

*National Democratic
Institute for
International
Affairs*

**REVIEW OF THE NEW DRAFT
STANDING ORDERS
OF THE MALAWI NATIONAL ASSEMBLY**

Prepared by Brian Kidney & Traci Cook

March 5, 1996

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MEMORANDUM

TO: The Honourable R.T.C. Munyenembe, Speaker of the National Assembly
The Honourable Mapopa Chipeta, Chairman, Parliamentary Procedures Committee
Members, Parliamentary Procedures Committee
Mr. Roosevelt Gondwe, Clerk of Parliament

FROM: Brian Kidney, Consultant, and Traci Cook, Director, NDI/Malawi

DATE: March 5, 1996

SUBJ: Review of New Draft Standing Orders

We have completed a comprehensive review of the new draft Standing Orders for the Malawi National Assembly. The primary goal of the review is to make suggestions which will increase the efficiency of Parliament and will enable the legislature to play a more active role in the governing process. This memorandum incorporates knowledge gained during consultations with the Speaker, the Chairman of the Parliamentary Procedures Committee, the Clerk of Parliament and several other clerks.

We would like to commend Clerk Gondwe for producing new draft Orders which we feel are an important progression from the current Orders, both technically and substantively. The revisions suggested herein are based on our experience with, or knowledge of, proven methods in other legislative bodies. At times, we have offered specific recommendations which we believe will have significant positive impact on the operation of the Assembly. At other times, we have simply listed options which we feel may be of interest to the Committee. Of course, we do not have the advantage of intimate acquaintance with the day-to-day workings of the Assembly which Members possess. Therefore, whether options or recommendations, all comments are offered in a constructive manner and should only be viewed as a starting point for further discussion.

Finally, we wish to draw your attention to two matters of particular importance. A number of the suggestions we have made seek to encourage the transparency of government. These suggestions are targeted at making Parliament more accessible *and* understandable to the general public. We urge the Members of Parliament to give special consideration to these issues and to work to find other ways, both within and outside the Orders, in which the Assembly can improve upon its efforts at education and communication. The other issue is one which we feel will have a significant impact on all parliamentary business. This is the issue of confining Bills to a single topic and disallowing all amendments which do not relate to the subject of the Bill. While there is no standard rule for parliaments around the world on this issue, in the Malawi setting it is likely that the greatest efficiency can be achieved by adopting this rule. We, therefore, urge your serious consideration of the matter.

The attached comments are arranged by topic with the relevant Standing Order noted. All suggested changes in wording in the Orders are italicized. Documentation accompanying the comments is attached including relevant citations in the Constitution and the Mangochi Workshop Report. We thank you for the opportunity to review the Assembly's Standing Orders and remain available to answer any questions generated by this document.

THE ISSUE OF A QUORUM

Early on, the vague and possibly contradictory description of the terms "session", "meeting" and "sitting" perplexed us. To help sort out the meaning of each, we looked to the Constitution of Malawi.

Chapter VI, Section 67 (1) declares that "the National Assembly shall last for five years from the date of its swearing in and then shall stand dissolved." This language clearly supports the definition of "session" in Order 6 of the National Assembly Standing Orders, adopted 7th November, 1994.

The term "meeting", as it relates to Parliament, appears in Chapter VI, Section 59 (1)(a) wherein "the President, in consultation with the Speaker of the relevant Chamber, may summon, on extraordinary occasions, a meeting of the National Assembly or the Senate..." The language suggests that a meeting is a period of sufficient length for the Parliament to consider and act upon legislation. Once more, the definition of the word "meeting" in Order 6 of the National Assembly Standing Orders seems supported.

The Constitution, while not defining a "sitting" does state in Chapter VI, Section 59 (2) that "There shall be at least two sittings of the National Assembly and of the Senate every year." It does not seem, therefore, incongruous that, while a "session", unless Parliament is prorogued, extends for five years, and a "meeting" is a coming together of Parliament for extensive deliberation, a "sitting" may be defined as the daily gathering of Members of Parliament to conduct business. The constitutional requirement would suggest that the Parliament must meet formally for no less than one sitting twice a year whether or not there is any business to come before the body. Therefore, it would appear to us that the term "sitting" is used by the Constitution to identify the minimum time period, or one day, during which Parliament may convene. We feel that this interpretation supports the notion that a "sitting" need not be longer than one day.

Standing Orders 128, 129 & 130

The notion of "sitting" comprising one day supports our contention that a quorum, as stated in Chapter VI, Section 50 (1) "shall be formed by the presence at the beginning of any sitting of at least two-thirds of the Members...entitled to vote, not including the Speaker or a presiding Member," and applies to each day the Parliament assembles. In order to give clearer definition to the issue of what constitutes a quorum, suggested revisions to Standing Orders 128 and 129 are listed below. In addition, we are suggesting that the Speaker be given the power to effect a quorum in the Assembly by a Call of the House.

- o Standing Order 128--A quorum of the House or Committee of the whole House is *no less than* two-thirds of all the members of the House at the commencement of a sitting.

