

1422

**REPORT ON SEMINAR ON DEMOCRACY IN MALAWI**

**21-23 February 1997**

**The Hon Justice Michael Kirby AC CMG**

CONFIDENTIAL

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I duly attended the seminar on democracy held in Malawi between 21-23 February 1997. I thought I should report to you on the seminar and on my impressions.

2. On my arrival in Malawi, and with the concurrence of the Chief Justice of Malawi (the Hon Richard Banda) I had a meeting with the representatives of the three donor countries - the United States of America, the United Kingdom and Denmark. I discussed with them the particular problems which have arisen and which provided the backdrop to the seminar, namely:

- (a) The boycott of Parliament, principally by members of Opposition parties, following the decision of the President to appoint as Ministers former members of the Opposition, thereby affecting the Parliamentary majority of the Government.

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reviewing the Speaker's ruling concerning the quorum of the National Assembly during the boycott.

- (c) Various pending criminal proceedings involving personalities in the former government.

I was generally aware of these developments. The Ambassadors were most careful to observe their own limited role in supporting the seminar. They stressed that, although donor funds had been provided, the entire purpose of the seminar was to facilitate a meeting of Malawian leaders and them only.

3. The seminar took place at Club Makokola on Lake Malawi. I was escorted there by the Registrar of the High Court (Mr Edward Twea) who became one of the rapporteurs of the seminar. The other rapporteur was Mr R L Gondwe, Clerk to the National Assembly.

4. The Vice-President of Malawi (the Right Hon J C Malewezi) arrived with full ceremony and presided at the opening session. The participants attending are shown in the list which is attached (Annex 1). However, the Vice-President was the only representative of the Executive, save for Mr Shabil Latif, a lawyer. The other expected Ministers did not attend. This was disappointing to the Chief Justice (the Hon Richard Banda). All other groups were fully represented. I made an opening statement which is attached (Annex 2).

5. After a somewhat slow start, the seminar soon became quite vigorous and candid. It was remarkable for the facts that:

- (a) It was the first time in many months that representatives of the main political parties in Malawi had come together for dialogue. Thus the former Minister for Finance (the Hon L J Chimango MP) represented the MCP and took an active part.

- (b) The session was divided into five parts. Each was opened by a formal statement. The Vice-President opened the session on the Executive Government and copy of his statement is attached (Annex 3). The Chief Justice opened the session on the judiciary. Copy of his statement is also attached (Annex 4). The Speaker of the National Assembly (the Hon R T C Munyenyeb MP) also made a full statement (Annex 5).
- (c) The contributions of all of the politicians were constructive, frank and attentive to each other. I was impressed by the high apparent willingness to extend compromise and courtesy to each other.

5. At the invitation of the participants I chaired the entire proceedings. At the end of each session I offered a summary pointing out practical suggestions which had been made for follow-up by the various speakers. Late on the evening of 22 February, the rapporteurs (Mr Twea and Mr Gondwe) produced a remarkable summary of the debates. I was most impressed by this efficiency. However, various small inaccuracies were detected by some of the speakers. Finalising the conference record was left to a small committee. It is expected that the record will be available in due course.

6. In the closing session of the conference, the Vice-President indicated that he preferred that the conference document should comprise my summaries of suggestions rather than the record of the debates. The participants agreed with this. My notes were then typed up and distributed. The conference then went through each of the suggestions, deleting some and amending many. The net result was the production of a conference document with a series of suggestions under the heading of the executive, the judiciary, the legislature, the media and the legal profession. I was delegated to prepare the opening words of the Statement. This was done by me before my departure from Malawi. I had suggested that the final text of the document be settled in consultation with the Vice-President, the Chief Justice and the Speaker of the National Assembly. I

expect that the Statement will be received shortly. When it is, it will be sent to you.

7. The atmosphere of the seminar was cordial. A number of the suggestions that were adopted reflected the high consensus amongst participants on many substantive matters. In some ways it is a pity that, like the Constitutional Conference in 1994, the seminar was not broadcast to a wider audience. On the other hand, it is possible that the level of consensus achieved was the result of its being in closed session. The judiciary were relatively subdued during discussion. I sought to explain to all participants the unavoidable involvement of the judiciary in highly controversial matters. In a country with a written Constitution and a Bill of Rights, the judiciary will find it difficult to escape controversial involvement in issues that are political in the broadest sense. They must shoulder their responsibility.

8. On my return to Lilongwe, I had another meeting, also with the concurrence of the Chief Justice, with the United States, British and Danish diplomats. The British High Commissioner (Mr John Martin) said that my visit had been anticipated in official circles and in the media for several months. He indicated that I should be aware that I was probably the only person at this particular time who could bring together all political parties in Malawi and the representatives of each sector. He suggested that my influence in Malawi was beneficial and was respected because of the role I had played as independent chairman of the Constitutional Conference in 1994. The participants in the seminar made a number of suggestions for further follow-up meetings. I drew these to the notice of the diplomats so that they might inform donors. I was told that donor funds would be available to support the democratic process in Malawi. The British High Commissioner indicated, for example, that Malawi was the third highest recipient of British overseas aid. The funds for my visit appear to have come directly from USAID.

9. The Speaker of the National Assembly indicated to me that he hoped that a delegation from the National Assembly

of Malawi would be able to visit the Parliament of Australia later in 1997. He evidenced familiarity with the Hansard of the Australian Parliament. The Chief Justice indicated his hope to attend a judicial conference of judges of the Asia/Pacific region to be held in August 1997 under the auspices of the Australian Institute of Judicial Administration. I encouraged the possibility of these visits.

10. The report by the Joint Standing Committee on Foreign Affairs, Defence and Trade of the Australian Parliament, *Australia's Relations with Southern Africa*, was particularly useful to me in the preparation of my remarks and in discussions with the participants in the seminar.

11. On my return journey to Australia, I called on the judges of the Supreme Court of Zimbabwe. They pay attention to developments in Malawi but are relatively unfamiliar with the changes happening there. I encouraged them to establish links with the judges in Malawi who have to perform difficult tasks with a sometimes difficult situation and with limited resources. It could be desirable that opportunities should be provided for judges in Malawi to visit and sit with judges in the Constitutional Court of South Africa and the Supreme Court of Zimbabwe. I was myself invited to take part in a regional conference of judges in Lesotho 25-28 February. However, my duties required me to return to Australia and to miss that meeting.