a voters register;
- (viii) with fraudulent intent, modifies or substitutes a voters registration certificate;
- (ix) through violence, threat or fraudulent intent, prevents the registration of another person;
- (x) knowingly obstructs the detection of incorrect registration or verification of voters registers;

(b) in relation to campaigning—

- (i) holds a public meeting without the permission under regulation 32 (2);
- (ii) prevents the holding, or interrupts the proceedings, of a public meeting authorized under regulation 32 (2);
- (iii) denies any special interest group equal treatment with any other special interest group;
- (iv) destroys, defaces, tears or in any manner causes to be totally or partially useless or illegible any campaign material displayed in an authorized place or space or superimposes thereon any other material concealing the first;
- (v) is entrusted, by virtue of his office or functions, with displaying or depositing in an authorized place or space any campaign material, fails to display or deposit such campaign material or misplaces, steals or destroys such material;
- (vi) publishes the results of an opinion poll on the likely outcome of the referendum;
- (vii) contravenes regulation 37;
- (viii) because another person attended or did not attend any campaign meeting, directly or indirectly, dismisses or threatens

to dismiss that other person from employment or other gainful occupation or prevents or threatens to prevent that other person from obtaining employment or other gainful occupation or from continuing in gainful occupation or applies or threatens to apply any sanction whatsoever to that other person;

(c) in relation to voting—

(i) not being otherwise authorized to be present or not being a registered voter knowingly presents himself at a polling station;

(ii) not being eligible to vote, casts a vote at any polling station;

(iii) fraudulently uses the identity of another person in order to exercise the right to vote;

(iv) consciously allows that the right to vote be exercised by a person who does not have that right;

(v) votes more than once;

(vi) accompanying a blind or a disabled person to vote, discloses the vote expressed by that person;

(vii) within a radius of one hundred metres of a polling station, reveals his vote or procures another person by force or deceit to reveal that other person's vote;

(viii) uses or threatens violence or uses false information or other fraudulent means to coerce or induce another person to vote for a particular side of the referendum question or to abstain from voting;

(ix) being a public officer, uses his office to coerce or induce another person to vote for a particular side of the referendum question or to abstain from voting;

(x) directly or indirectly, dismisses or threatens to dismiss another person from employment or other gainful occupation or prevents or threatens to prevent another person from obtaining employment or other gainful occupation or from continuing in gainful occupation or applies or threatens to apply any sanction whatsoever to another person in order to induce that other person to vote for or not to vote for, or because that other person voted for or did not vote for, a particular side of the referendum question or because that other person abstained from voting;

(xi) being a presiding officer of a polling station, fails to display a ballot box in accordance with the requirements of these Regulations;

(xii) illicitly introduces ballot papers in a ballot box before, during or after the voting;

(xiii) fraudulently takes possession or conceals a ballot box with uncounted ballot papers or removes an uncounted ballot paper from a ballot box;

(xiv) being a polling station officer, purposely neglects his duty with a view to occasioning an irregularity;

(xv) being a polling station officer, unjustifiably refuses to receive a complaint or a response to a complaint about the proceedings at his polling station or to examine and seek to resolve it;

(xvi) disturbs the regular functioning of a polling station;

(xvii) refuses to leave a polling station after being asked to do so by a polling station officer;

(xviii) being an officer-in-charge of police requested to assign police officers to keep order at a polling station, fails without justification to do so within a reasonable time;

(xix) being a police officer assigned to keep order at a polling station wilfully neglects his duties;

(d) in any manner, fraudulently spoils, substitutes, conceals, destroys, amends or falsifies any document relating to the referendum process;

(e) in bad faith, submits a complaint or response to a complaint or challenges or questions the decisions thereon by a competent person or body;

(f) without justification, neglects to fulfil obligations imposed on him by or under these Regulations,

shall be guilty of an offence.

General penalty

96.—(1) A person guilty of an offence under these Regulations for which no other penalty has been specified shall be liable to a fine of K1,000 and to imprisonment for six months

(2) In addition to the penalty under subregulation (1), the court may make an order—

(a) where applicable, barring the convicted person from performing the duties of his office in connexion with the referendum;

(b) suspending the right of the convicted person to vote in the referendum; and

(c) having regard to the nature of the activity constituting the offence, giving such directions as the court considers to be warranted in the circumstances.

PART XII—MISCELLANEOUS

Validation of appointments, etc.

97. Any appointment to the Commission made, and any thing done preparatory to the referendum, before the commencement of these Regulations and which is capable of being made or done under these Regulations shall be deemed to have been properly and validly made or done in accordance with these Regulations, but without prejudice to the right of the Commission to vary the thing so done in the exercise of its powers and duties under these Regulations.

Presentation of the referendum documents

98. At the end of its functions, the Commission shall deposit all documents forming the official record of the referendum (including voters registers, ballot papers, records from districts and polling stations and summaries thereof and the record and summary of the national result of the referendum) with the Clerk of Parliament who shall retain and preserve such documents in safe and secure custody without destruction for a period of not less than seven years.

FIRST SCHEDULE

Preamble

REFERENDUM QUESTION

Do you wish that Malawi remains with the one party system of government with the Malawi Congress Party (MCP) as the sole political party or do you wish that Malawi changes to the multiparty system of government?

**SECOND SCHEDULE
SPECIAL INTEREST GROUPS**

reg. 2

1. The Malawi Congress Party (MCP)
2. The Alliance for Democracy (AFORD)
3. The United Democratic Front (UDF)
4. The Public Affairs Committee (PAC)

**THIRD SCHEDULE
OATH OF OFFICE OF MEMBER OF THE COMMISSION**

reg. 7 (2)

I, _____, having been appointed to the office of Member of the Referendum Commission, established under the Constitution (Referendum on Malawi's Political System) Regulations, 1993, do swear that I will well and truly serve the Republic of Malawi in that office. So help me God.

Signed _____

Before me this _____ day of _____, 19_____

OR

President

I, _____, having been appointed to the office of Member of the Referendum Commission, established under the Constitution (Referendum on Malawi's Political System) Regulations, 1993, do solemnly, sincerely and truly declare and affirm that I will well and truly serve the Republic of Malawi in that office.

Signed _____

Before me this _____ day of _____, 19_____

President

Made this 4th day of February, 1993.

(FILE NO. 11/05/0)

H. KAHUZU BANDA
Life President

The Malawi Gazette Supplement, dated 28th May, 1993, containing
Regulations, Rules, etc. (No. 22A)

GOVERNMENT NOTICE No. 57

CONSTITUTION OF MALAWI
CONSTITUTION (REFERENDUM ON MALAWI'S POLITICAL SYSTEM)
(AMENDMENT) (NO. 2) REGULATIONS, 1993

IN EXERCISE of the powers conferred by section 8A of the Constitution, I, NGWAZI DR. H. KAMUZU BANDA, Life President of Malawi, hereby make the following Regulations—

1. These Regulations may be cited as the Constitution (Referendum on Malawi's Political System) (Amendment) (No. 2) Regulations, 1993. Citation
2. The Constitution (Referendum on Malawi's Political System) Regulations (hereinafter referred to as the "principal Regulations") are amended, in regulation 29— Amendment
of reg. 29
of G.N. 5.
of 1993
 - (a) in subregulation (1), by deleting the words "(1) Subject to subregulation (2), the" and substituting therefor the word "The";
 - (b) by deleting subregulation (2).
3. Regulation 41 of the principal Regulations is deleted and replaced by the following— Replacement
of reg. 41
of the
principal
Regulations

"Publication of books, pamphlets, etc. Cap. 21:01

41. Subject to the provisions of any rules made under section 24A of the Censorship and Control of Entertainments Act, during the campaign period any special interest group may, either alone or in common with others, publish campaign materials in the form of books, booklets, pamphlets, leaflets, magazines or newspapers and shall, in any such publication specify particulars sufficient to identify the group or groups as the case may be:

Provided that nothing in this regulation shall be construed as authorizing the publication, distribution or circulation of any publication the importation or publication of which is prohibited under section 46 of the Penal Code.
4. Regulation 47 of the principal Regulations is amended— Amendment
of reg. 47
of the
principal
Regulations
 - (a) by deleting paragraph (b), and substituting therefor the following—
 - (b) the ballot papers and accompanying envelopes for use by voters in casting their votes;";
 - (b) in paragraph (c), by deleting the word "boxes" and substituting therefor the word "box";
 - (c) by adding thereto the following new paragraphs—
 - "(f) record sheets for the record required under regulation 71;
 - (g) a special container to be positioned in the polling booth into which a voter shall deposit the ballot paper he has discarded;
 - (h) a lamp or lamps to be lit and used for counting votes at the close of the poll."

Amendment
of reg. 51
of the
principal
Regulations

5. Regulation 51 of the principal Regulations is amended by deleting subregulation (4) and substituting therefor the following new subregulation—

“(4) A voter shall be entitled to cast his vote only once and one person shall have one vote”.

Replacement
of reg. 53
of the
principal
Regulations

6. Regulation 53 of the principal Regulations is deleted and replaced by the following new regulation—

“Ballot
papers and
accompany-
ing envelopes

53.—(1) The Commission shall arrange for the printing in sufficient quantities of two distinctly identifiable ballot papers, one displaying the agreed symbol for the choice of voters favouring the one party system of government and the other displaying the agreed symbol for the choice of voters favouring the multi-party system of government.

(2) In addition to the two ballot papers as required under subregulation (1), the Commission shall procure specially printed envelopes for use by voters in casting their votes in accordance with the requirements of regulation 64”.

Amendment
of reg. 54
of the
principal
Regulations

7. Regulation 54 of the principal Regulations is amended by deleting the words “while he is casting the ballot paper in the ballot box” and substituting therefor the words “when he is selecting one ballot paper and discarding the other ballot paper according to his choice”.

Amendment
of reg. 55
of the
principal
Regulations

8. Regulation 55 of the principal Regulations is amended by deleting subregulations (2) and (3) and substituting therefor the following new subregulation—

“(2) Subject to satisfying the requirements of these Regulations, on the polling day the presiding officer of a polling station shall position in respect of each voting booth at that polling station one ballot box in such a way that when voters cast their votes in the ballot box they shall do so in full view of the polling station officers and other officials present thereat.”.

Amendment
of reg. 64
of the
principal
Regulations

9. Regulation 64 of the principal Regulations is amended—

(a) in subregulation (2), paragraph (b), by deleting the words “outer part of a ballot paper perforated from the inner part” and substituting therefor the words “two ballot papers, one for each side of the referendum question, and one specially printed envelope for use by the voter in accordance with subregulation (3)”;

(b) by deleting subregulation (3), and substituting therefor the following new subregulation—

“(3) The voter shall while in the voting booth enclose in the envelope handed to him with the ballot papers the ballot paper corresponding of the side of referendum question which he favours and discard the other ballot paper into a container positioned in the voting booth and shall then emerge from the voting booth and cast the envelope in the polling box in full view of the polling stations officers and other officials present thereat.”;

(c) by deleting subregulation (4).

10. Regulation 66 of the principal Regulations is amended in sub-regulation (1)—

(a) in paragraph (b), by deleting the words "or 69 (3)";

(b) by adding thereto the following new paragraph—

"(c) the envelope used for casting the vote contains two or more ballot papers."

Amendment of reg. 66 of the principal Regulations

11. Regulations 68 to 73 of the principal Regulations are deleted and replaced by the following new regulations—

"PART VII—DETERMINATION OF RESULTS

Replacement of regs. 68 to 73, inclusive

Unused ballot papers

68. At the close of the poll at any polling station, the presiding officer shall proceed by first collecting together and separately all unused ballot papers and placing them in a separate envelope provided to him for the purpose by the Commission and then sealing the envelope and initialling or stamping it over the sealed area.

Classification of votes cast

69. For the purposes of determining the results of the referendum at a polling station and, in particular, in counting the votes thereat, the votes cast at a polling station shall be separately classified into—

- (a) null and void votes;
- (b) votes for the one party system of government;
- and
- (c) votes for the multi-party system of government.

Opening of the ballot box and counting of votes

70. After the close of the poll at any polling station, and only thereafter, the presiding officer shall, in the presence of other polling station officers and representatives of special interest groups if any be present, open the ballot box and order the counting of the votes to proceed according to a procedure entailing the polling station officers—

(a) picking out of the ballot box one envelope at a time and then opening the envelope and displaying the ballot paper or papers to all present and making the usual classification of the votes as specified in regulation 69;

(b) recording on a sheet of paper provided to the polling station officers for the purpose, showing the classification of votes, the votes cast for each classification;

(c) displaying the already announced ballot papers and separating them into lots corresponding to each classification; and

(d) announcing, through the presiding officer, the number of votes cast at the polling station under each classification.

Record of the polling process

71.—(1) The presiding officer shall cause to be prepared by the polling station officers—

(a) a record of the entire polling process at his polling station containing—

(i) the full particulars of the polling station officers and representatives of special interest groups;

(ii) the total number of votes;

(iii) the total number of votes for or under each classification of votes;

(iv) the number of unused ballot papers;

(v) the number of ballot papers which have been the subject of complaints;

(vi) the discrepancies, if any, between votes counted and the number of voters;

(vii) the number of complaints and responses thereto and decisions taken thereon by the polling station officers;

(viii) any other occurrence which the polling station officers consider to be important to record;

(b) a brief summary of the final result,

and such record and summary shall be legibly signed by the presiding officer and each of the other polling station officers and by at least one representative of each special interest group if any be present.

(2) Representatives of special interest groups at a polling station shall be entitled to a copy of the duly signed summary of the final result at that polling station.

Delivery of
ballot papers,
etc., from
polling
stations

72. The presiding officer of a polling station shall, with all dispatch, deliver to the office of the District Commissioner of his district under conditions of absolute security against loss, tampering or interference—

(a) the record prepared under regulation 71;

(b) all the ballot papers collected in separate lots corresponding to the classification under which they were counted;

(c) all unused ballot papers;

(d) all voters registers and other work items provided to that polling station.”

Compilation
of the
district result
of the
referendum

73.—(1) On receipt of records of the referendum process from polling stations, the District Commissioner or an officer of the Commission duly authorized in that behalf shall, at the office of the District Commissioner, compile the result of the referendum in his district on the basis of the duly signed summaries received with such records and shall prepare, on the appropriate sheets provided for the purpose by the Commission, a record in respect of the entire district showing—

(a) the total number of persons who registered as voters;

(b) the total number of persons who voted;

(c) the total number of votes for or under each classification of votes in accordance with regulation 66;

(d) the discrepancies, if any, between the votes counted and the number of persons who voted:

(e) the complaints, if any, received by him and his decisions thereon.

(2) Representatives of special interest groups, duly designated for the purpose, shall be entitled to observe the entire procedure followed at the office of the District Commissioner in compiling the district result of the referendum under subregulation (1).

(3) The record prepared under subregulation (1) shall be legibly signed by the District Commissioner or other officer supervising the compilation thereof and by at least one duly designated representative of every special interest group, if any be present, and such representative shall be entitled to receive a copy of the record.

(4) The District Commissioner or a duly authorized officer of the Commission shall, with all dispatch, deliver to the Referendum Supervisor under conditions of absolute security against loss, tampering or interference—

(a) the record prepared under subregulation (1); and

(b) all items received from all polling stations in the district concerned.

12. Regulation 74 of the principal Regulations is amended in subregulation (1) by inserting after the word "districts" the words "and polling stations".

Amendment
of reg. 74
of the
principal
Regulations

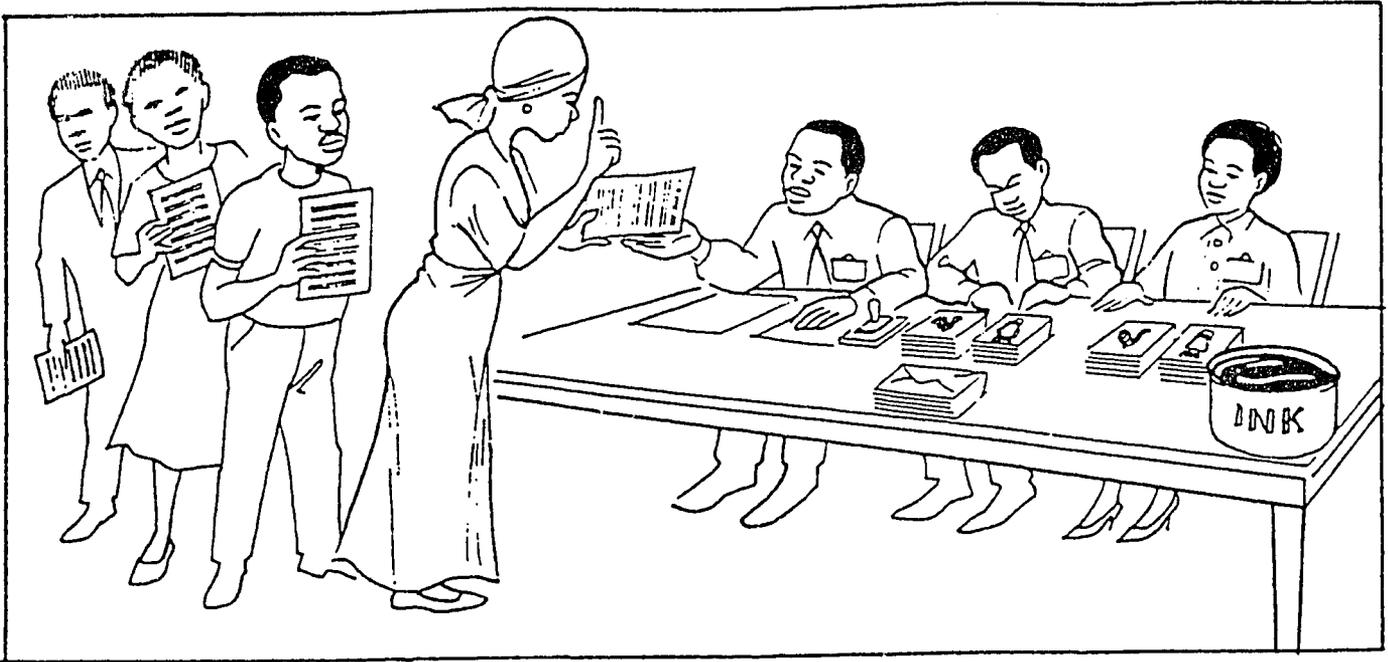
Made this 26th day of May, 1993.