- o Standing Order 129 (1)--If there is not a quorum present when the Chair is taken at the time appointed for a sitting of the House, *the Speaker may order a Call of the House, after which no Member present may leave the room in which the Assembly is sitting, and absent Members may be brought in under threat of breach of privilege.* (See Part V, Order 19) *Upon determining the presence of a quorum, the Speaker may, at his discretion, lift the Call.*
- o Standing Order 129 (2)--*Following the announcement of the presence of a quorum, the Speaker shall identify those questions scheduled which require no less than a vote of two-thirds of the Members of the Assembly, if any, and announce the time for their consideration. For all other business, a quorum shall consist of 91 Members.* [Note: See Chapter VI, Section 50 (2) and Chapter VI, Section 56 (1) of the Malawi Constitution.]
- o Standing Order 129 (3)--*Should an extraordinary question arise which would require a two-thirds vote during a sitting, the Speaker may again place a quorum call in order to secure the necessary presence of two-thirds of all the Members. Upon resolution of the question, the Speaker may lift the Call and a quorum of the House shall again consist of 91 Members.*
- o Standing Order 130--Remains as is.

Standing Order 6--Definitions

Based on the recommendations surrounding the quorum, the definitions of "sitting" and "meeting" should be revised to ensure absolute clarity. We suggest the following definitions:

- o "sitting" means a period, usually a day, during which the Assembly sits without adjournment and includes any period during which it is in Committee of the whole House;
- o "meeting" means a period of time, identified by one or more sittings, from the date of the commencement of Parliament to the last when such business is completed;

We also recommend including a definition of a "day", which would be as follows:

- o "day" means a calendar day, unless otherwise noted in these Standing Orders.

The current definition of "session" does not interfere with the suggested revisions in the quorum rule. Therefore, we recommend that this definition remain unchanged. [Note: We recommend that the drafters of the final version of the Standing Orders check all references to "sittings", "meetings" and "sessions" throughout the Standing Orders to ensure they are consistent with final definition of quorum decided upon by the Procedures Committee.]

Standing Orders 111 & 112

To ensure that the definitions used throughout the Standing Orders are consistent with the definition of a quorum, we are suggesting that these Orders be reworded as follows:

- o Standing Order 111--Every *meeting* of the Assembly shall commence *with a sitting* on such date as the Assembly may from time to time order, or, in the event of the Assembly having been adjourned *sine die*, on such day as Mr. Speaker may appoint.
- o Standing Order 112--A sitting shall continue until a motion *to adjourn is carried*.

Standing Order 175

To maintain consistency with the new definitions of a quorum suggested above, we recommend the following revision to this Order:

- o **Decision of the House**--No question for decision in the House shall be proposed for determination *unless a quorum, consisting of 91 members, is present in the House, except when a greater vote is required by the Constitution.*

THE ISSUE OF TIME

Standing Orders 85, 86, 87 & 89

Generally throughout the Orders, the amount of time given to Members to speak will, we believe, cause unnecessary delays to the Assembly's business. Therefore, we recommend the following revisions:

- o Standing Order 85--A Member shall be entitled to speak for *10 minutes* on each motion. *Additional time may be granted by leave of the Speaker.*
- o Standing Order 86--A Member shall be entitled to speak for *10 minutes* on matters of public importance. *Additional time may be granted by leave of the Speaker.*
- o Standing Order 87--On the second reading of any Bill, *the responsible Minister and the Leaders of the parties which are not the majority party in the Assembly may speak for no longer than 15 minutes. On presentation of the Budget, the responsible Minister may speak for more than 30 minutes. The Leaders of the parties which are not the majority party in the Assembly may speak for no longer than 30 minutes.*
- o Standing Order 89--A Member shall speak for *no more than 10 minutes* on the President's address motion except that the Leader of the House *and Leaders of the parties which are not the majority party in the Assembly* may speak for *no more than twenty minutes.*

Standing Order 97

Again, based on the belief that business in the Assembly should be efficient and should provide for reasonable specified amounts of time for debate, we suggest adding a limit on the amount of time allowed for Right of Reply. Therefore, the Order should be revised as follows:

- o **Right of Reply**--A reply may be exercised by the mover of a motion (except an amendment). The reply is confined to matters raised during the debate. In all cases the reply of the mover of the original question closes the debate. *The right of reply is limited to ten minutes. Additional time may be granted by leave of the Speaker.*

Standing Order 219

In the interest of the efficiency of the House, it is suggested that Order 219 be amended as follows:

- o Save as otherwise provided by these Standing Orders, the same provisions for order in the Parliament Chamber, for dealing with the amendments, for taking divisions, for regulating debate and for general conduct of business shall be observed in Committee as in the Assembly, save that a Member shall speak for no more than *5 minutes, without leave of the Chair*, at any time in any Committee of the Whole House.

