

**ALLIANCE FOR DEMOCRACY
AFORD**

Malawi's Future in Light of the Proposed Changes to the Constitution: A paper prepared for Presentation at a Democracy Seminar, at The Electoral Institute of Southern Africa (EISA) Johannesburg, RSA

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Preamble

There is nothing more exciting and satisfying than to be associated with a cause in which one deeply believes and which is also just. Perhaps even better is to be associated with a cause in which not only believes, which is just, but which is a winner or a Common good.

That is how I feel about my involvement in the National and International struggle for Democratic Governance, through the Alliance for Democracy – AFORD.

Therefore, I want to thank the Electoral Institute of Southern Africa (EISA), very kindly for inviting our party to come and share with you our experiences during our Country's transition to Democracy.

Introduction

Three years after the second multiparty elections, the Malawian Democracy could still be said to be facing problems of infancy. Malawi's democracy can best be expressed as having gone through a transition without transformation and on the other hand, after these three years after the second multi-party elections Malawian democracy could well be coming to an end.

It is generally believed that the Malawi's democratization process was not an indigenous concept. It was prompted by a growing record of human rights abuses, and other repressive and atrocious incidents. Britain and America had then tied all bi-lateral and agreements to human rights issues and the democratizations question. They funded pressure groups, which formed the local front for the call for change.

On June 14, 1993 Malawians overwhelmingly voted in a referendum for political pluralism as a system of government – ending 31 years of one – party dictatorship. The Malawi Congress Party had grown very complacent and became too rigid and in many ways insensitive to the people's wishes.

Although Malawi had a Republican Constitution, which created the three branches of government, the government did not function with the checks and balances for controlling state power. There was widespread abuse of the respect which the former head of state commanded amongst the people. Political intolerance flourished which led to fear and intimidation, preventing the smooth functioning of all the branches of government.

The call to review the human rights practices was complimented by local agitation for total democratisation. A new constitution was ushered in; whose fundamental difference with that of the previous regime was the inclusion of the Bill of Rights. There are very few different inclusions in the new Constitution.

The new dispensation calls for transparency, accountability and the rule of Law. The two principles presuppose basic political tolerance, to be part of our system of governance. The three branches of government namely, the Executive, Legislature and Judiciary must exemplify mutual respect for each other.

Malawi Today

(a) Political Threat to Malawi's Democracy

Of concern to the previous regime prior to the current democratic dispensation, were tribalism, regionalism or any other form of social exclusion or discrimination, this persisted until an attempt to diminish these segregative instances through the MCP/AFORD Alliance in 1998, but ended in 2001.

(b) Insecurity

There is growing insecurity and therefore potential instability arising from a few factors; Chief among them is the increased incidents of armed robberies, the general lawlessness arising from Social problems such as poverty and massive unemployment.

(c) Judiciary

There was a general question of the Judiciary's credentials in its independence during the one party era. The question was not so much on the professional integrity of the bench, but perhaps the pressure they may have felt by themselves and made decisions that they thought would be acceptable to the authority of the day. Today there is the general Consensus that the Judiciary must be independent; not only of the political and branches of government, but within itself as well. There have, however been incidences of executive interference in the Judiciary as well as the custodial services, such that some suspects have been allowed to escape from lawful custody.

(d) Legislature Compromised Independence

Constitutional provisions safeguard our parliamentary democracy. Parliament has enacted Laws, which are in sharp contradiction with the constitution. For example, the forced constitutional amendment of section 65 (1) effectively prohibits association of members of Parliament with any organization whose activities are political in nature. Section 32 of the same constitution guarantees freedom of association. Section 65 (1) therefore as it stands is inconsistent with Section 32 and the spirit of Chapter IV – the Bill of Right. Aford is currently seeking financial assistance for legal fees to challenge this amendment in court.

Currently the President has engaged in the buying of Opposition members of Parliament in order to strengthen his weak parliamentary representation in order to pass a controversial bill which seeks to extend the tenure of the Presidency to three terms. This is section 83 (3). This was first attempted on July 4 2002, when the aim was to remove the restriction completely, implying a life Presidency. For such an amendment to pass they must have the support of two thirds of Parliamentarians, which is 128 out of 193 members of Parliament. The first attempt failed by 3 votes i.e. 125 votes for it and 68 were against. In this exercise the executive is using money to induce the opposition Ms to support the Bill. And this has relegated our Parliament to a subservient role – completely surrendering its independence to the executive. The Executive is also engaging in corrupt practices. Perhaps it is significant at this point to mention that AFORD is the only political party in the country which discussed this development – the bill officially at its National Conference on May 1 2002, and rejected the proposed amendment.