H. KAMUZU BANDA
Life President

FILE NO. 11 05 6)

APPENDIX C

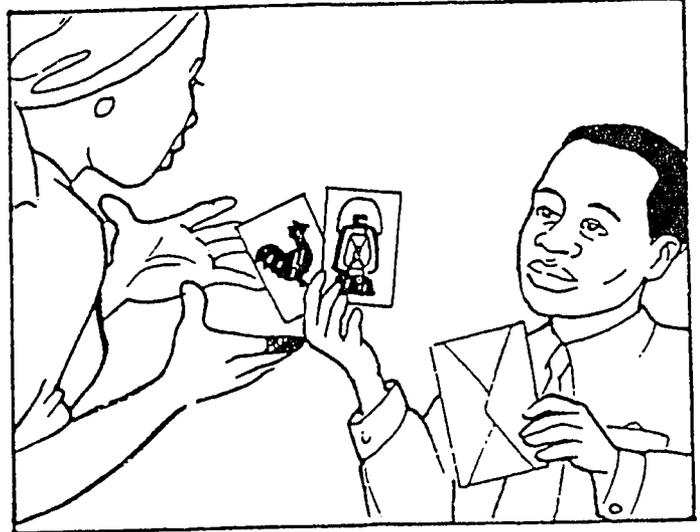
VOTER EDUCATION FLYER AND POSTER



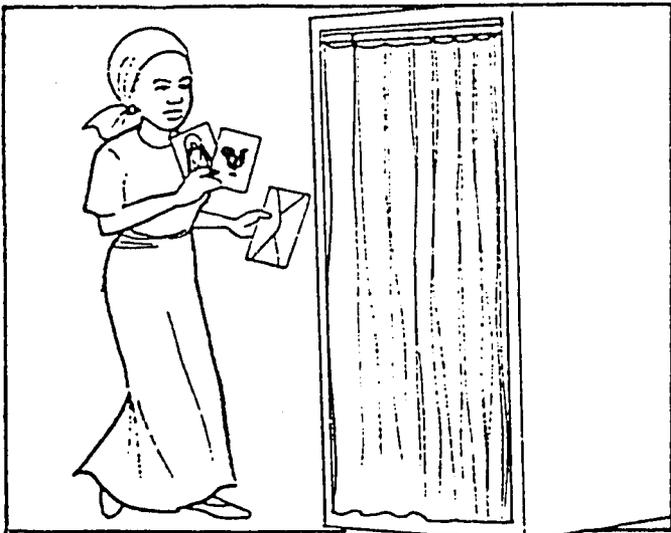
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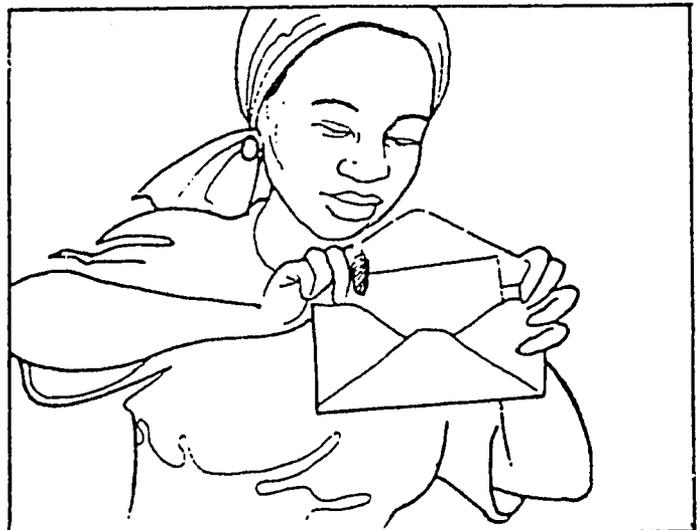
2 Viikani chala mu Inki



3 Landitani mapapala a baloti awiri: La Tambala Wakuda ndi La Nyali, ndi Inviolopu



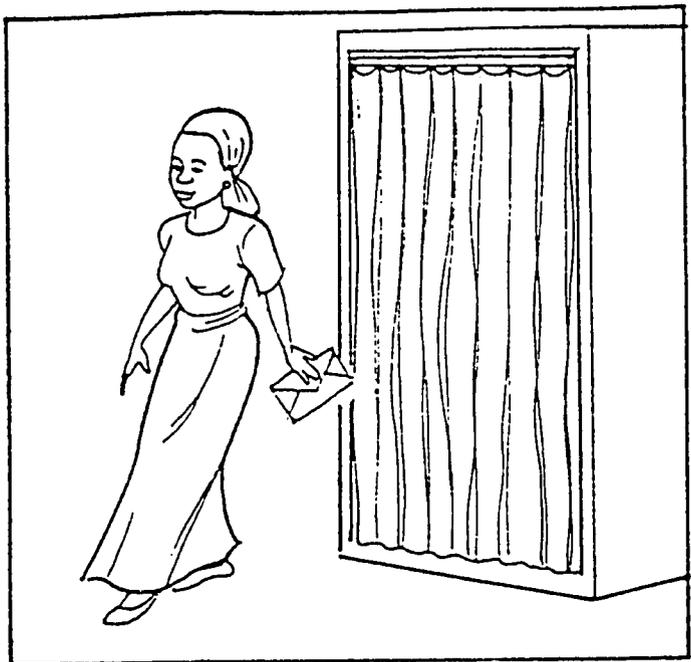
4 Kaloweni m'malo obisika mosankhila pepala la Voti



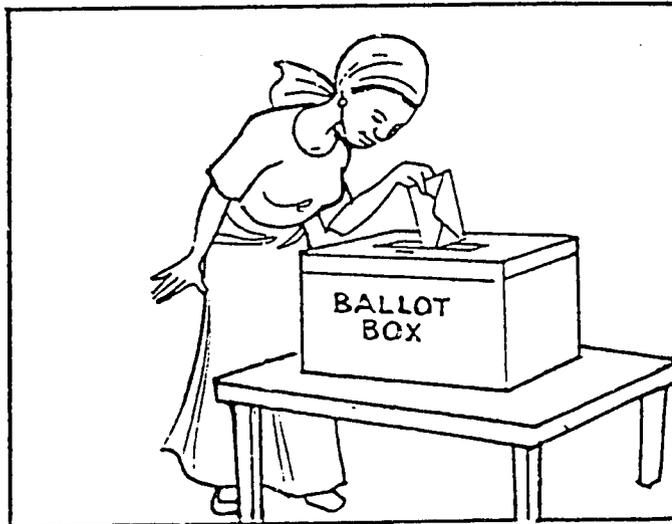
5 Ikani mu Inviolopu Voti yomwe mwasankhayo



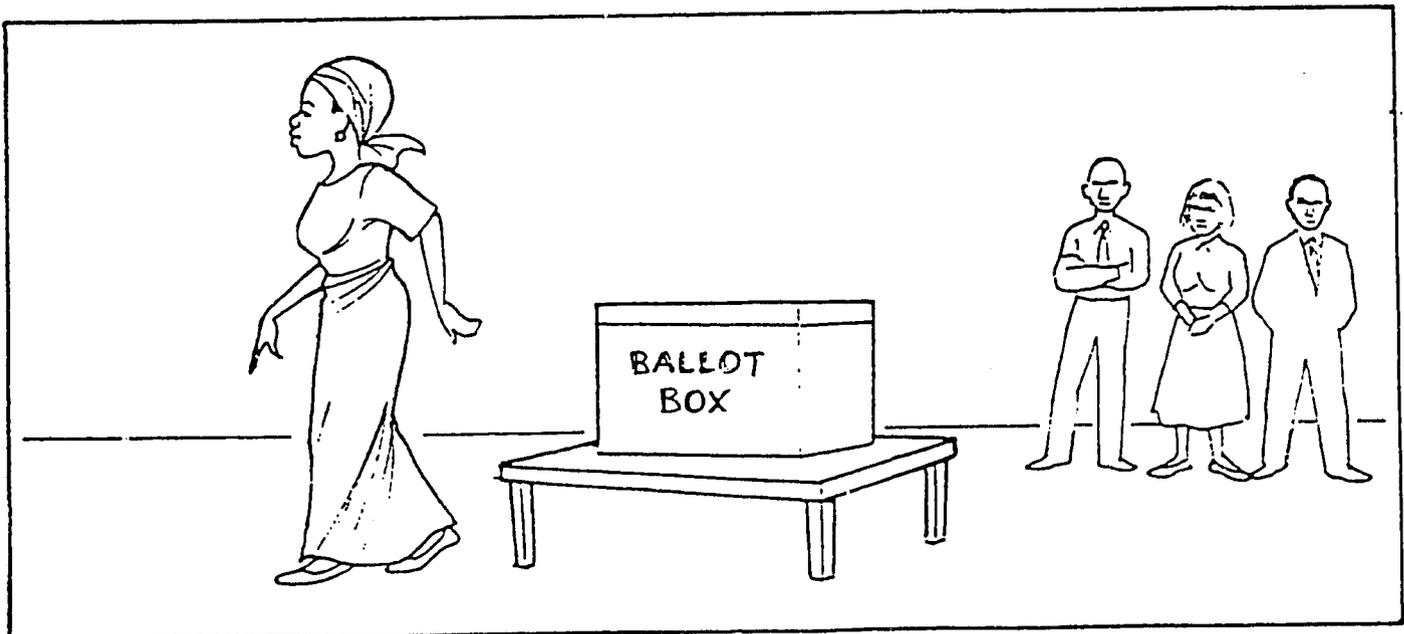
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7 Tulukanimo m'malo obisikawo



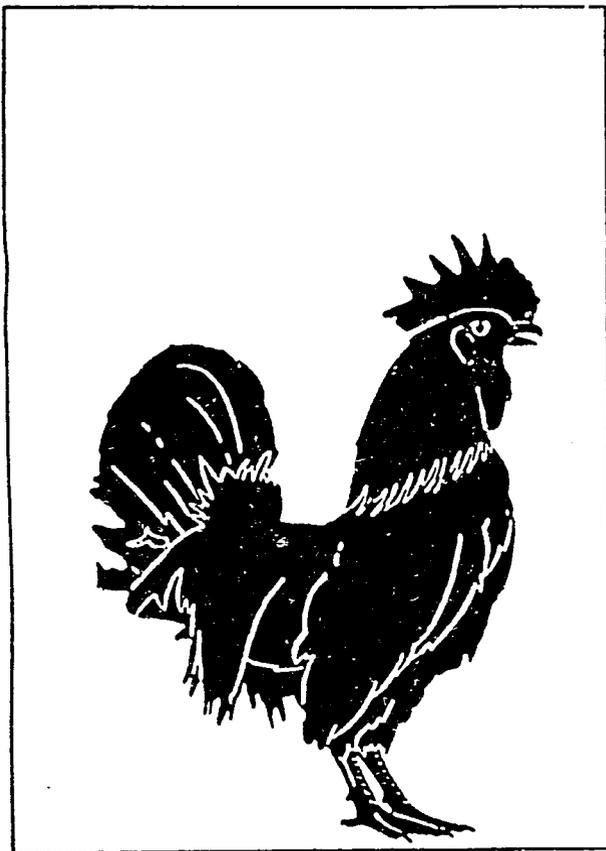
8 Ikani Invilopu mu bokosi loponyela Voti lomwe lili lokhoma ndi loko



9 Tulukani m'malo



VOTI YA RIFERENDAMU PA 14 JUNI, 1993



Empressment Paper 1

REPUBLIC OF MALAWI
No. 03

MALAWI AGE AND RESIDENCE CERTIFICATE
(Form under s. 4 of the Empressment of Voters Act (Cap. 3:01))

To the best of my knowledge and belief:-

_____ **THENGOLAKULA** _____ (Name)
(Full Name Lastname)

_____ **ZEMBENI** _____ (Place of Birth)
(Full Name Lastname)

_____ **MALE** _____ (Sex)
(Full Name Lastname)

_____ **DZIKHUTUMBALE** _____ (Village)
(Full Name Lastname)

_____ **GWIRENIMASO** _____ (District)
(Full Name Lastname)

BE is a citizen of Malawi
BE has attained the age of 21 years
BE is ordinarily resident in Malawi and has been ordinarily resident in Malawi for some time in a continuous period of two years; and

BE is:-

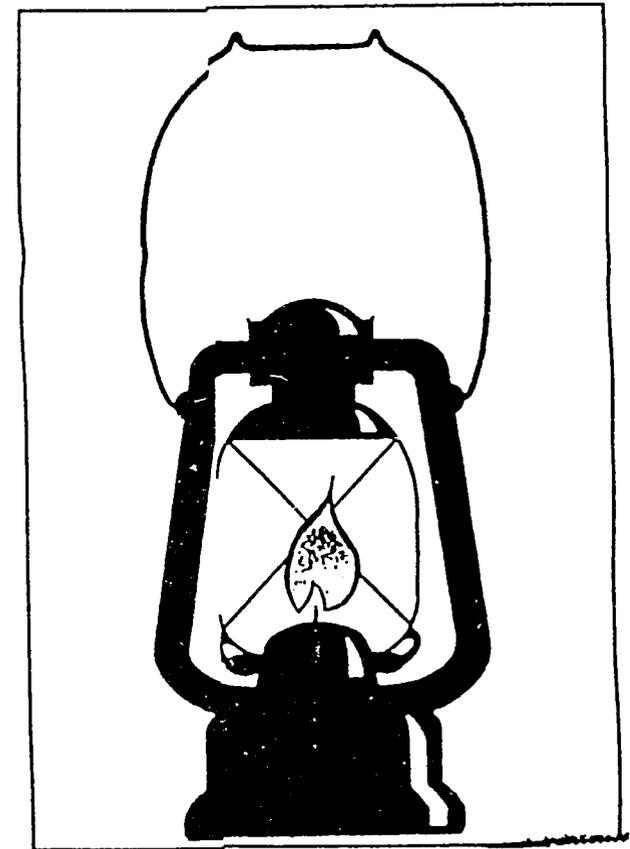
BE is ordinarily resident in the village/parish of **DZIKHUTUMBALE**

BE was born in the village/parish of **MCHIKA/DELUDU**

BE is employed/occupied as a business in the village/parish of **MCHIKA/DELUDU**

Date **12-04-93** Signature **BAK**
(Authorized Officer)

*Other information to be supplied.



APPENDIX D

GUIDELINES FOR THE CONDUCT OF TRAINING SESSIONS

4/20

CONDUCT OF TRAINING SEMINARS

I. Programme

Session 1

- A. Introductions - Reason for Training
- B.
 - 1) Glossary of Terms
 - 2) Role of Presiding Officers
 - 3) Polling Staff and Duties
 - 4) Preparations for Referendum Day Including Layout of Polling Station

Session 2

- A. Referendum Day - Polling
- B. Referendum Day - Closing the Poll

Session 3

- A. Referendum Day - Counting the Votes and Transmission of Results
- B. Security - Role of Monitors and Observers
- C. Review Overall - Consolidation Where Necessary

Notes: (i) Three sessions of approximately two hours each - may run over or under - adjust on the day.

(ii) Distribute manuals at commencement of training - if possible beforehand so people have opportunity to read before sessions commence

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II. Notes for Conduct of Sessions

Session 1

- A. **Introduce self** - ask others to introduce themselves and state whether they have any experience of referendum/elections. Explain programme, inviting questions as you go. Explain reason for training - need to ensure compliance with regulations and consistent standards. Training of Pos is of great importance - Pos are key people in conducting the poll, counting the votes and transmitting the results. Explain importance of manual - refer to it at all times for guidance.
- B. (i) **Glossary of Terms - Manual Section 1.** Run through. Same words mean different things to different people - explain particularly difference between polling centre and polling station. Check that everybody understands definition.
- (ii) **Role of Presiding Officer - Manual Section 2.** Go through duties. Stress supervisory role - PO should ensure whole process is running smoothly.
- (iii) **Polling Staff & Duties - Manual Section 2.** Run through. Particularly important to stress role of Recording Secretary - key person - make sure Pos work with RS in completion of official report.
- (iv) **Preparations for Referendum Day - Manual Section 3.** Visit the site. Pos should meet staff - make sure everyone knows their jobs before the day - poor preparation = poor performance. Layout of Polling Station - refer to plan - get clerks in the right order - get best layout possible in the room available - find out who will control entrances and exits.

Session 2

- A. **Referendum Day Polling - Manual Section 4.** First go through the procedures before opening the polling station as per manual - include reference to polling staff voting. Run through voting process in detail as per manual - simulate polling station layout and process.

Refer specifically to:

- spoilt vote process
- ensuring secrecy
- maintaining an orderly flow
- close of poll - last person in line
- official report - note incidents as they occur

Stress again need to keep polling stations separate when more than one is located in the same building.

- B. **Referendum Day - Closing the Poll - Manual Section 5.** Run through process. Ensure accurate completion of the official report. Explain procedure for counting marked names in register and counting number of unused ballot papers. Must destroy contents of discard box (by fire) - Do not leave polling station while this is being done - burn in sight of PO if possible - delegate task to two poll clerks. Final job is to rearrange furniture for count.

Section 3

- A. **Counting the Votes and Transmission of the Result - Manual Sections 6 & 7.** Run through. Explain layout. Particularly important to deal with step-by-step procedure. Open box. Check for ballot papers in envelopes. Count number of envelopes, number of spoilt ballot papers. Check totals are right and agree with close-of-poll totals. Then open envelopes - make sure they are emptied. Put envelopes to one side. Split ballot papers into piles as per manual instructions. Check and recheck numbers - should agree with total on opening of box. Make sure everyone agrees on result. Simulate count layout and process. Then complete official report and pack up as per manual. Go through arrangements to deliver to DC.
- B. **Security - Manual Section 8.** Stress need for absolute security of election material; vital to confidence in result. Keep polling station secure at all times. Monitors and observers. Explain difference and role as per manual.
- C. **Review overall - run through whole process again briefly.** Check whether any particular issue that those present wish to go through again. Not complicated - just stress to everybody that if they have a problem: stop - think - look at the manual. Mention that position about monitors and observers is explained in Manual Section 9. Good luck!

APPENDIX E
REFERENDUM RESULTS

SUMMARY OF MALAWI'S 1993 REFERENDUM RESULTS

DISTRICT	NO. REGISTERED	NO. VOTED	PERCENTAGE OF VOTES						NO. VOTED*
			SINGLE PARTY	MULTI-PARTY	NULL AND VOID	SINGLE PARTY	MULTI-PARTY	NULL AND VOID	
NORTHERN REGION									
Chitipa	58 404	41 073	3 603	37 165	305	9	90	1	70
Karonga	110 603	65 376	3 799	61 038	539	6	93	1	59
Mkhata Bay	129 514	60 211	4 399	54 990	822	7	91	2	46
Rumphi	59 300	51 342	6 687	43 943	712	13	86	1	87
Mzuzu	110 980	91 832	17 520	73 281	1 031	19	80	1	83
Mzimba	160 538	134 362	11 093	122 152	1 117	8	91	1	84
CENTRAL REGION									
Dedza	184 589	139 440	100 840	34 628	3 972	72	25	3	76
Dowa	194 010	139 732	115 958	20 345	3 429	83	15	2	72
Kasungu	232 276	179 542	125 600	48 960	4 982	70	27	3	77
Lilongwe	591 460	384 790	267 168	105 110	12 512	69	27	3	65
Mchinji	196 393	116 425	75 012	34 559	6 854	64	30	6	59
Mkhota Kota	133 866	79 336	40 515	35 965	2 856	51	45	4	59
Mtcheu	142 550	100 971	25 227	74 655	1 089	25	74	1	71
Mtchisi	64 204	52 053	39 946	11 224	883	77	22	1	81
Salima	94 472	78 592	42 147	34 586	1 859	54	44	2	83
SOUTHERN REGION									
Blantyre	271 152	230 408	30 363	197 938	2 107	13	86	1	85
Chikwawa	194 987	106 873	24 631	80 364	1 878	23	75	2	55
Chiradzulu	98 605	82 572	8 539	70 578	3 455	10	86	4	84
Machinga	344 753	201 239	17 240	181 186	2 813	9	90	1	58
Mangochi	352 263	201 319	17 911	179 697	3 711	9	89	2	57
Mulanje	347 006	191 366	37 775	145 111	8 480	20	76	4	55
Mwanza	74 890	41 525	11 639	29 137	749	28	70	2	55
Msanje	106 287	58 853	10 106	47 929	818	17	81	2	55
Thyolo	186 262	153 485	28 259	122 823	2 403	18	80	2	82
Zomba	260 163	170 731	22 496	146 632	1 603	13	86	1	66
T O T A L	4 699 527	3 153 448	1 088 473	1 993 996	70 979	35	63	2	67

* as a percentage of registered voters

ANNEX I



Stephanie

World Development

Annex I

Reference MLW/93/004

1 copy
12 October 1993

Dear *Cynthia* →

... As you are fully aware, the United Nations Centre for Human Rights fielded a Needs Assessment Mission to Malawi from 28 August to 6 September 1993. I am very pleased to enclose a copy of the mission's report which we received over the weekend.

You will kindly note that the report is comprehensive, and sets out proposals for short, medium and long term actions. In this regard, I would draw your special attention to pages 55 to 63 which contains specific recommendations for assistance. In view of the urgent need to follow up on these recommendations and to ensure an effective coordination of all concerned in planning and implementing the proposed actions, I am forwarding the report to you immediately while awaiting the Annexes which I expect to receive shortly.

I have communicated the report to the Government requesting their earliest reaction, and in particular a request to the United Nations, through my office, to organize a follow up assistance programme, the first elements of which should be initiated before the end of October in order to meet the requirements of what undoubtedly will be a very demanding schedule of international support.

I have also forwarded the report to the National Consultative Council for their review and reaction, pointing out that the proposed follow up technical assistance will in many respects be directed at supporting the work of the various NCC committees.

/...

Ms. Cynthia Rozell
Director
USAID
Lilongwe-3

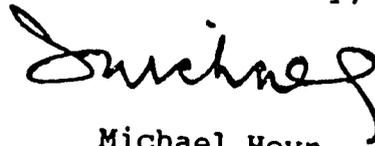


UNITED NATIONS DEVELOPMENT PROGRAMME

(Continuation Sheet)

I propose that we plan to discuss the report at our next donor meeting this Thursday, 14 October at 11:00 a.m., and on this basis that we ensure a coordinated approach to the envisaged technical assistance and funding package.

Yours sincerely,



Michael Heyn
Resident Co-ordinator of the UN
System's Operational Activities
for Development

UNITED NATIONS
CENTRE FOR HUMAN RIGHTS

WFO 243



REPORT OF THE NEEDS ASSESSMENT

MISSION TO MALAWI

28 AUGUST TO 6 SEPTEMBER 1993

2

476

Contents

- I. Introduction
- II. General Overview of International Standards for Free and Fair Elections
- III. The Transition Time Frame
- IV. Analysis of Challenges and Short Term Needs
 - 1. The National Consultative Council and the National Executive Committee
 - 2. Civic Education, Information, and Documentation
 - 3. Constitutional Reform
 - 4. Electoral Reform
 - 5. The Administration of Justice and Legal System Reform
 - 6. The Mass Media
 - 7. Political Parties
 - 8. Non-Governmental Organisations and Civil Society
 - 9. The Amnesty and Returnees
 - 10. Full Integration of Malawi into the International Human Rights System
- V. Medium Term Needs
- VI. Long Term Needs
- VII. The Need for a U.N. Field Presence in Malawi
- VIII. Closing Statement of the Mission
- IX. Assistance Recommendations
- X. Detailed Review of International Standards for Free and Fair Elections

Annexes:

ANNEX ONE--Overview of available assistance under the programme of advisory services and technical assistance of the Centre for Human Rights

ANNEX TWO--Comparative table for the analysis of constitutional provisions regarding human rights

I. Introduction

In response to the request of the Government of Malawi, the United Nations Centre for Human Rights sent an expert mission to assess needs which may be addressed by the provision of advisory services and technical assistance in the field of human rights and democratic transition. The Mission was funded by the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights. This report, based upon the findings of the Team, is offered to assist in guiding the process of democratic transition, currently under way in Malawi, with particular reference to institutions and legal measures affecting the promotion and protection of internationally recognized human rights and fundamental freedoms.

Principal Objectives

The Mission identified several institutional and legal needs for the promotion, protection and realization of human rights, and the effective transition to multi-party democracy which may be addressed by services offered under the United Nations Programme of Advisory Services and Technical Assistance in the Field of Human Rights, by other United Nations agencies, bilateral donors, intergovernmental and non-governmental organizations involved in technical cooperation for human rights.

The Mission has further sought to facilitate dialogue on issues key to the transition process, and, in particular, to introduce international human rights standards into that dialogue.

The Mission Team hopes to further coordination and cooperation in the provision of technical assistance for the transition process by making available this comprehensive report, which should prove useful to potential international partners.

Identification of Priorities

In its consultations and analysis, the Team sought to identify priorities for attention and assistance based, in part, on the exigencies of the current transition process and the planned multi-party elections. It paid particular attention to certain areas identified by the Government as matters of priority, namely, electoral reform; legal and judicial reform; constitutional reform; prison reform, and; the establishment of an electoral commission. (Letters from the Secretary to the President and Cabinet to the United Nations of 10 August 1993, ref.no.11/05/7, and 19 August 1993, ref.no.11/05/7).

Composition of the Mission Team

The Mission Team was constituted as follows:

- Mr. Craig Mokhiber, United Nations Centre for Human Rights
- Mr. Maliof Tafsir Ndiaya, University of Dakar, Senegal
- Mr. John Barker, University of Cambridge (Corpus Christi College)

Dates and Itinerary of the Mission

The Mission was fielded from 28 August to 5 September 1993. A detailed itinerary will be included in the final report.

Substantive Areas of Assessment

The Team explored needs which might be addressed through international cooperation in the form of advisory services of experts; international training courses, workshops and seminars; human rights information and documentation; the organization of fellowships for key personnel; and the provision of some forms of material support. Assessment in these areas is based upon problems identified and proposals offered by the Malawians themselves, and derived from international standards for democratic transition, free and fair elections, and international human rights.

Parties Consulted

The Team held consultations with representatives of a broad cross-section of Malawi society, meeting both with key governmental officials and non-governmental organizations. In particular, contacts were made with the following (inter alia):

Governmental Offices:

Office of the President and Cabinet
 Minister of State
 Ministry of Justice (and Finance)
 Ministry of External Affairs
 Ministry of Labour
 Ministry of Education and Culture
 Ministry of Health
 Ministry of Youth and Social Services
 Presidential Committee on Dialogue
 Chief Justice
 Attorney-General's Office
 Solicitor General
 Registrar of the High Court
 Commissioner of Prisons
 Chief Public Prosecutor
 Office of Inspector-General of Police
 Chief of Internal Security Police
 Director of Public Prosecutions
 Malawi Broadcasting Corporation.

Political Parties (Pressure Groups) :

MCP, UDF, AFORD, UFMD, MNDP, MIP

Non-Governmental Organizations:

Public Affairs Committee
 Law Society of Malawi
 National Alliance of Business Women

Others:

Interested Representatives of the Diplomatic and Donor Community
 Moslem and Christian Religious Organizations
 Various Human Rights Activists
 Other interested parties

United Nations Coordination:

The Team coordinated all activities closely with other UN actors involved in Malawi, especially the United Nations Development Programme and the Electoral Assistance Unit, and held consultations with UNICEF, UNHCR, WHO, WFP, WHO, WFP, UNFPA, and FAO, in order to ensure an integrated approach to cooperation with the Government of Malawi.

Report of the Mission:

The Centre for Human Rights prepared this report based upon the findings and recommendations of the Mission. It is intended to aid the Government and people of Malawi in identifying human rights assistance needs, and to further inform other international partners which the Government may choose to invite to cooperate in the transition process.

Follow-Up to the Mission:

The Centre for Human Rights will remain available to receive requests from the Government for implementation of the recommendations contained in the report. This may include a request for the conclusion of an agreement between the Government and the Centre for Human Rights for a comprehensive country programme of advisory services and technical assistance in the field of human rights. Bilateral and multilateral donors, inter-governmental and non-governmental organizations, and relevant United Nations agencies will be encouraged to contribute to the needs identified according to their respective mandates and resources.

Upon Government approval, agreement should be reached between all international actors in the field of assistance and technical cooperation as to implementation and funding of each of the recommended components. Specific programme development and implementation should then follow as a matter of urgency.

II. General Overview of Relevant International Standards for Free and Fair Elections

As noted above, the request of the Government for the fielding of the Mission emphasized the need to give particular attention to issues which should be addressed in preparing for the planned multi-party elections. As a legal and practical matter, this necessarily includes essentially all of the areas of reform included in the request of the Government, including electoral legal and judicial reform, constitutional reform, prison reform, and other human rights issues. As such, a brief overview of

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international human rights standards for the conduct of free and fair elections may be useful. A more detailed discussion is provided at the end of this report, and should be referred to for further guidance as to the internationally-agreed legal framework for free and fair elections.

International human rights standards relating to elections are broad in nature and thus may be achieved through a wide variety of political systems. United Nations assistance does not seek to impose any given political model. Rather, it is based upon a realization that there is no single political system or electoral methodology which is appropriate for all peoples and States. The best formulation for Malawi will ultimately be that shaped by the particular needs, aspirations, and historical realities of the people of Malawi, taken within the framework of international standards. Nevertheless, comparative examples do provide useful guidance for the construction of democratic institutions that both respond to domestic concerns, and conform to international human rights norms. Accordingly, Malawi could benefit from the advisory services of electoral experts from other countries in the region, particularly those having recently conducted successful, free and fair multi-party elections, in order to gain insights in the practical implementation of the international standards.

International human rights standards contain a number of criteria for free and fair elections. This section provides a brief review of those criteria, and is followed by particular information on needs for the application of those standards in the current Malawi context. Most of the standards referred to are drawn from the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights. All three instruments are relevant for Malawi.

Since February 1990, Malawi has been party to the African Charter, and, accordingly, is bound by the Charter's provisions. Furthermore, as a member of the United Nations, Malawi is bound under the Charter of the United Nations to take action for the achievement of universal respect for human rights. Those rights are authoritatively defined by the Universal Declaration of Human Rights, which is incorporated by reference in the current Malawi Constitution. While Malawi is not yet a party to the International Covenant on Civil and Political Rights, the Government is currently reviewing the possibility of acceding to that instrument, and, in any event, the Covenant is useful in providing more detail for the rights enumerated in the Universal Declaration, particularly when taken in concert with the comments and decisions of the Human Rights Committee established under the Covenant itself.

In essence, international standards require that elections be free, fair, periodic, and genuine. Free elections are those which give voice to the will of the people through assurances for free

opinion, expression, information, association, assembly, as well as freedom from intimidation and the use of a secret ballot. A fully-functioning independent judiciary is also required to assure free elections.

Fair elections imply guarantees for equal, universal and non-discriminatory suffrage.

Periodicity requires continuous answerability to the electorate, and the avoidance of postponing scheduled elections in all but the most exceptional circumstances.

Genuine elections are elections conducted with all of the guarantees indicated above, such that they give full expression to the will of the people. They must include the election of the nation's principal policy-making offices, and must give effect, through a prearranged formula, to the transfer of power to prevailing candidates. To be genuine, elections must respect standards for equal access to public service, and must be accompanied by effective civic education. Assuring all of these elements, and building public confidence, are important goals which can be furthered by the participation of independent observers.

Each of these elements, as noted above, is further developed at the end of this report.

III. The Transitional Time Frame

Implementation of the Team's recommendations should occur in three phases, encompassing the full term of democratic transition for Malawi. The Team has identified needs for the short, medium and long terms, to this end. The short term needs are those which must be addressed in the period leading up to the multi-party elections themselves. While at the writing of this summary the NCC and NEC had not yet agreed on a definitive date for elections, most of those consulted appeared to support an electoral date of mid-May 1994. The medium term refers to the period immediately following general elections, during which time democratic institutions should be firmly established and enabled to carry out their mandates in legislating and administering further reforms. Long term consolidation of democratic and human rights reforms is a process necessarily measured in years, and will require the sustained commitment of both national and international actors in assuring the realization by Malawians of the economic and social development critical to the survival of the reforms currently under way.

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IV. Analysis of Challenges and Short Term Needs

1. The National Consultative Council and the National Executive Committee

The National Consultative Council (NCC), its National Executive Committee (NEC), and the proposed Technical Committees (TC's) of the NCC, as the bodies responsible for deciding on transition issues, will represent the principal constituencies for most international assistance aimed at supporting the transition process in the short term.

The Mission Team is of the opinion that the single most urgent task facing the NCC, the NEC, the TC's, and the Government is the promulgation and publicizing of a transition management schedule. Such a schedule should set out, in chronological order, and with specified implementation dates, each of the major transition events, leading up to and including the general elections and the assumption of authority by the prevailing candidates and parties.

The effective planning, development and implementation of each of the critical steps on the schedule will require substantial financial and technical support from the international community. The necessary resources far exceed the capacities of the Government and the transitional bodies.

The schedule would be organized in the form of a time line, with points demarcated for each of the following events:

- Signature of the agreement on the establishment and functioning of the NCC and NEC
- Parliamentary adoption of the statute on the constitution of the NCC and NEC
- Commencement of the general civic education programme component
- Adoption of the Constitutional (interim) reform package, including provisions for an independent judiciary, multi-party politics, a bill of rights, and democratic structures
- Adoption of the electoral law reform package
- Appointment of an Electoral Commission
- Commencement of electoral civic education programme component
- Appointment of a constituency delimitation commission
- Adoption of electoral boundaries legislation
- Commencement of electoral registration
- Arrangement of international and national observation of electoral events
- Adoption of legal reform package on laws affecting free expression, assembly, association, assembly and freedom from intimidation
- Adoption and dissemination of code of conduct for political parties

- Adoption and dissemination of code of conduct for the media
- Adoption of the legislative reform package for human rights in the administration of justice (including the judiciary, police, prisons, lawyers, and security legislation)
- Adoption of a programme of resettlement for returnees
- Adoption of a plan for Malawi accession to major international human rights treaties
- Adoption of a national plan of action for human rights
- Other important events as identified by the NCC

Such a schedule would serve three purposes, crucial to the current transition process. Firstly, it would provide an agreed programme of activities for reference by the NCC itself--a kind of detailed mandate for action and a framework for transition management.