(e) Presidential Decrees

The decrees usurp the power of the people and the country slides back to autocracy. Currently the Presidential decree to ban peaceful demonstrations has been challenged in Court. It is likely that the ban will be nullified by the Court of Law. Such a development by a head of state is a serious danger to democracy. Peaceful demonstrations are allowed under section 38 of the Constitution. The state president is obviously in breach of the provision. Civil Society need to mobilize themselves to counter this abuse of state authority.

(f) Access to Information

Malawi has one National Radio Station. The Malawi Broadcasting Corporation, and has continually been subjected to abuse by the ruling party. Dissenting views cannot be allowed on the Radio and Television. Such limitation of public access to information is a serious infringement on the individual's rights to make informed choices on matters that affect them. All this is being done in defiance of a legal instrument – communications Act of 1998. This Act allows all political parties

equal opportunity on the Radio/TVM; to grant them the right to respond to the propaganda and accusations from government.

(g) Transparency and Accountability

There have been numerous incidents where elected representatives are being protected from prosecution by the Executive. Recently, a situation has arisen, where a sum total of MK2.9 Billion is being investigated by a Parliamentary Committee on Agriculture. This money is the proceeds from the sale of maize grain which has been the cause of hunger in the country. The State President has interfered with the investigations by sacking the Chair of the parliamentary committee on agriculture. Honourable Joe Manduwa. The scam involves the current Minister of Finance who prior to this Ministerial appointment was Chief Executive of a Conglomerate Agricultural Development and Marketing Corporation – ADMARC. These incidents raise question of law the government can ever fight corruption which is decaying the economy of the Country, and eroding its integrity.

(h) Ombudsman

This office has functioned outstandingly well. Infact, because of the efficient way it has handled matters, the executive and some Legislators are threatened and conspired to reduce the powers of this office. Fortunately, it has not happened.

(i) Anti-Corruption Bureau

This is a toothless Bulldog, to say the least. This body's job is to look away while serious Corruption eats at the heart of the Malawian Society. It is embarrassing that the state President is the major distributor of sugar, fertilizer, importation of petroleum products (PETRDA). This is known as conflict of interest, and it is dreaded in this government. Our police service is now extremely unreliable. They are quick to jump on any opposition politician on the flimsiest of offences. They have turned a blind eye on the ruling Party's hoodlums assaulting the opposition right in front of them.

(j) Electoral Fraud

If an electoral process is unfair, there is no basis upon which contesting parties can ever agree on end results. In Malawi, each by election that has been conducted since 1994 has been fraught with serious irregularities, intimidation, violence and explicit fraud. The Electoral Commission has maintained conspiratorial inaction. This erosion of confidence in the electoral process is what caused voter apathy in the 2000 Local government polls, where only 14% of registered voters participated. Government, during all these elections, including by elections have used financial inducements to disenfranchise the electorate by buying off registration/voter certificates.

(k) International Support

The role played by the international community in the democratization process in Malawi was very significant. The financial and human resources they invested earned us the democratic governance we have today. It is therefore imperative that they continue to monitor and support the growth of democratic institutions which are instrumental for the consolidation of the democratic transition. But, over and above that, the political parties themselves indeed also need support. This is the new realization by Donors in Malawi today.

Conclusion

To sum up the discussion, let it be emphasized that in the politics of transition and/or in young and fragile democracies, there is serious concern for the possibility of domination by majority governing parties in the decision making process. There is also fear on the part of the members of the governing elite to criticize government, let alone to accept criticism no matter how genuine it might be. It should therefore be stressed here, that the institution of democratic operational methods within political parties that allow for criticism is a useful complement to the oversight functions of all the institutions of state and government. Besides, on matters of principle and conscience, it is neither unbecoming nor uncommon (at least in a mature democracy) for members of Parliament, including those of governing parties, to depart from, and differ with the official position of their parties. It cannot be overemphasized that the Civil Society Institutions, Non Governmental Organizations and Constitutional bodies be empowered enough to enable them to function without hindrance, as they will help in the task of watch dogs for the state.