Secondly, the schedule would be useful for informing the process of international technical cooperation, allowing international programmes to "plug-in" to relevant needs at the request of the NCC and the Government.

Thirdly, the schedule could prove to be a valuable tool for the management of public expectations with regard to the transition process. This third point is perhaps the most important, as the Team noted a broad diversity of opinions in Malawi regarding the current pace of transition. Presently, an inordinate amount of attention is being focused on the date for elections, resulting in a potentially problematic climate of impatience among some groups.

This is due, in part, to the insufficient level of available public information on the process and on the broad range of tasks which face the Government and the transition authorities prior to the conduct of elections. A clearly agreed, broadly publicized, and precise schedule of reforms and transition events would allow the parties, the international community, and, most importantly, the people of Malawi to gauge, step-by-step, the progress being made in the run-up to elections.

An additional valuable tool for keeping the public informed of the process, might be the publication by the NCC of a periodical Official Bulletin (perhaps weekly), which would contain all official decisions, documents, and information on the body's activities. The content of such a Bulletin would be by agreement in the NCC, and publication would ideally be in all major languages. The NCC should aim for the broadest possible national distribution of the Bulletin.

2. Civic Education, Information and Documentation

There was considerable agreement amongst the full range of parties consulted by the Team in regard to the central importance

of a well conceived and coordinated programme of non-partisan civic education in Malawi. Such a programme should address both the electoral process itself, and the broader issues of human rights, popular participation and democratic transition. Currently, there is very little popular understanding of any of the important issues at hand, including the meaning of the outcome of the June referendum, the mandate and work of the NCC, the proposals for reform, the electoral process, or basic human rights principles.

Similarly, even the most basic documents and instruments concerning human rights are currently unavailable in Malawi. This important need is evident at all levels, including Government offices, political parties, NGOs, and, especially, the general public.

The declared aims of both the Government and the opposition parties of basing Malawi's reforms and transition on the neutral and fundamental principles of international human rights cannot be effected without reference to such important resources. Neither can the people of Malawi demand that their legitimate rights be recognized and incorporated into the current reforms if they are unaware of them.

Civic education in the current Malawi context should be a two-track process. The first (and immediate) focus should be the dissemination of general principles of human rights, democratic participation, and the transition process itself. The second (to begin upon finalisation of the electoral laws and procedures) should address the "who, what, where, when, how, and why" of registration and voting. In both cases, the materials and media should be tailored to be culturally appropriate, and accessible to various language groups and levels of literacy.

While there do exist certain valuable resources which could be mobilized for effective civic education, including official MBC radio reaching some 75% of the population, capable public school teachers and some (albeit nascent and few) non-partisan non-governmental organizations, substantial assistance will be required from the international community in this area, owing to the expense and magnitude of the task at hand. Primary responsibility for development and coordination of the programme should rest with a well-constituted technical committee of the NCC.

3. Constitutional Reform

There is currently broad consensus in Malawi on the need for far-reaching constitutional reform. While there is not yet clear agreement on the time-frame for such reform, most seemed to be of the opinion that some crucial interim reform measures should be taken prior to the elections, with a full constitutional revision occurring afterwards. While some argue strongly for the adoption

of a completely new constitution immediately, others point out that the shortage of time remaining before the elections would preclude the possibility of organizing the necessary full public discussion and comprehensive drafting and political agreement processes.

The Government has already instituted some constitutional reforms in order to allow for multi-party politics consistent with the outcome of the referendum. Nevertheless, a multitude of constitutional (interim) reforms remain to be addressed in the period prior to elections. If, as is likely, it proves impossible to formally and completely redraft the Constitution through a full and informed process of public consultation and agreement (including, necessarily, the formation of some form of constitutional assembly), the most efficient method of interim reform might be the adoption by the NCC of a constitutional reform package, and its legislation by the Parliament. Such legislation should be of a quasi-organic nature, with express provisions preventing its revision or revocation, in whole or in part, prior to the seating of the newly-elected parliament. Additionally, the legislation should, by express provision, be supreme over all other laws in Malawi. (A full and proper revision of the Constitution would then be envisaged for the Medium-term, after the general elections, and based in part upon the principles included in the interim package).

It will further be necessary, as described in the subsequent sections of this report, to pass into law other complementary legislative reform provisions, such that all legal provisions currently in force, which are contrary to the interim constitutional principles, are at least suspended. In this way, the legal framework will provide a comprehensive and consistent structure for human rights and free and fair elections. Removing such legal inconsistencies will ensure clarity of the law, and in doing so, prevent the possibility of overburdening already heavily taxed judicial resources in addressing legal challenges.

Proposed Elements of the Constitutional Reform Package

Based upon the Team's consultations with the various parties in Malawi, and its resulting assessment, the following proposals are offered as components of the constitutional reform package, in order to ensure that the process is protected by the rule of law:

Bill of Rights. A comprehensive bill of fundamental rights and freedoms is essential to the package, and for the conduct of free and fair elections consistent with international standards. A useful framework for the drafting of such a bill of rights may be found in the international human rights instruments themselves, including the Universal Declaration and the two principal Covenants. A full listing of the relevant rights is attached at Annex 2, in the form of a three column chart, which should facilitate drafting and comparative

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reference to the international standards.

Justiciable Remedies at Law. The rights guaranteed in the constitutional reform package should be accompanied by enforceable civil and criminal law remedies, and should include the right of suits and injunction against the Government.

National Human Rights Institution. The package should include the establishment of a national human rights institution such as an ombudsman office or human rights commission. That body should be empowered to promote understanding of human rights, to receive and act upon individual complaints, to resolve conflict through mediation or conciliation, to advise the Government and the judiciary on human rights matters, and to monitor implementation of human rights standards. The body should be statutorily independent, representative in its constitution, accessible, efficient, and transparent in its operations.

Allocation and Separation of Powers. The powers of the various branches of Government should be clearly delineated in the package, and it should include assurances for a representative legislature (with full multi-party access), limitations on the powers of the executive, and a fully independent and integrated judiciary (see the section below on the administration of justice).

Limitations on Emergency Powers. Emergency or other exceptional legislation restricting fundamental rights will be generally inconsistent with the conduct of free elections. The interim constitutional package should include legislation that carefully and clearly defines the extent to which the constitutional order may be altered in the event of an emergency situation. States of emergency should only be declared in conformity with the law and should only be authorized in the event of public emergency which threatens the life of the nation, where the measures normally compatible with the Constitution and laws in force are plainly inadequate to address the situation.

Relevant international standards further require that a state of emergency be officially proclaimed before any exceptional measures are put into place. Any such measures must be strictly required by the exigencies of the situation, and must not be inconsistent with other requirements under international law. Neither may such measures discriminate solely on the basis of race, colour, sex, language, religion or social origin.

Additionally, under the international standards, no derogation is permissible with regard to the right to life; the

prohibition on torture and cruel, inhuman or degrading treatment or punishment; the prohibition on slavery, slave-like practices and the slave trade; nor the prohibition on imprisonment for inability to fulfil a contractual obligation. Neither, even during states of emergency, may anyone be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time it was committed. Nor may a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed. If, subsequent to the commission of the offense, provision is made by law for the imposition of the lighter penalty, the offender must benefit from the lighter penalty.

Also non derogable is the right of everyone to be recognized as a person before the law. Finally, the right of everyone to freedom of thought, conscience, and religion may not be derogated from. Each of these principles should find expression in the constitutional reform package.

In addition, consideration should be given to the informative work of the United Nations Special Rapporteur on States of Emergency. Among the recommendations made by the Special Rapporteur, are the following: an independent and fully functioning judiciary must be protected; nothing done pursuant to a state of emergency should diminish the jurisdiction of the courts to review the legality of the state of emergency or, jurisdiction over legal actions to protect any rights whose effectiveness is not affected by the declaration of emergency. Additionally, existing national legislatures may not be dissolved during a state of emergency and all members of the legislature shall enjoy the privileges and immunities necessary for the exercise of their mandates.

Also, according to the work of the Special Rapporteur, when the state of emergency has terminated, all possible efforts should be made to restore to those whose rights have been adversely affected by measures taken pursuant to the emergency, full enjoyment of their rights, including the right to participate in the political process, and compensation for injuries suffered. Moreover, no person should be subject to any form of discrimination by reason of his or her involvement in any activity or expression which was rendered illegal by the state of emergency. In addition, nothing done pursuant to the declaration of emergency should restrict the right of a person who considers that he or she has suffered a violation of a legally recognized right during the state of emergency to seek redress before the courts once the emergency has ceased. This includes the right to a prompt decision of his or her claim. In every case, States should be vigilant to ensure that no lingering negative effects on

political participation survive the termination of the state of emergency.

Political Pluralism. The Government acted quickly in taking steps to implement the outcome of the referendum to allow for the introduction of multi-party politics in Malawi. In particular, section 4 of the Constitution providing for a one-party state under the MCP was repealed, and provisions for party registration were put into place. Nevertheless, some vestiges of the one party state remain in the Constitution, and should be repealed in the new package. This may include, inter alia, section 23(d) requiring MCP membership for a seat in the Assembly, removal from the Assembly for non-MCP membership under section 28(2)(h), and a range of other references to the MCP which survive throughout the Constitution. These measures would be without prejudice to the continuation of the present Government in the period leading up to the general elections, but would be necessary to provide the coherent legal basis for the elections themselves, as they involve multi-party competition for a national legislature. In this regard, several parties also raised with the Team the question of separation of MCP finances from public funds for the purpose of party and campaign activities.

Independent and Integrated Judiciary. The constitutional package should expressly guarantee the independence of the judiciary. This will require, inter alia, the revision of sections 47-48 of the constitution. In addition, the traditional courts should be fully integrated into the judiciary, under the authority of the high court, for a single judicial system subject to the same guarantees for legal process. Further details in this regard are offered below, under the section on The Administration of Justice and Legal System Reform.

Full Incorporation of Malawi's International Legal Obligations into Domestic Law. The Constitutional package should provide for the incorporation of international legal obligations into national law. This should be seen as a complementary and reinforcing measure to the inclusion of human rights in the bill of rights itself, such that all subsequent international human rights obligations undertaken by Malawi will stand as the enforceable law of the land, without fear of legislative interference.

4. **Electoral Reform.** Work should begin at once on the drafting of a new electoral law. This will benefit to some degree by the experiences of single-party elections in the past, and lessons learned during the recent referendum. Nevertheless, the challenges posed by the conducting of first time multi-party elections are great, as are the assistance

needs in this regard. The technical committee of the NCC charged with proposing electoral law reform may wish to consider the following elements:

1. Election Administration - Provisions of the electoral law must ensure that an objective, unbiased, independent and effective administrative structure is in place. This entails careful drafting of the provisions for appointment, compensation, duties, powers, qualifications and reporting structure of electoral staff. At all levels, staff must be insulated from bias and political pressure. A single line of ultimate authority should be established. These concerns remain important regardless of the type of administration selected. Most states opt for an Electoral Commission with fair partisan representation, recognized neutrality or a mixture of the two. Whatever the structure, legal guarantees should be in place to insulate electoral administration from bias or corruption. Adequate advance training is imperative for all election officials.

In selecting an appropriate administrative structure to oversee the elections, the NCC should consider that the composition of an electoral commission should be acceptable to all parties. The basic models are as follows:

- a. Impartiality. Members are appointed based upon merit, knowledge, and non-partisan reputation.
- b. Balance. Memberships are allocated to representatives of each party, in such a way that no single party can control.
- c. Mixed Models. In this formulation, each party is granted a certain number of seats, with additional seats filled by independent personalities agreed by both sides.

It might also be possible in Malawi to conceive of a model based upon two sides--that is, government and opposition. The Commission would then be established with a mixed structure incorporating both balance and impartiality. Each side would select a certain number of members, after which that group would collectively select a number of other members by consensus. The Chairman would be from the third (non-partisan) group.

Balance may also be maintained at lower levels in the electoral structure, by providing, for example, for one representative from each party to serve on each polling team.

2. Constituency Delimitation - The appointment of a commission to draw electoral boundaries should be undertaken at the earliest possible moment, and the role of such a

commission should be clearly set out in the electoral law. The process of identification of electoral districts and boundaries should respect the international norm of equal suffrage. Such delimitation should not be designed to dilute or discount the votes of any particular groups or areas. Fair constituency delimitation procedures will take into account a range of information, including available census data, geographic distribution, topography and so on. Polling stations should be distributed to guarantee equal access within each constituency.

3. Registration of Electors - For proper advance registration of voters, the process must ensure fairness and effectiveness of provisions for elector qualifications, residence requirements, elector lists and registers and means for challenging those documents. Election lists should be available to interested parties. Additional measures for preventing double-voting, or voting by unqualified persons, should also be in place. (For example, the use of indelible ink). Disqualifying factors must not represent impermissible discrimination, and should be limited to provide the maximum reasonable enfranchisement of the people. Procedures should accommodate broad participation, and should not create unnecessary technical barriers to participation by otherwise qualified persons. For instance, advance registration should be allowed for those who will reach the minimum voting age by election day, but after the close of registration. Suspension of registration should occur as closely as possible to election day, so as to provide the greatest opportunity for electors to register.

4. Nominations, Parties and Candidates - Electoral laws and procedures should guard against unfair advantage bestowed upon government supported candidates. Provisions for candidate qualifications must be clear, and must not discriminate against women or particular racial or ethnic groups. Disqualifications should be subject to independent review. Political parties should not face unreasonable restrictions on participation or campaigning. There should be protection under law for party names and symbols. Procedures for designation of party agents, for nomination time and place requirements and for campaign financing should be clearly established by law. In addition, the electoral calendar should provide adequate time for campaigning and public information efforts.

5. Polling, Tabulation and Reporting - To be successfully conducted, free and fair elections should be guided by detailed provisions regarding the form of ballots, the design of ballot boxes and voting compartments, and the manner of polling. These should protect the process from fraudulent practices and respect the secrecy of the vote. Ballots should

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be worded with absolute clarity and be identical in all languages. Proxy and absentee voting provisions should be designed to encourage the broadest possible participation, without compromising electoral security. Voters with special needs, including the disabled, the elderly, the infirm, students, conscripts, workers, foreign service personnel, and prisoners who have retained voting rights, should be accommodated. Polling personnel will require clear guidance in admitting and identifying qualified voters. Permissible questions to be put to voters at polling places should be expressly set out by statute, to prevent voter intimidation, abuse of discretion, or discriminatory application. The attendance of observers should be provided for. Counting should be open to official observation by concerned parties. All issued, unissued, and damaged ballot papers must be systematically accounted for. The processes for counting votes, verification, reporting of results, and retention of official materials must be secure and fair. Finally, recount procedures should be available in case of questionable results.

6. Complaints, Petitions and Appeals - Standing to challenge election results and redress for aggrieved parties should be provided by law. The petition process should set out the scope of available review, procedures for its initiation and the powers of the independent judicial body charged with such review. Multiple levels of review, where appropriate, should be described as well. The effect of irregularities on the outcome of elections must be established by law. Anyone alleging a denial of their individual voting or other political rights must have access to independent review and redress.

7. Respect for Fundamental Human Rights - Guarantees of free speech, assembly, movement, information and association take on heightened significance during elections. The prevailing atmosphere should be one of respect for human rights and fundamental freedoms, and should be characterized by an absence of intimidating factors. Laws in force which might have the effect of discouraging political participation should be repealed or suspended. Emergency or other exceptional legislation restricting fundamental rights should be repealed or suspended, as described below. Any exceptional measures in force must be those strictly required by the exigencies of the situation, and must not be calculated to corrupt or unnecessarily delay the political process. Respect for a wide range of human rights, as enumerated in the Universal Declaration and the two Covenants, is crucial to the conduct of free and fair elections.

8. Offenses, Penalties and Maintenance of Order - The national electoral law must also protect the political process from

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corruption, official misfeasance, obstruction, undue influence, personation, bribery, treating, intimidation, and all forms of illegal and corrupt practices. Prosecutions, procedures and penalties must respect international standards for human rights in the administration of justice. Decisions regarding the maintenance of peace and order at polling places should be made by balancing concerns for security against the potential intimidating effect of a police presence at the polls. Polling officers should be delegated the authority to maintain order at polling places. Civil and criminal liability may be imposed for acts of official misfeasance, nonfeasance, and malfeasance by election officials.

9. Media Access and Regulation - Arrangements for fair media access by candidates and parties are an important focus of electoral law. This is especially evident where the major information media are government controlled. Media regulations should provide for safeguards against political censorship, unfair government advantage and unequal access during the campaign period.

10. Public Information and Voter Education - Funding and administration should provide for objective, non-partisan voter education and information campaigns. Such civic education is especially critical for populations with little or no experience with democratic elections. The public should be well informed as to where, when and how to vote. It must be confident in the integrity of the process and its right to participate in it. Literature should be widely available and should be published in the various national languages to help ensure the meaningful participation of all eligible voters.

11. Observation and Verification - The observation and verification of election preparations, voting and counting by representatives of political parties and candidates should be widely provided for in election legislation. In addition, the presence of non-partisan election observers from national or international organizations can help secure public confidence in the electoral process. If observers are to be invited, their presence must be expressly permitted by the electoral laws and procedures, and their role should be clearly described in public information materials. Whether drawn from the United Nations system, from regional intergovernmental organizations, from non-governmental organizations or through official missions from other States, observers should be afforded free movement and access, and should be protected from harm or interference with their official duties. It is important to allow for a sufficient numbers of observers which ensures their presence at an adequate number of polling places and election events.

12. Legal Authority and Structure - Guarantees for the

fundamental rights of periodic free and fair elections with universal, equal, and non-discriminatory suffrage and secret balloting, and for the right to be elected and to have access to the public service on equal terms should be enshrined in the Constitution or other high organic law of the State. The legal authority for rights of free expression, opinion, information, assembly, and association should also rest in the highest law of the land. Statutory language should be clear, concise, and adequately specific, in order to forestall potential abuse of discretion, discriminatory application, or impinging upon rights of free expression or full participation. Drafting language should be gender-neutral to encourage participation by women, and should be translated into the languages of all voting groups. Subsidiary legislation, including clear and detailed regulations and administrative instructions, should also be promulgated and should respect these general requirements.

5. The Administration of Justice and Legal System Reforms

Some of the most pressing needs identified by the Team during the Mission relate to laws and practices regarding the administration of justice and certain fundamental human rights. Principle areas within this category include the Judiciary (ordinary courts and traditional courts), the police, the prisons, and the reform of certain problematic laws in force. Assistance in effecting the reforms indicated below will be vital in assuring the necessary human rights context for the conduct of free and fair elections, and for the post-elections democratic order.

a. The Judiciary.

Constitutional change, as discussed above and elaborated here, with regard to reform for an independent, integrated and fully-functioning judiciary, should be a matter of high priority, in the interest of securing the role of the Malawi judiciary as the guardian of the rule of law in the country.

Based upon relevant international standards, including the United Nations Basic Principles on the Independence of the Judiciary, the constitutional package should provide that:

a. The independence of the judiciary is to be respected and observed by all governmental and other institutions.

b. The judiciary is to decide matters before them impartially, on the basis of facts and in accordance with law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

c. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

d. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle should be without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

e. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals. This implies, as noted, the full incorporation of the traditional courts into the regular judicial system. It will also require the dissolution of the Administrative Review Tribunal established under the Public Security Act. These issues are addressed in more detail under the section on the administration of justice, below.

f. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected. This responsibility must be accompanied by guarantees of fair legal process in the constitutional package.

g. The judiciary must be provided with adequate resources to ensure the proper performance of its duties.

h. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training and qualifications in law. The method of judicial selection must safeguard against judicial appointments for improper motives. In the selection of judges, there can be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or other status, except that a requirement that a candidate for judicial office be a national of Malawi would not necessarily be considered discriminatory.

i. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and age of retirement shall be adequately

secured by law. (Note: adequate remuneration is crucial to the maintenance of a judiciary free from external pressure and undue influence).

j. Judges shall have guaranteed tenure until the mandatory retirement age or the expiry of their term of office as provided by law.

k. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

l. Any charge or complaint made against a judge in his or her personal capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have a right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

m. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

n. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review, although exceptions may apply for decisions of the High Court or legislative impeachment proceedings.

In addition, the constitutional package should expressly provide for judicial review of legislation and executive acts, and the judiciary should be authorized to declare such instruments to be unconstitutional.

As noted above, the Traditional Courts should be fully integrated into the ordinary judiciary, under the authority of the High Court of Malawi. The Traditional Courts may then continue to function as part of a single court system, and subject to the same guarantees for fair legal process. This will have implications both for Constitutional revision, and for revision of the Traditional Courts Act and the Rules of Procedure for the Traditional Courts.

The reforms to be effected with regard to the Traditional Courts, in order to bring their operation into compliance with international standards for the administration of justice, are as follows:

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- a. Integrate the Traditional Courts into the regular Judiciary, under the control of the High Court and the independent judicial commission (described below). Remove any Executive or Ministerial control over the Traditional courts.
- b. Remove the jurisdiction of the Traditional Courts for matters with serious criminal penalties (e.g., murder, treason).
- c. Increase the levels of required training and qualifications for traditional court judges to the point that they are prepared to base decisions on the written law and legal argument and to apply crucial (enhanced) rules of procedure.
- d. Allow for appeal of Traditional Court decisions to the High Court.
- e. Provide for the absolute right of legal representation before Traditional Courts.
- f. Repeal the provisions allowing for the establishment or extension of jurisdiction by warrant.
- g. Provide for the express rights of those appearing before the Traditional Courts to present witnesses and to cross-examine adverse witnesses.
- h. Require the full application of the Rules of Evidence in the Traditional Courts.

A strong, independent, adequately funded and staffed, and fully operative Judicial Service Commission must be secured at the earliest possible moment. This will require substantial enhancement of the current Judicial Service Commission in terms of mandate and resources. This Commission should be composed of members of the Judiciary itself (e.g., the Chief Justice, two High Court Judges, a senior Magistrate, a non-practising legal Academic, and a retired practitioner might be a useful formulation). The Commission should have sole responsibility for making appointments, and should be charged with recommending part-time judges to supplement the courts, disciplining judges, giving directions as to judicial training, negotiating conditions of pay and terms and conditions of judicial service.

The material and financial resources, as well as training opportunities available to the Judiciary should be

enhanced at every level. This should include, inter alia, the following:

1). **Seminars**, on human rights in the administration of justice, on judicial administration, and on changes in the Malawi legal system under the current reforms for judges, magistrates, lawyers, judges, and prosecutors, as well as basic legal training for traditional court judges. All levels of the judiciary and the should receive training in the value and use of various non-custodial measures.

2). **Court Recording Devices**. Court records are currently made by hand, a process which substantially delays the judicial process (each transcript must be subsequently checked, typed and verified), and contributes to the serious human rights problems of delayed appeals, prolonged detention (justice delayed is justice denied), and occasional inaccuracies resulting in miscarriages of justice at the appellate level. While some such devices have already been provided under bilateral assistance agreements, further needs in this regard remain.

3). **Law Library for the High Court**. Even at this level, according to the Chief Justice, law books and other basic legal resources are incomplete, outdated, and in generally bad condition. Additionally, the high court does not have access to literature on international human rights, including the basic instruments.

4). **Computers**. The judiciary, including the high courts lacks the necessary computer technology, even for daily administrative tasks, let alone legal databases and the like. This too contributes to delays and errors in the administration of justice.

5). **Judicial Housing**. Many districts are left without an accessible judiciary, because there is no place to house the judges, and no money with which to rectify the situation.

5). **Fellowships**. The Chief Justice also expressed interest in the possibility of organizing judicial fellowships, to allow Malawi judges to study, first-hand, the workings of independent judiciaries in democratic countries.

7). **Salaries and Expenses**. While these monies should be

normally drawn from the Consolidated Fund, there will be a need in the short term for assistance in meeting the operating expenses of the Judiciary, if it is to fulfill its enhanced role in ensuring the proper administration of justice in Malawi, particularly during the short-term transition period. For example, it may be necessary to appoint as many as five part-time judges to assist the High Court in meeting the increase in case load associated with the reforms and the electoral and transition processes. These might be drawn from the (albeit limited) available pool of senior legal practitioners in Malawi.

b. Legal Aid and Public Legal Resources. There are currently only about one-hundred lawyers in Malawi to serve a population of nine-million. Indeed, of the one-hundred qualified lawyers, approximately twenty are in the public service, thirty in the courts, ten in politics, five on the law faculty, and fifteen in private companies. Accordingly, a pool of approximately twenty lawyers remains for private law practice. Of those twenty, according to the Team's consultations, perhaps ten to fifteen are available for criminal defense work. Clearly, a ratio of ten or fifteen criminal defense lawyers for a population of nine million will have disastrous effects on the proper administration of criminal justice in Malawi, even with the reforms discussed in this section.

The problem is further exacerbated by the absence of sufficient legal aid services in Malawi. Existing free legal aid is critically short of personnel, material, documentary and financial resources.

Furthermore, legal resources, including research materials, books, documents, forms, authoritative versions of laws, and collections of Malawi and international jurisprudence are largely unavailable throughout most of Malawi.

The needs represented by these shortages might be addressed in part by the following measures, with international support:

1. Strengthen the law faculty through the provision of financial support, contributions to the library, and training for law professors in international human rights law.
2. Provide scholarships for accomplished Malawi students to pursue law study.

3. Initiate paralegal study and training programmes to provide qualified paralegals to supplement the available pool of lawyers.
4. Provide financial and material support to the legal aid programme for its substantial expansion.
5. Support the establishment and strengthening of public access legal resource centres throughout Malawi.

c. The Police. Changes in the administration, control, legal standing and operations of the police forces in Malawi were identified as priority areas among most of those met by the U.N Mission. The police authorities themselves noted several material needs seen as crucial to assuring full operational capacity. Police training, including in international human rights standards for police conduct was a common issue of discussion.

Police and security forces play a dual role in an election setting. Effective administration of justice during an election period requires a balancing between the need for polling security and maintenance of order with the importance of non-interference with rights and the existence of an environment free of intimidation. The Code of Conduct for Law Enforcement Officials imposes a duty of service to the community upon all officers of the law. This notion of service necessarily requires that security forces strive to ensure that all citizens benefit from elections that are administratively sound and free of any disruptive forces which seek to undermine the free expression of popular will.

Similarly, the Code provides that "law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons." This includes not only the human right to take part in elections but all human rights. Police agencies that do not respect fundamental human rights have the potential to create an intimidating atmosphere that will inhibit the electorate and thereby subvert the genuineness of the election's outcome.

In addition, the Code of Conduct requires law enforcement officials to "rigorously oppose and combat" any act of corruption. This clearly includes a duty to prevent attempts at election fraud, personation, bribery, intimidation or any other acts that may frustrate the authenticity of election results. In addition, the Code of Conduct provides that law enforcement officials "shall

not commit any act of corruption." This is of extreme importance given the negative historical role that police and security forces have played in the elections process in some countries. Finally, in order to ensure that security forces remain impartial, the role of police in the provision of security for polling elections should be subordinate to that of the polling officers.

In the post-electoral period, as during the elections themselves, the police forces should perform their crucial duties within a structure which is recognized by all Malawians as disciplined, controlled, and professional, and no spectre of intimidation should attend the performance of their legitimate role in democratic Malawi. In order to achieve these ends, to which both the Government and the political parties of Malawi have committed themselves, the following ten-point programme might be considered by the Government and the NCC:

1. The establishment of a technical committee of the NCC to address police system reforms, with the advisory services of an international expert in law enforcement and the relevant international standards.
2. The incorporation, into Malawi law, of the U.N. Code of Conduct for Law Enforcement Officials, the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and other relevant instruments.
3. A restructuring of the top level chain of command, such that the Inspector-General will report directly and officially to a Minister accountable to Parliament. That Minister should be responsible for police activities, conduct and command. Issues relating to prosecution should be the responsibility of an independent and accountable authority, such as the Chief Public Prosecutor.
4. Clear legal provisions, and a firm statement of policy and orders, requiring all police officials to respond, without delay, to all court orders, including orders for release of detainees.
5. Permission for access by the ICRC to places of detention operated by police (as is currently allowed for prisons in Malawi).
6. Express legal provisions for access by judges, magistrates and lawyers to police detention facilities, and strict enforcement of those provisions.

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7. Training for all police officers, including senior officials, police trainers, and constables, on their responsibilities under new laws and regulations, and under international standards for human rights in the administration of justice.

8. Complete separation of the prisons and the police, as described below under the section on prisons.

9. Material and financial support to secure full operational capacity, including radios, vaccines and medical support, transport, and so on.

10. Allowance of complaints of police abuses to be heard and acted upon by the national human rights institution recommended under the section on the Constitution, above. (i.e., an Ombudsman Office or Human Rights Commission).

d. The Prisons. The Malawi Government has been cooperating and consulting with the International Committee of the Red Cross since August of 1992. The ICRC has carried out prison inspections, and continues to interview prisoners and prison authorities throughout the country. As of the date of the U.N. Mission, the ICRC had visited 27 prisons in Malawi.

The Government's cooperation with the ICRC is an encouraging development, and a demonstration of its interest in bringing the operation of prisons in Malawi into closer conformity with international standards. Full cooperation between the Government and the ICRC should therefore continue, and should complement the recommendations set out below.

The needs identified by the U.N. Mission involve six basic areas, as follows. Each will have implications for international assistance:

1. The material and resource needs affecting conditions in Malawi prisons. While the ICRC is already addressing some of these needs, further provision of assistance in securing adequate food, medicines, blankets, soap and sanitary supplies, and physical facilities will be required.

2. The need to reduce overcrowding and overuse of Malawi prisons. This problem may, in part be addressed by efforts to reduce the length of sentencing; the introduction an use of more non-

custodial measures to replace or reduce prison sentencing; the reduction of the number of remand prisoners in custody through the use of bail or recognizance; the release of all prisoners incarcerated for political offenses or for acts which will cease to be legal offenses under the reforms to be implemented during the transition (further addressed elsewhere in this report); the introduction of effective reform, rehabilitation and retraining programmes to reduce the rate of recidivism; and increasing the resources available to the probation service.

3. The need to increase the level of commitment to and knowledge of national laws and regulations and international standards by prison officials. This area could be addressed through well formulated training activities, including training courses for prison personnel; the provision of fellowships to enable certain officials to travel to other jurisdictions in order to study first-hand the operation and conditions of prisons in other countries; and the development of manuals or handbooks for prison personnel. These measures should be complemented by strict enforcement of the rules and regulations by the prison administration itself, and strong instructions from the authorities prohibiting violations of the rules regarding treatment of prisoners.

4. The need for legal and regulatory reform. This could be carried out through a careful review of prison regulations and laws with a mind to ensuring their conformity with relevant international standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners; the Basic Principles for the Treatment of Prisoners; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; the Convention Against Torture; and the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

5. The need to separate police and prison responsibility. This was a frequent topic of discussion during the Team's consultations with both Governmental and non-governmental actors in Malawi. The responsibility of the police for control of

Malawi's prisons raised several strong concerns regarding the conflicting functions of policing and corrections, and the dangers of allowing the same organization responsible for arrest to exercise control over convicted prisoners. The requisite legislative and administrative reforms, necessary to correct this situation, could be undertaken, in the first instance, through the technical committees and procedures of the NCC. The end result of such reforms would be a complete separation in terms of budget, administration, accountability and staffing.

6. The need to develop more adequate access, inspection, complaint and investigation procedures. Attention to these areas was also a priority for many with whom the Team consulted. Such concerns might be addressed by, inter alia, appointment of an independent judicial commission of inquiry to investigate prison conditions and make reform recommendations; the strict enforcement of the provisions of the Inquests Act regarding prompt investigations by judicial authorities of any custodial deaths; strictly enforced legal provisions for prompt and thorough investigations of other custodial abuses, and criminal prosecution of violators; the establishment of strengthened complaints procedures, including the right of prisoners to submit complaints to the proposed Office of the Ombudsman or Human Rights Commission; the strict application of the recent High Court ruling allowing unrestricted access for lawyers; clear legal provisions and official statements allowing for unrestricted access by judges and magistrates; the issuances of firm orders to prison personnel to respect and comply promptly with all court orders.

e. Laws in Force.

Of particular import to the proper functioning of the electoral laws and procedures, and to their desired legal effect, as well as to guarantees of a free and fair campaign period and international human rights, is the relationship of the electoral laws and procedures to the general legal system of Malawi and, especially, to any laws in force that may be seen to conflict with the provisions established in the electoral laws or the constitutional reform package. These reforms are also important for a post-electoral democratic order which is

respectful of human rights.

As such, a review of all such laws is indicated, and the suspension or revocation of any provisions thereof, which may either directly contradict, or otherwise interfere with the provisions of the electoral laws or constitutional reform package should be effected. In any case, the legal supremacy of the important rights and freedoms of expression, assembly, association, and movement set out in the laws must be clearly and unequivocally established. It should be emphasized that any lack of clarity as to the legal precedence of rights related to participation in the campaign and election processes can have the effect of discouraging participation therein. Neither can the meaningful human rights reforms to which both the Government and the parties have publicly committed themselves, be effected without attention to the laws addressed below. To this end, international cooperation in the form of advisory services of experts in both law and legal drafting would be of great use in assisting the NCC and the Government in the legal reforms necessary.

The Security Laws

Special attention, for these purposes, should be paid to security laws, currently in force, including the Preservation of Public Security Act, Chapter 14:02 of the Laws of Malawi, as amended by the Preservation of Public Security (Amendment) Act No. 17 of 1992. Especially problematic, for the purposes of free participation in the electoral process, and for a legal order respectful of international human rights, are the following provisions:

Section 3(2) of the Act allows for the prohibition of the publication and dissemination of matter which appears to the Minister, in his discretion, to be prejudicial to public security, and empowers him to control the production and distribution of publications, for those purposes. In addition, that Section grants to the Minister the power to prohibit, restrict, and control assemblies; to prohibit, restrict and control the residence and movement of persons and property, and to restrict access to immovable property; to have persons detained; and to take any other action required by the exigencies of the situation.

The margin of discretion afforded to the Minister in determining the necessity of such actions (under Section 3(1)) raises, for election campaign purposes, serious issues of potential conflict with the proposed electoral and constitutional reforms, and with international

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requirements for a free and fair process. The activation of any of the provisions of Section 3 during the campaign period would certainly interfere with the process. Indeed, even if such powers are not exercised by the Minister, their very existence and possibility of activation during the campaign period can be expected to have a dampening effect on participation, by those fearful of the possibility of punishment for otherwise protected campaign activities.

Clearly, these concerns must be balanced against the legitimate right and duty of the state to protect public order. However, in every case, such actions must be strictly required by the exigencies of the situation, must be consistent with the needs of a democratic society, and must respect certain fundamental rights as non-derogable. Furthermore, the restrictions imposed should not be so vague or broadly defined as to afford an overly wide margin of discretion to the authorities responsible for enforcing the law.

In the present case, any restrictions which would interfere with the requisite rights to freely campaign, by use of publications, public meetings, movement about the country, or association with political parties, or restrictions discriminatorily applied on the basis of ones position on the elections, or any party, would, by definition, be inconsistent with the conduct of the free and fair elections proposed for Malawi by the Government. Supporters of any party must be absolutely secure in the knowledge that any such activities will not, under the law, result in prosecution or punishment, either during or after the elections.

The provisions allowing for restrictions on publications (sub-section(a)), with their attending imposition of strict penalties including imprisonment, may come into direct conflict with the guarantees of international human rights and the proposed electoral and constitutional reforms, which will be intended to ensure freedom of expression and information and the right, in particular, to publish and distribute literature.

Prohibition, restriction, or control of assemblies under sub-section (b) could, both during the campaign period and after its conclusion, contradict the relevant international standards for free assembly discussed earlier in this report, including the right to hold public demonstrations.

Prohibition of movement, if activated under sub-section (c), could interfere with the normal course of

campaign activities, as individuals and groups must be free to carry their campaign messages to areas throughout the country, without fear of undue or discriminatory limitations.

Sub-section (e), empowering the Minister to make provisions for the detention of persons for security reasons would have an intimidating effect on persons involved in campaign activities, and should be clearly and expressly subjugated in legal force to the legally protected activities to be set out in the constitutional and electoral reform packages, such that no person need fear imprisonment or detention for active participation in campaign-related activities. Similar attention is warranted for other potential penalties, such as those which the Minister is authorized to impose under section 4(b) of the Act. These provisions will also be inconsistent with the democratic order in the post electoral period.

The grant of authority to the Minister to make regulations, under section 4(c), to suspend or amend all other laws outside of the Constitution, if retained, should not extend to legal action against any person or group for legitimate activities engaged in before the suspension of the electoral laws, and any such suspension or should be prohibited in all but the most exceptional of circumstances, as described above. The power to amend the electoral laws should be reserved to the Electoral Commission, alone.

Neither should section 4 (e) extend to the interim constitutional package, which should be seen as the supreme law of the land prior to the adoption of a new constitution.

Section 5(2) of the Act has the effect of making that Act supreme over all other laws of Malawi, save for the Constitution. This provision, taken in concert with the several individual provisions which may stand in conflict with the provisions of the various proposed reforms, would, without further revision of the kind discussed herein, serve to effectively void the guarantees of the new laws of their substantive import, thereby jeopardizing the election process and eroding public confidence in it.

Similarly, the provisions of the Amendment Act of 1992 raise some issues which could have a direct impact on the election and transition processes. In particular, the discretion afforded to police officers to arrest without warrant, and to impose preventative

detention, based upon their own judgement or suspicion, pending a decision of the Minister on whether a detention order is to be issued, and such a detention order itself, in the context of campaign activities, could raise concerns of discriminatory application without meaningful redress, as these provisions are exempted from ordinary judicial safeguards.

The procedures that are established under Sections 9 and 10 of the Act, which provide for the use of an Administrative Review Tribunal, which is to have a majority membership appointed by the Minister himself, and where the Minister is to have final discretion in the review of detentions, as an extraordinary mechanism outside of normal independent judicial procedures, can have no role in prosecutions or legal action related to the conduct of the elections, or the current transition process. Offences and penalties relating to the campaign and to the elections should be the express statutory domain of the normal judiciary, and of the Election Commission. Other offences, as well, may be sufficiently addressed by ordinary judicial recourse. As such, these sections should be repealed, consistent with international standards for human rights in the administration of justice.

As to subsidiary legislation, issued under authority of the Act, the Subsidiary Legislation Declaration (Public Security Regulations) declared by the Minister has already brought the provisions of section 3 of the Act into effect in Malawi, and several of the detailed components of that subsidiary legislation stand in direct contradiction to the proposed legal reforms, and to international standards for free and fair elections and the administration of justice.

In particular, the publication (including the use of words written or spoken, pictures, and audio or video recordings) of anything which is seen by the Minister or authorities authorized by him to be likely to prejudice public security, to undermine confidence in the Government, to promote ill-will between different groups in Malawi, or to promote industrial unrest, is made an offence subject to serious penalties. A reasonable interpretation of this section suggests the potential for criminalizing or, at the very least, discouraging public debate on the current political system in Malawi, thereby rendering it inconsistent with the carrying out of a free and robust public debate during the transition period. (The broad drafting language makes no provision for criminal intent, nor for incitement to violence). This section should be repealed, accordingly.

Penalties under the Security Regulations could also be seen to interfere with the campaign and transition processes, both by discouraging participation, and by restricting the activities of individuals charged with violating their provisions. Among the possible sanctions are detention and imprisonment, restrictions on employment, residence, association, communication, movement, property or possession of any designated article, and the imposition of control orders.

Finally, throughout the Security legislation (for example, Section 14 of the Security Regulations currently in effect) police are vested with broad powers of search and seizure without a warrant, and at the discretion of the individual officer. This can be seen to represent a potential threat to the security of voting materials, polling places, and campaign materials and offices, so long as the security laws, as currently constituted, remain superior to the proposed legal reforms.

It should be emphasized that the powers provided by the Act and its regulations to arrest without warrant and to detain without trial, with broad discretion afforded to the arresting officer may be seen as contrary to international standards for human rights in the administration of justice. Accordingly, those sections should be subject to full repeal.

In sum, the Government should carefully consider whether security laws contradicting the proposed legal reforms and international standards for the conduct of free and fair elections and human rights should be repealed or suspended, either in whole or as to individual contradictory provisions. Such measures would bring the laws of Malawi into closer conformity with international standards, and would serve as valuable confidence building measures among the people of Malawi.

The Penal Code

Discussions with both Government and non-governmental actors in Malawi, as well as a review of the penal code, raised several important concerns with regard to that law. A review and redrafting of certain provisions should therefore be carried out by a technical committee of the NCC, and incorporated into the legislative reform package. The appropriate technical committee could draft the necessary reforms with the cooperation of one or two international experts skilled in law and legal drafting, with particular reference, inter alia, to the following provisions:

Section 42, with broad interpretation of the concept of

incitement to sedition of the police, might be seen to interfere with the legitimate right of party proponents to deliver campaign propaganda to police, and the right of police to receive such information. A more narrow redrafting may be possible, while still protecting the legitimate security concerns of the provision.

Section 45 of the penal code, defining seditious publications and words as those "having a seditious intention", when taken in concert with the section 50 overly-broad definition of seditious intention, could come into conflict with both international standards and the requirements of a free and fair election period.

Section 46, empowering the Minister to ban the importation of publications which he, in his absolute discretion, determines to be contrary to the public interest, should be narrowed, in order to limit its effect to permissible areas such as racist or pornographic materials, and to protect the right of individuals and parties to import legitimate political materials. The corresponding provisions of section 47, providing penalties for these acts, should also be adjusted accordingly.

Section 49, allowing police and others to intercept and open any package suspected by the officer at her discretion, to contain publications in violation of section 47, may give rise to arbitrary interference with privacy and correspondence, contrary to article 12 of the Universal Declaration of Human Rights.

Section 50, defining "seditious intention", in its current broad drafting, may be seen to interfere with legitimate and internationally protected rights of free expression, as well as the democratic element of protecting the right of citizens to criticize their government without fear of criminal sanctions. Section 50 also provides for presumed criminal intent, further broadening its abusive potential.

Section 51, providing for imprisonment and fines for communications deemed to be seditious, should also be reviewed, consistent with the suggestions above.

Section 52, providing for the forfeiture of printing machines and the prohibition of publication activities following charges of related sedition, may be seen to interfere with the operation of a free press in Malawi, as well as with the protected right to produce political publications. Both for purposes of the electoral period,

and for post-elections democratic society, this provision, even if not applied, could have the effect of discouraging full and robust discussion of political issues, necessary to any democratic order.

To the extent that the above provisions of the penal code are not repealed, redrafting should be carefully effected, such that incitement to violence (or to war or racial hatred) are necessary elements of the crime, and such that criminal intent is a further necessary element (i.e., not presumed intent).

Sections 54-55, proscribing certain unlawful oaths, is also overly-broad, such that legitimate strike activities might be jeopardised. (e.g., the broad formulation of breach of the peace may have this effect). This section might be more narrowly drafted in order to clearly limit its application to the prevention of violence.

Section 50, criminalizing publication of false statements, rumour, or reports likely to cause fear and alarm to the public or to disturb public peace, albeit providing as a defence attempts at verification, may require further attention in order to narrow its scope of application. In particular, it might be considered whether the formulation "alarm or breach of peace" might be replaced with "public disorder", in the interest of further protecting free expression.

Section 60A, prohibiting false reports to persons outside of Malawi, if such reports are likely to be published and might reasonably be expected to be harmful to the interests or the good name of Malawi, also raises serious questions as to its conformity with international standards for free expression. To the extent that legitimate governmental interests are at question, it might be considered whether these interests could not be addressed through civil actions, without the imposition of criminal sanctions. A more narrow drafting might also be considered, since the notion of what may be seen as harmful to the good name of Malawi is open to broad interpretation, raising the possibility of arbitrary or abusive discretion.

Section 61, outlawing certain forms of defamation against foreign princes, potentates, ambassadors, or foreign dignitaries, provides as criminal intent "intent to disturb the peace". A more precise and useful formulation, and one less likely to infringe rights of free expression, including the right to criticize the foreign policies of other states, might be one based upon endangerment of persons or property.

Sections 64-67 of the penal code, relating to unlawful societies, will require full repeal, in order that the penal code may be brought into line with international standards for freedom of association and religion. As currently drafted, it allows for the ministerial banning of organizations at the broad discretion of the Minister, and the criminalizing of membership in such organizations. Those provisions also allow for legal presumptions to be made as to membership simply by virtue of attendance at meetings or possession of documents, and further allow for entry into certain premises without warrant, in order to seize evidence related to societies deemed to be unlawful.

Section 71, defining criminal riot as assembly of three or more persons with the purpose of committing an offense "or some common purpose" causing reasonable fear to a proximate person of a breach of the peace. A more narrow drafting of the provisions regarding intent and purpose should be effected, so as not to impinge on rights of peaceful assembly.

Section 101, which punishes as perjury false testimony to tribunals, even if the tribunal in question is not properly constituted (i.e., even for unlawful tribunals), might be redrafted to limit its application to legally-constituted tribunals. Under international standards for the administration of justice, including article 14 of the International Covenant on Civil and Political Rights, everyone, in the determination of any criminal charge against him, or of his rights and obligations in a suit of law, is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Tribunals which do not meet these requirements should not carry the power of sanction over those who appear before them.

The criminal penalties currently provided for will require special attention for these reforms. In sum, all provisions allowing for the imposition of corporal punishment must be repealed. Corporal punishment of any kind is a clear violation of international human rights standards, particularly article 5 of the Universal Declaration (prohibiting torture and cruel, inhuman or degrading treatment or punishment); and article 7 of the International Covenant on Civil and Political Rights (prohibiting the same activities).

Review of the penalties should also include consideration of the abolition of capital punishment. There is a decided abolitionist trend reflected in recent international standard setting activities, and the broad

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programme of reform under way in Malawi provides an ideal opportunity for Malawi to take a leading role in its furtherance. Malawi could take the following concrete steps, toward that end:

1. Ratify the International Covenant on Civil and Political Rights.
2. Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, relating to the abolition of the Death Penalty.
3. Repeal all legal provisions in the national laws which allow for the imposition of the Death Penalty.
4. Commute all death sentences currently pending.

While abolition of capital punishment is strongly encouraged, certain minimum guarantees must be in place until such time as that is effected. In particular, capital punishment may never be applied arbitrarily; the sentence of death must be imposed only for the most serious crimes (i.e., crimes which are intentional and have lethal or other grave consequences) in accordance with the laws in force at the time of the commission of the crime (except that where the law changes subsequent to the commission of the crime, the offender shall benefit from the lighter penalty); the carrying out of such punishment must be in such a way as to not violate other international standards, such as those contained in the International Covenant on Civil and Political Rights, or the Genocide Convention.

The penalty can only be carried out pursuant to a final judgement rendered by a competent court--with all of the guarantees for a fair trial as outlined in the international standards. (It should be noted in this regard that the Traditional Courts, as currently constituted, do not satisfy these standards); anyone under sentence of death must have the right to seek pardon or commutation of the sentence, and amnesty, pardon or commutation of death sentences should not be precluded as a possibility in any case; no sentence of death may be imposed on anyone under the age of 18, nor on pregnant women, nor on new mothers, nor on the insane;

The standard of proof for the imposition of the death penalty must be one establishing guilt based on clear and convincing evidence leaving no room for an alternative

explanation of the facts; anyone charged with a capital crime must have access to adequate legal assistance at all stages of the proceedings; the right to appeal a sentence of death must be guaranteed; capital punishment must not be carried out pending an appeal or other recourse procedure or proceeding relating to pardon or commutation; when it occurs, it must be carried out in a manner which inflicts the minimum possible suffering. (See, in this regard, the International Covenant on Civil and Political Rights; the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty; and the Second Optional Protocol to the International Covenant on Civil and Political Rights).

Censorship and Control of Entertainments Act

The 1968 Censorship and Control of Entertainments Act, which establishes the Malawi Censorship Board and provides for the banning of certain publications, should be reviewed with a mind to its repeal or substantive revision.

The current law provides broad discretion to the Censorship Board to ban publications, films, pictures, plays, statues, posters, etc. As such, it may be seen to interfere with the political, cultural and artistic freedoms contained in international standards for free expression.

The rights to freedom of expression and information are guaranteed under international human rights law, as described earlier in this report. Every form of subjective idea or opinion capable of transmission is protected including: news and information, commercial expression and advertising, works of art, etc. The scope of the article is not confined to one means of expression (it includes political, cultural, artistic, and other forms of expression). The electoral process itself is a mechanism whose very purpose is the expression of the political will of the people. The right to express partisan ideas must, therefore, be firmly guarded during election periods and beyond, as must other forms of protected expression.

Accordingly, the law might be repealed in the interest of protecting rights to free expression. Legitimate Governmental interests of protecting specific constructions of the rights and reputations of individuals, national security, public order, public health, public morals, and of preventing propaganda for war or advocating national, religious or racial hatred

that constitutes incitement to discrimination, hostility or violence, could be addressed through less restrictive, more narrowly tailored legislation.

The Protected Flag, Emblems and Names Act

The broad range of protected words and symbols specified in this Act raises further serious questions as to legal recognition of the international human right of free expression. Full, unhindered and robust public discussion of national issues is critical to the proper functioning of democratic societies, both during and between electoral exercises. As such, the Act should be either repealed, or reviewed with a mind to narrowing its provisions to the extent that it does not impinge upon free speech. In particular, consideration should be given to removing those provisions which prevent public criticism of the leaders or government of Malawi, since such criticism is a normal, and internationally protected democratic activity.

The Decency in Dress Act

Prosecutions under this Act, as currently constituted, could raise issues relating to the right of everyone not to be subjected to arbitrary interference with their privacy and home, as well, in some circumstances, to free expression. The Act should be reviewed in order that a more narrow drafting, and precise applicability might be developed, to forestall arbitrary application or abuses of discretion, and to better protect the rights identified herein.

The Forfeiture Act

The Forfeiture Act, providing for confiscation of property and funds by the Government, without due process of law, and without right of appeal, should be repealed. The Government has already expressed its willingness to do so, and that decision should be implemented as soon as possible, as the Act is contrary to several international human rights standards, including the right not to be arbitrarily deprived of one's property.

The Chiefs Act

A review of this Act might be effected, based upon concerns of several of the parties consulted that the Act politicizes the role of Chiefs, and gives the President the power to appoint and remove Chiefs, thereby

interfering with certain long-standing cultural traditions in Malawi.

The Malawi Young Pioneers Act

The Young Pioneers Act should be repealed. Armed or paramilitary wings of the MYP should be disbanded as such, and placed under the control of the regular military of Malawi. All police powers, or quasi police powers allowed previously to Young Pioneers should be immediately revoked, and law enforcement should be the express and exclusive domain of regular police agencies. MYP units charged with agricultural, educational or development activities should be under the direct control of the relevant ministry or ministries.

The Malawi Broadcasting Corporation Act

Several of the preceding sections of this report deal with critical law reform issues relating to the fundamental freedoms of information and expression, and to their importance for a free and fair campaign period. The next section of the report addresses further media issues to be considered during the short-term transition period. Consistent with the reforms explored in those sections, a review by the NCC of the Malawi Broadcasting Corporation Act might also be undertaken.

In particular, careful attention should be given to the provisions of the Act setting out restrictions and requirements for the licensing of independent broadcasting services, and those which might have an impact to fair public access to the MBC itself. Additionally, under a revised Act, public broadcasting on the MBC should be expressly guided by provisions to ensure that no single political party may control broadcast content, nor benefit from unequal access or control of the station.

Other Acts to be Reviewed

A careful review of legislation should be undertaken with a mind to identifying and repealing any provisions which may have discriminatory impact on any particular groups in Malawi. This should include repeal of restrictions on residence and business opportunities, and any other field of activity in the country. One such Act is the Business Licensing Act, which currently restricts the equal participation of certain ethnic groups in business activities in Malawi.

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6. The Mass Media

As noted above, arrangements for fair media access and use by candidates and parties are an important focus of electoral law. This is especially evident where the major information media are government controlled. Media regulations should provide for safeguards against political censorship, unfair government advantage and unequal access during the campaign period. Fair media access implies not only equality of time allotted to parties and candidates, but also attention to the hour of broadcasting (i.e., prime-time versus late broadcasting). Fair media use implies responsibility on the part of all persons or parties delivering messages or imparting information via the mass media. (i.e., truthfulness, professionalism, and abstaining from false promises or the building of false expectations).

A valuable mechanism for assuring fair and responsible broadcasting during electoral periods is an independent body charged with monitoring political broadcasts and broadcast civic education programmes, allocation of time to various political parties, and receiving and acting upon complaints regarding media access, fairness and responsibility. In the Malawi context, this function might be discharged by a technical committee of the NCC, by the NCC itself, by the Electoral Commission, or by a newly constituted Media Commission.

Securing responsible broadcasting and publication in the media could, in part, be served by agreement on a Code of Conduct for the Media. Such a Code could address both electoral and post-electoral media activities in Malawi, and would represent a far preferable form of media regulation (i.e., self-regulation) than legislative or governmental action which might raise the issue of impermissible censorship or interference with the human rights of freedom of information and expression. The promulgation of such a Code could be facilitated by the holding of a national conference for the media, to be attended by representatives of both public and private broadcasters and publishers, as well as international experts on human rights and the media.

The sections above deal extensively with certain areas of law reform regarding free expression and information and the media. The underlying notion in those recommendations is that media control, in areas which may touch on protected rights, should primarily be a function of ordinary tort remedies in civil actions (libel, slander, defamation), taken together with means of self-regulation (such as the code of conduct). Criminal law restrictions, as described in the section on law reforms, will certainly, at the very least, have a dampening effect on full free expression and the public's right to information.

Training of media representatives can also have a positive effect on the conduct of media activities, both during electoral

periods and in the post-electoral order. The national conference for the media, described above, would provide the ideal forum for informing journalists, publishers and broadcasters on international and comparative law and practice regarding the role and responsibilities of the media in elections, democratic transition, and democratic society, as well as relevant human rights issues.

These issues are particularly important in the current Malawi context, where a nascent and rapidly growing independent press will be called upon to inform the public of rapidly evolving transition issues in a responsible and professional manner, in spite of their very recent inauguration.

Clearly, the most far reaching information medium in Malawi is the state owned Malawi Broadcasting Corporation (MBC). The MBC reaches some seventy-five per cent of the people in Malawi, and is the primary source of public information for both rural and urban populations. The station broadcasts both in English (40%) and in Chichewa (40%), and is on the air for nineteen hours and fifteen minutes per day. Its important role as a source of information for sections of the population with lower levels of literacy is evident.

The potential of the MBC for civic education endeavors is noted earlier in this report. The MBC will, of course, also be called upon to accommodate political advertising during the campaign period. In doing so, it should be subject to the free media access provisions of the electoral reform package, and to the decisions of the independent body charged with monitoring fair media access.

7. Political Parties

At the time of the Team's Mission to Malawi, six political parties had been officially registered. Others may be expected to emerge during the short-term transition period, as well. The existing parties (both the ruling party and the various opposition parties) have demonstrated a strong commitment to an efficient and peaceful transition through meaningful dialogue and compromise.

The Government has already effected some Constitutional and legal reforms aimed at providing a legal framework for the participation of political parties in the political process. Further recommendations are made, in that regard, under the section of this report dealing with Constitutional reform.

In furtherance of this spirit of dialogue and fair play, there may be a need to take steps to ensure clarity and agreement on the "rules of the game" for campaigning and cooperation in the transition in Malawi. Such steps might include the convening of a conference to be attended by representatives of all political parties, for the purpose of drawing up a clear and comprehensive

code of conduct for political parties, to which all parties would publicly commit themselves. Such a process might be facilitated by the participation of international resource persons, who could provide valuable advice on how such rules have been successfully set down in other democratic transitions.

Additionally, consideration must be given to issues of campaign financing, such that political agreement and clear provisions of law may ensure the adequate funding of full and fair party participation and transparency in the financing process. This implies consideration of and agreement on three principal questions in Malawi: discontinuing access of the ruling MCP to public funds for campaign or party activities; acceptable sources of funding for all parties, and procedures to assure transparency and disclosure of such sources, as well as full disclosure of expenditures made by parties and candidates, and; public funding of campaign activities, on a fair basis, to all registered parties, according to an agreed formula. All of these issues should be agreed within the NCC, and incorporated into the electoral law.

2. Non-Governmental Organizations and Civil Society

There are, relatively speaking, few independent non-governmental human rights organizations in Malawi. Those that exist tend to be very new and in need of organizational and financial strengthening, if they are to fully assume the crucial role that such organizations play in every democratic society. As such, such organizations should benefit from domestic guarantees for unrestricted legitimate activities, and international support, in the form of financial contributions, training and capacity-building.

Similar support should come from the international community for the strengthening of trade unions and workers organisations. In addition, a review of labour laws in force should be effected during the transition process. While this might occur during the medium-term, the recent strike by civil servants demonstrated the importance of fair laws and effective mechanisms for the resolution of labour disputes to the success of the transition process itself. To the credit of Government and labour, that strike was settled peacefully through negotiation.

In the short-term, it would be useful to create some form of standing labour dispute commission, utilizing structured mediation and other dispute resolution procedures, to ensure a stable transition period. Conclusive legal reform, and training of labour unions, employers and Government in international labour standards, including, especially the work and standards of the International Labour Organization, could then be effected during the medium-term of the transition. A simultaneous review of current ratifications of ILO conventions, and those not yet effected, should also occur.

The Churches, Islamic groups and other religious organisations in Malawi have played a strong role in the transition process, and are well-prepared to continue in that role throughout the process. Vocal religious group support for peaceful democratic transition is a common phenomenon in many countries in democratic transition, where, as in Malawi, they have been proponents of dialogue and progress based on tolerance, dialogue and human rights. Thus, religious groups in Malawi, while not a part of the political process as such, can play a critical part in non-partisan civic education (including informing their membership and followers on important developments in the process).

In addition, such groups should be able to introduce into the process their positions on transition issues, based on their religious and moral convictions. Their right to do so (based on the rights of their members to freedom of expression and freedom of religion), as with all Malawians, should be legally protected and strictly respected. Accordingly, religious groups in Malawi should also be included in seminars, conferences and public discussions of transition issues, and should benefit from training and capacity building efforts provided by the international community.

2. The Amnesty and Returnees

The Government has taken the laudable measure of passing a general amnesty for Malawians living in exile. Under the law, exiled Malawians are free to return and participate in the transition process without fear of prosecution. The Team found this to be a most encouraging development. Nevertheless, further measures will be required, if the full reincorporation of the returnees into Malawi society, and their full participation in the process is to be realized.

As of the U.N. Mission, only thirty or so of the thousands covered under the amnesty had returned. Based upon the Team's consultations with some of those returnees, this is largely due to enormous economic barriers facing those who wish to return. Both those who have returned, and those still outside the country, are, in general, without the financial resources to take advantage of the amnesty. This includes a critical need for support in the form of relocation expenses, housing in Malawi, and support for daily subsistence during reintegration, as well as vocational training, health care, and other such needs.

No international actors have, as yet, undertaken to introduce resettlement programmes to address these needs. While some Government support might be envisaged (and is encouraged), the need for international action remains critical. Without such support, the full reintegration of exiled Malawians, and their full participation in the transition, cannot occur. In addition, their absence will represent the loss for Malawi of several skilled professionals, who could be called upon to assist in the

technically challenging process of transition itself.

10. Full Integration of Malawi into the International Human Rights System

During the Mission, discussions were held with the authorities in Malawi regarding further ratifications by Malawi of the major international human rights instruments. Prior and subsequent discussions on the subject have also been held with the Malawi authorities, who have expressed great interest in examining the possibility of further ratifications. As noted during those discussions, Malawi is already party to the following instruments:

- The African Charter on Human and Peoples' Rights
- The Convention on the Rights of the Child
- The Convention on the Elimination of All Forms of Discrimination Against Women
- The Convention on the Political Rights of Women
- The Convention on the Nationality of Married Women
- The Slavery Convention of 1926, as amended
- The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- The Convention Relating to the Status of Refugees
- The Protocol Relating to the Status of Refugees

The principal human rights instruments to which Malawi is not yet a party include the following:

- The International Covenant on Economic, Social and Cultural Rights
- The International Covenant on Civil and Political Rights
- The First Optional Protocol to the International Covenant on Civil and Political Rights (recognizing the competence of the United Nations Human Rights Committee, established under the Covenant, to receive and consider communications alleging violations of the Covenant)
- The Second Optional Protocol to the International Covenant on Civil and Political Rights (aiming at the abolition of the death penalty)
- The International Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Prevention and Punishment of the Crime of Genocide
- The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against

Humaniity

- The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The Convention on the Reduction of Statelessness
- The Convention Relating to the Status of Stateless Persons
- The Convention on the Rights of Migrant Workers and the Members of their Families

The context of the current transition in Malawi, Malawi's recent participation in the World Conference on Human Rights, and Malawi's upcoming role as a member of the next session of the United Nations Commission on Human Rights, provide an important opportunity for the Government to assert Malawi's full participation in the international human rights system. The Mission Team has been encouraged, in this regard, by the recent ratification by Malawi of the Convention on the Rights of the Child and the 1970 ratification of the African Charter, as well as by expressions by the Government of interest in further ratifications.

As a first step, the Government may wish to consider immediate ratification of the two principal human rights instruments, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. This, taken in concert with implementation of the provisions of those instruments into national law, would provide a solid framework for the protection of human rights during the transition in Malawi.

Ratification of the other core instruments could follow, including the International Convention on the Elimination of all forms of Racial Discrimination; The Convention on the Prevention and Punishment of the Crime of Genocide; The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the convention on the Rights of Migrant Workers and their Families. Further ratifications could then be planned as considered by the Government.

In addition, as noted, Malawi was an active participant in the World Conference on Human Rights held in Vienna in June of 1993. In the Vienna Declaration and Programme of Action, adopted by the World Conference, the following recommendation was made:

The World Conference on Human Rights recommends that each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights.

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During discussions with the Team and with the Centre for Human Rights, the Malawi Government has expressed its interest in receiving the advice of the Centre in the drawing up of such a plan of action for Malawi. The Government is encouraged to continue its consultations with the Centre in this regard, as a long term plan of action for human rights in Malawi is particularly appropriate in the context of the current transition.

V. Medium Term Needs

The challenges of Malawi's democratic transition, as noted above, will not end on the day following elections. The period of democratic consolidation which we have identified as the medium-term will require continued commitment on the part of all Malawians, and on the part of the international community. Once the normal course of post-electoral government has begun, continuing needs will be evident in all of the areas addressed during the short term. The particularities of such activities, and of the types of international cooperation which will be required, will not be clear until after the elections and the seating of the new Parliament. As such, the fielding of a second needs assessment mission could be envisaged for the purpose of identifying assistance needs for the medium and long terms.

At this point some needs for the medium-term are already evident. If the interim constitutional reform procedure described in section IV of this report is indeed the approach adopted, early attention will have to be given after the elections to the organization of a national constitutional conference for the full adoption of a new constitution. This would require assistance from the international community for the convening of the conference itself, and for related civic education activities. The full spectrum of Malawi society should be included in the process, such that all views may be accounted for in the constitutional decision making process. Printed materials, audio-visual media, and district and local level seminars on the constitutional process could be also envisaged. International experts in constitutional law and human rights would be a valuable complement to the national expertise of those charged with the drafting of the constitution itself.

Capacity building and the provision of international expertise to assist legislators and government officials in the continuing task of legal and institutional reforms in the medium term may also be required. The dramatic substantive legal and institutional reforms now being considered by Malawi will have to be translated into practice once they have been provided for in the law. This will imply sustained efforts at training directed at various sectors and levels of both official and non-governmental society. Training and education in the meaning of the new reforms, and of the role of those groups in post-elections Malawi will be crucial.

Specifically targeted training activities should be developed for parliamentarians, Government officials, police, prison officials, the military, teachers and curriculum developers, the Media, organized labour, NGOs, judges, magistrates, lawyers, and others.

In addition to ad hoc training activities, the capacities of permanent educational institutions should be strengthened during the medium term, so that they may assume full responsibility for professional training functions in the long-term. Financial support, documentation, and training to staff training colleges, civil service colleges, the law school, police and military training academies and to the proposed office of the ombudsman or human rights commission should be a priority area of attention for international cooperation.

Fellowships for officials in the various sectors identified in this report will be equally useful. International programmes which can fund the temporary placement of key personnel with their counterpart institutions in other democratic jurisdictions could provide valuable first-hand comparative experience to selected fellows. Some foreseeable candidates would be, in addition to those groups identified above, Government officials who will be charged with reporting obligations under international treaties to which Malawi is, or will become, party to.

VI. Long-Term Needs

It is an established principle of international human rights law that all human rights are equal, interdependent and indivisible. While the current discussion on reforms in Malawi have, thus far, focused primarily on issues of civil and political rights, it should be clear that economic, social and cultural rights must not be ignored, if the democratic transition is to be sustainable, and if the Malawi people are to enjoy the full realization of their human rights.

Similarly, while general legal and institutional reform is the first step toward securing a society based on the rule of law, and respectful of human rights and fundamental freedoms, particular attention must also be given to the condition of vulnerable groups, such as women, children refugees, and members of minority groups.

In this regard, the Government and people of Malawi, and those in the international community committed to supporting the transition in Malawi, are encouraged to give ample attention to the economic, social and cultural needs of Malawians. While many of these issues are, by definition, matters for the long-term, public discussion and attention to finding effective solutions should begin at once.

Poverty, Development and Vulnerable Groups

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In spite of concerted government efforts, and the intervention of several international programmes, poverty remains high in Malawi, and development needs great. Useful data was provided to the Mission by the representative of the United Nations Children's Fund in Lilongwe, and by other U.N. agencies in the country. A detailed analysis of some of these issues is provided in the recently released Situation Analysis of Poverty in Malawi, which was prepared jointly by the Government of Malawi and the United Nations. Taken together with other information collected by the Team, the following picture emerges:

-Malawi is one of the world's least developed countries, where more than half of the population lives below the poverty line, and access to basic needs such as food, water, shelter, education and health is extremely critically limited. Estimated GNP per capita in 1990 was \$200.

-The most vulnerable groups, in terms of poverty, are small holders; casual labourers and estate workers; estate tenants; the urban poor; female-headed households and; children.

-Annual population growth is rapid currently at an annual growth rate of 3.3%.

-Malawi is currently populated by 9 million nationals and an additional 1 million refugees.

-The crude birth rate is 53.6 and the death rate 20.9. The fertility rate is high as well, at 7.6.

-Mortality rates are among the highest in the world, especially among infants and children.

-Malaria and malnutrition are the major causes of death.

-Maternal mortality is very high, at 250 per 100,000 live births.

-Life expectancy at birth is 48 years.

-The HIV epidemic has resulted in 20% of the adult population being infected with the HIV virus, with the number rising as high among urban populations.

-Malawi is one of the world's most densely populated countries, with 87 persons per square kilometre.

-Women's access to critical inputs, training, credit, technology, and business skills, as well as to effective

and representative women's organizations is very low.

-Public expenditure on health, education, and social welfare is relatively low in comparison to other sub-Saharan African countries. While government expenditure has risen, debt servicing has claimed an increasing proportion. Malawi now spends twice as much on debt servicing as on social services.

-Gross domestic product has decreased due to the serious drought conditions in Southern Africa.

-Household food insecurity is critically high in Malawi. As a result, 56.4% of pre-school age children suffer from chronic malnutrition, and almost 50% of smallholder households are food insecure.

-Malawi's active labour force is estimated at 3.45 million. The urban unemployment rate is approximately 16%. In the last decade, real wages and income have declined, and purchasing power has been eroded.

-Literacy rates among the adult population are very low, at 29% for females and 49% for males.

-While access to primary education has risen greatly since independence, the need remains critical. Among children between the ages of 6 and 15, female enrolment is at 80%, and male enrolment at 85%.

Despite primary education, repetition rates are high, retention rates are low, and drop-out rates are high. 50% of the children who enter primary education drop out before acquiring a permanent state of literacy.

-Guaranteed free primary education is not yet available. Many poor households are unable to enrol their children due to the lack of money to cover fees and uniforms. The Government has begun a programme to remove fees, one grade at a time, but due to the shortage of available funds, it does not expect to cover all grades at the primary level before 1998.

-Gross shortages of adequate buildings, teaching materials, and trained teachers are evident.

-The limited access to formal education underscores the need for more non-formal education programmes. Programmes for adult literacy, out-of-school youth, and the disabled are in need of expansion.

-Malawi suffers from a low health standard, with high

rates of illness and death. Infant and under five mortality rates are among the highest in the world.

-Women are particularly affected, with high incidence of disease, especially malaria, respiratory infection, diarrhoea disease, and undernutrition.

-The main causes of death for all Malawians are infectious disease, malnutrition, malaria, AIDS, and anaemia.

-Malawians face severe shortages of safe water, proper sanitation, and adequate shelter.

-The health care delivery system is insufficient and under growing pressure.

-Social welfare programmes including those for the disabled, child and family services, care and treatment of juvenile offenders, and for those in extreme poverty are severely under resourced.

-Further legal protections are to improve the conditions of labour on the estates, including protections against the exploitation of child labour, refugee labour, and women's labour.

The Equal Rights of Women

As indicated above, the particular vulnerability of women in regard to economic and social needs will require specific attention. At the same time, a review should be undertaken to identify needs with regard to the legal status of women in Malawi. The Malawi Government has demonstrated its concern in this area through ratification of the Convention on the Elimination of All Forms of Discrimination Against Women. Meeting the obligations set forth in that instrument will require careful attention to the effects of the interaction in Malawi between statutory and customary laws in Malawi, including the net effect of that interaction on the equal rights of women in areas of employment, property, marriage, credit, child custody and inheritance.

Addressing the particular needs of women in Malawi will require a four-tier approach, comprised of legal reform, public education, social programming and the fostering of women's organisations to allow women in Malawi to effectively introduce their concerns into the democratic process.

Donor Commitment

The single most important factor in assuring the sustainability of the democratic reforms in Malawi will be the degree to which international donors and agencies demonstrate their long-term commitment to supporting the advancement of economic, social and cultural rights in Malawi and the country's economic development. Particularly appropriate in this regard are comments made by the Secretary-General of the United Nations in 1990 when he noted that

"We cannot be unmindful of the fact that, while democracy is a necessary condition for the recognition of basic human rights, it is not in itself sufficient to ensure the actual enjoyment of those rights. Indeed, genuine political democracy has little chance to survive, and stability is bound to prove elusive, without social justice. Such justice to be consolidated needs the help of those who can rightly encourage it, though too often, they abandon it just after it has been brought about."

VII. The Need for a United Nations Field Presence and Support

The current report, as noted in the introduction, is intended to facilitate coordination in the provision by international agencies and donors of technical and financial support to the transition process in Malawi. Further to that end, and owing to the complexity and multiplicity of areas for attention, it is recommended that a United Nations Human Rights Officer be placed at the United Nations offices in Lilongwe, to act as a focal point and coordinator for the implementation of the projects implied in this assessment.

The officer would cooperate with the Resident Representative of the UNDP, and all other U.N. agencies in Malawi, as well as with bilateral and non-governmental donors and aid-givers, for the purpose of effectively implementing various programme components, and avoiding duplication of activities. She or he would maintain close contact with the Government, the NCC, and interested non-governmental groups, would coordinate funding, organization and implementation of project components, and would provide legal and human rights advice as needed. A two-year contractual period might be envisaged, such that the officer would be available to oversee implementation of the entire short-term (pre-electoral) period, as well as the first year of the medium-term.

In addition, it would be useful to fund (perhaps 1/2 time), the post of a human rights officer at the Centre for Human Rights in Geneva, to be charged specifically with overseeing and supporting the continuing projects in Malawi.

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VIII. Closing Comments of the Mission Team

The Team wishes to express its sincere thanks to the people and Government of Malawi for the warm hospitality, openness, and cooperation which it has been shown since the commencement of the mission. The Team is unanimously impressed by the superlative commitment to dialogue demonstrated by all parties involved in the democratic transition process, and is convinced that that process is well on track.

The Team is nevertheless further convinced that the huge task, the multiplicity of prerequisite actions for free and fair elections, the critical shortage of resources, and the severe shortage of time available for the implementation of necessary reforms prior to the elections, will certainly necessitate substantial cooperation and sustained commitment by the international community in the provision of material and financial support, advisory services of experts, training, documentation, information materials and all other relevant assistance.

The Team is cognizant that the process now under way in Malawi, in spite of the demonstrated commitment of both Governmental and non-governmental actors in Malawi, will continue to be strained by the challenges facing it, both before and after multi-party elections. That the freely expressed political will of all of the people of Malawi should be realized, the United Nations Team appeals for continued demonstrated commitment by all parties to the process itself, and encourages each of the principal actors to support that process with further compromise and confidence-building measures.

IX. Assistance Recommendations**The NCC:**

- 1) **Advisory Services of Experts** for the drafting of a transition schedule including advice on the necessary time intervals for requisite events.
- 2) **Advisory Services, technical assistance and financial and editorial support** for the periodical drafting, publication, translation and distribution of an Official Bulletin of the NCC.
- 3) **Financial Support** for the Staffing and incidental operational costs of the technical committees of the NCC.
- 4) **Provision of one full-time legal draftsman** to assist the various technical committees of the NCC.

Civic Education, Information and Documentation

- 1) **Advisory Services, Technical Assistance, and financial support** for a nation-wide, two-track, multi-lingual, multi-media Civic Education Campaign

Track-one (to begin immediately):

National Civic Education component programme on Democracy, Human Rights, and The Transition in Malawi

Track-two (to begin after agreement on the electoral laws and procedures):

National Civil Education component programme on the "who, what, when, where, how, and why" of registration and voting.

2) Elements:

- a.) **Advisory Services on Programme Development**
- b.) **Seminars at the National and Regional levels**
- c.) **Training courses for selected audiences, including political parties, parliamentarians, observers, election and registration officials, police and security personnel, the military, traditional authorities, the judiciary, teachers, NGOs, and the general public.**
- d.) **Advisory Services, technical and financial support for the production of multi-lingual literature and multi-media materials.**
- e.) **District workshops to "train trainers" for the Civic Education Campaign**
- f.) **Advisory Services and technical assistance in the development of public school curricula on human rights and**

democracy.

- g.) Technical assistance and financial support for the production of civic education radio spots for the MBC.
- h.) Financial support for the local recruitment of persons to coordinate civic education in each of the districts.
- i.) Documentation on human rights and democracy for broad national distribution, including to Government offices, police and security organizations, political parties, prisons, libraries, law offices, courts, schools, universities and non-governmental organizations.

Constitutional Reform

- 1) Advisory services of experts in constitutional law and legal drafting to assist the appropriate technical committee of the NCC in the drafting of an interim constitutional reform package.
- 2) Advisory Services of experts to begin the comprehensive review of the Constitution and to identify issues to be addressed in the ultimate redrafting of the Constitution after elections.
- 3) Assistance in the organization of a national Constitutional Conference, to be held after the elections, for the purpose of guiding lawmakers in the ultimate reform of the Constitution. (see medium term).
- 4) Technical and financial support for civic education and popular input into the final constitutional process. (see medium term).
- 5) Provision of documents and materials on international principles relevant to constitutional development, as well as comparative models for reference in the ultimate reform of the Constitution. (see medium term).
- 6) Assistance for the organization of post-electoral district seminars to accompany the national Constitutional Conference. (see medium term).
- 7) Financial support for recruitment of local constitutional law experts to work on the ultimate redrafting of the Constitution. (see medium term).
- 8) Advisory Services of international experts to advise the NCC on possibilities for the establishment of a national human rights institution, such as an ombudsman office or human rights commission.

Electoral Reform

- 1) Assessment mission of the Electoral Assistance Unit to identify detailed modalities and possibilities for electoral assistance at all levels.
- 2) Advisory services of experts, to assist the NCC and its technical committees in the drafting of the electoral law reform package, including provisions for constituency delimitation, registration, an Electoral Commission, an independent administrative structure, safeguards for full participation and fundamental right, observation, etc.
- 3) Advisory Services of experts, and technical assistance for the drawing of fair electoral boundaries.
- 4) Assistance. fielding, training and coordination of electoral observers.
- 5) Training activities for registration and electoral personnel. and the production of handbooks for each group.
- 6) Technical, logistical, financial and material support for the voter registration drive.
- 7) Technical, logistical, financial and material support for the elections.

The Administration of Justice and legal system ReformsThe Judiciary:

- 1) Advisory Services of experts to assist the technical committee of the NCC with the drafting of a legal reform package for the fair administration of justice - including provisions relating to the courts, the police, prisons, the legal profession and penal and security laws.
- 2) Financial and technical support to enhance judicial capacity during the transition period, including support for:
 - a.) The organization of seminars for judges and magistrates on human rights in the administration of justice, on the changes in the Malawi legal system and on judicial administration.
 - b.) Basic legal training for traditional court judges.
 - c.) Court recording devices.
 - d.) Material and documentary support to the High Court

library.

- e.) Computer equipment for the High Court.
- f.) Judicial Housing in the districts.
- g.) Fellowships to allow judges to study first-hand the working of independent judiciaries in other democratic jurisdictions.
- h.) Support for extraordinary salaries and expenses confronting the judiciary during the transition period, including, for example, support for the recruitment of 5 senior Malawian lawyers to serve as part-time judges at the appointment of the High Court.

Legal Aid, Public Legal Resources and Legal Education

- a.) Financial support to the law faculty for its expansion.
- b.) Contributions of books and legal collections to the University law library.
- c.) Training for professors of law in international human rights law including human rights in the administration of justice.
- d.) Scholarships for accomplished students to study law.
- e.) Initiation of paralegal study and training programmes.
- f.) Financial, material and technical support for the expansion of the public legal aid programmes.
- g.) Financial support and books and documentation for the establishment and strengthening of public access legal resource centres throughout Malawi.

The Police

- a.) Support for the fielding of a technical and logistical needs assessment mission of experts to evaluate equipment and administrative needs of the Malawi police forces, with a view to securing enhanced operational capacity and firm control of police forces throughout the chain of command.
- b.) Advisory services of an international expert in law enforcement and international standards to assist the NCC in addressing police system reforms; including the establishment of direct accountability to a Government Minister; clear legal provisions for police compliance

with court orders; provisions for access by judges, magistrates and lawyers to police detention facilities.

c.) Advisory Services of one international legal expert to assist the NCC in incorporating the UN Code of Conduct for Police; the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the Standard Minimum Rules for the Treatment of Prisoners; and other relevant instruments.

d.) Expansion of the ICRC visits and inspections programme to include places of police detention.

e.) Training courses for all police officers, including senior officials, police trainers, and constables on their responsibilities under new laws and regulations, and under international standards for human rights in the administration of justice.

f.) Short-term material support for enhancement of operational capacity, including full control by police administration of lower ranks; this will include communications equipment and vehicles

g.) Documentation and information on international human rights standards for law enforcement for use by the proposed office of Ombudsman or Human Rights Commission to assist their work in hearing complaints on police activities.

The Prisons

a.) Support for the securing of adequate supplies of food, medicines, blankets, soap and sanitary supplies and the improvement of physical facilities.

b.) Advisory Services of experts to assist the NCC in the review of sentencing provisions with a view to identifying possible areas of reduction.

c.) Advisory services of experts to assist in the drafting of legal provisions for a wider range of non-custodial measures, and for the necessary training of members of the judiciary, lawyers, and the Government in the use of such measures; support for programme costs for non-custodial measures, including enhancement of the parole board.

d.) Advisory services of experts in the development of programmes of reform, rehabilitation and retraining for the reduction of recidivism.

e.) Training programmes for prison officials on international and national standards for the treatment of prisoners.

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f.) Fellowships for key prison officials to study prison administration in other democratic jurisdictions.

g.) Technical and financial support for the production of manual on the treatment of prisoners for prison personnel.

h.) Advisory Services of experts to assist the NCC in a careful review of existing prison regulations with a mind to ensuring their conformity with relevant international standards, including the United Nations Standards Minimum Rules for the Treatment of Prisoners; the Basic Principles for the Treatment of Prisoners; the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; the Convention Against Torture, and; the Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

i.) Advisory Services of experts to assist in the complete separation of the Police from the Prisons at all legal, administrative, budgetary and personnel levels.

j.) Advisory Services to assist the NCC in proposals for the establishment of an independent (judicial) commission of inquiry, to be charged with investigation of prison conditions and to make reform recommendations.

k.) Advisory services and documentation on international and domestic standards for the treatment of prisoners for reference by the proposed office of the Ombudsman or Human Rights Commission, which should be enabled to hear complaints regarding prisons.

l.) Reform Assistance

1.) Advisory Services of experts (at least 3) in law and legal drafting to assist the technical committees of the NCC in the drafting of a legal reform package, with particular attention to the following laws in force:

The Public Security Act and Regulations; The Penal Code; the Censorship and Control of Entertainments Act; the Protected Flag, Emblems and Names Act; the Decency in Dress Act; the Forfeiture Act; the Chiefs Act; the Malawi Young Pioneers Act; the Malawi Broadcasting Corporation Act.

2.) Financial Support for the recruitment of 3 domestic legal experts in law and legal drafting to work full-time with the technical committees of the NCC.

The Mass Media

a.) Advisory Services of experts to assist the body charged with monitoring media access, the allocation and scheduling of air-time, and broadcast civic education (either the NCC, the Electoral Commission, or a separate media monitoring and complaints committee) in the development of guidelines, working methods, and a plan to ensure equal and fair access to the MBC.

b.) Financial and organizational support for the convening of a national media workshop on human rights, democracy and the media, and for the drafting of a Code of Conduct for the Media.

Political Parties

a.) Financial and organizational support and the provision of international expertise for the convening of a national workshop for political parties for the drafting of a code of conduct for political parties for the electoral campaign.

b.) Advisory Services of experts to assist the NCC and Electoral Commission in the drafting of provisions for fair, transparent and accountable campaign financing.

Non-Governmental Organizations and Civil Society

a.) National and regional seminars for Non-Governmental Organizations on democracy and human rights, and on the role of NGO's in the democratic process.

b.) Provision of documents and materials to NGO's on human rights and democracy.

c.) Financial support for the establishment and strengthening of independent non-governmental human rights organizations.

d.) Advisory Services of experts for the review of current labour legislation in Malawi, and of Malawi's responsibilities under the Conventions of the International Labour Organization.

e.) National seminars and training in international labour standards and dispute resolution for labour unions, employers, and Government.

The Amnesty and Returnees

a.) Advisory Services of experts for the development of a

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relief and resettlement programme for returnees.

b.) Donor support for the implementation of a resettlement programme.

Full Integration of Malawi into the International Human Rights System

a.) Advisory Services of experts to advise the Malawi Government on ratification of international human rights instruments and reporting obligations under those instruments.

b.) Advisory Services of experts to assist the Government in the drafting of a long-term national plan of action for Human Rights in Malawi, with the full assistance of all relevant U.N. agencies.

Medium Term Needs

a.) Second Needs Assessment Mission of the United Nations Centre for Human Rights to determine, with particularity, post-electoral assistance needs for human rights and democratic consolidation.

b.) Assistance in the convening of a national Constitutional Conference.

c.) Civic education campaign on the Constitutional process.

d.) Continued Training and capacity-building projects in all areas identified in the short term, and in the second needs assessment.

e.) Financial and material support for the strengthening permanent professional education institutions.

f.) Fellowships for brief periods of study abroad by key governmental actors.

Long-Term Needs

a.) Continued support through international programmes for development and the realization of economic, social and cultural rights as indicated in section 11 of the Report - This should include capacity-building in the health, education, food security, water, shelter and labour sectors.

b.) Financial and organizational support for the establishment and strengthening of independent non-governmental women's organizations.

c.) Targeted programmes to improve the conditions of vulnerable groups in Malawi, including women, children, refugees, small-holders, estate workers, and others.

A United Nations Human Rights
Field presence in Malawi

a.) Funding for the establishment of a field office of the Centre for Human Rights at the U.N. office in Lilongwe for coordination of programme elements. A one-year term would be initially envisaged, with possibility of extension for a second year. Support should include local recruitment of a secretary, as well as funding for operational expenses.

b.) Funding for the posting of a human rights officer at the United Nations Centre for Human Rights in Geneva, to oversee and support U.N. assistance to Malawi

X. Detailed Review of International Standards for Free and Fair Elections

A. "Free Elections"

1. Will of the people

The Universal Declaration of Human Rights provides that everyone has the right to take part in the government of his country - directly or through freely chosen representatives. Both International Covenants state that, by virtue of their right to self-determination, all people have the right to freely determine their political status. This right is echoed in the Declaration on the Granting of Independence to Colonial Countries and Peoples, which also provides that the freely expressed will and desire of the people is to guide the transfer of power to them.

What is more, the Charter of the United Nations reflects identical concerns, particularly in regard to trust and non-self-governing territories. The Charter mandates assistance to peoples in non-self-governing territories in the development of free political institutions. As regards trust territories, the Charter established as a basic objective of the trusteeship system, the promotion of self-government in such territories, based, inter alia, upon the freely expressed wishes of the people concerned. In the present case, these provisions may be of only academic interest. Nevertheless, with independent states increasingly seeking the cooperation of the United Nations in the conduct of elections, such notions of freedom have survived as guiding principles in the work of the Organization.

Finally, the African Charter on Human and Peoples' Rights holds that every individual shall have the right to participate freely in the government of his country.

2. Assuring freedom

Thus, international instruments for the promotion and protection of human rights are replete with admonitions that popular political participation must be "free". While such instruments do not (indeed, could not) describe a particular methodology for ensuring such freedom, its essence is clear. To be free, participation in elections must be conducted in an atmosphere characterized by the absence of intimidation, and the presence of a wide range of fundamental human rights. To this end, obstacles to full participation must be removed, and the citizenry must be confident that no personal risk will befall them as a result of their participation. The particular formula for assuring such an atmosphere is set out, article by article, in the International Bill of Human Rights (comprised of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights), and in the African Charter.