Standing Order 53

If debate is limited by time, it is not necessary for Members to have the option of interrupting another Member during a speech. Therefore, we recommend that this Order be revised in the following manner:

- o **Closure of a Question**--After a question has been proposed, any Member may at any time, *without interrupting another Member who is speaking* and whether that Member himself has previously spoken, rise in his place and claim to move "That the question be now put", and, unless it shall appear to Mr. Speaker that such a motion is an abuse of the rules of the Assembly, or an infringement of the rights of a minority, the question "That the question be now put" shall be put forthwith and decided without amendment or debate.

Standing Order 54

Revising Order 53 also requires a revision of Order 54 to remove the provision of interrupting a Member during a speech. The following new wording is suggested:

- o **Closure of Debate by Member**--A Member may move *that a question shall be put forthwith and decided without amendment or debate.*

Standing Order 132 (h)

In the interest of time and efficiency, this Order should be reworded as follows:

- o **Address in Reply**--Where a meeting of the Assembly has commenced by an opening address from the President, the House shall debate a motion on the address and on any amendments proposed thereto. The motion "That this House do now consider His Excellency's speech" shall be moved by one Member and seconded by another Member and the debate thereon shall not exceed *three* sitting days.

Standing Order 84

We strongly recommend that this Order limit debate on an amendment to that amendment and not allow debate on the main question. Otherwise, debate on the main question could be opened on each and every amendment causing delays and inefficiency in the Assembly's business. The following is suggested:

- o In Standing Order 84, eliminate the last phrase: **Debate on amendment confined to amendment**--When an amendment is moved the debate must be confined to the amendment. ~~unless it be of such a nature as to involve the consideration and decision of the main question, in which case both the main question and the amendment are open for discussion.~~

21 DAY PUBLICATION RULE

Standing Order 194 (3)

To ensure fairness, it is suggested that the Business Committee be the initial determining body in deciding if the 21 day publication rule can be suspended, but that the House retain the right to approve or reject a decision for suspension. Therefore, it is recommended that this Order be revised as follows:

- o **Urgent bills submitted to Business Committee**--Where, in the opinion of the responsible Minister, a Government Bill is so urgent or of such nature as not to permit compliance with publication within 21 days, *the Minister shall present the Bill to the Business Committee with a request for suspension. As soon as practicable after receipt of the Bill and the request, the Committee shall, on motion, vote on the request. If the request is approved, the Committee shall report the Bill with its recommendation to the Assembly for its determination. If the request fails to be approved by the Committee, the Bill will be subject to the 21 day rule, and the House will be so advised.*

Standing Order 142

To comply with other revisions suggested in this memorandum with regard to the duties of the Business Committee, we suggest the following paragraph be added to this Order:

- o (e) the resolution of those other matters which are ascribed to the Committee in these Standing Orders.

POSSESSION OF THE HOUSE

Standing Order 198

Under ordinary rules for parliaments, a motion or Bill becomes the possession of the House once it is introduced by a Member. This notion is supported by Standing Order 50 which notes "after a motion has been proposed from the Chair it shall be deemed to be in possession of the House and cannot be withdrawn without leave of the House." For reasons which are unclear, Standing Order 198 does not apply the same rule to Bills. Therefore, the following is suggested:

- o It is recommended that Standing Order 198 be deleted.

Standing Order 199

To positively affirm support for the possession of the House rule, we recommend the following paragraph be added to this Order:

- o *(3) Following its First Reading, a Bill should be deemed to be in the possession of the House.*

Standing Order 208

Again, under ordinary parliamentary rules, a motion or Bill becomes the possession of the House once it is introduced by a Member. To maintain consistency with Standing Order 50 and the suggested revision for Standing Order 198, the following is suggested:

- o It is recommended that Standing Order 208 be deleted.

AMENDMENTS TO BILLS

Standing Order 200 (3)

Amendments on the Floor:

This Order currently allows Members to move substantive amendments to the Bill on the floor before the Committee Stage. It appears to us that it is the intent of the Assembly not to have substantive amendments on the Bill until after the Committee has had a chance to review the legislation. Thus, we suggest the following change to this Order:

- o In Standing Order 200 (3), eliminate the last phrase: No other amendment may be moved to such question. ~~unless such amendment is strictly relevant to the Bill.~~

Standing Order 201 (5)

Amendments in Committee:

This Order addresses the Committees' ability to amend Bills. The current language authorizes Committees to "make such amendments therein as they shall think fit." We recommend that this language be changed to "propose such amendments." This change will still allow the Committee wide jurisdiction in reviewing legislation but will also grant the House the right to accept or reject amendments to Bills without having to accept or reject the Bill as a whole. In addition, we propose that the greatest efficiency can be accomplished in the Assembly if the subject matter of a Bill is limited to one issue, disallowing all amendments which do not relate to the subject of the Bill. Based on these two recommendations, this Order should read as follows:

- o Any such Committee shall have power to *propose* such amendments therein as they shall think fit, provided that the amendments, including new clauses and new schedules, are relevant to the subject-matter of the Bill; *if any such amendments are subsequently determined by the House not to be within the Title of the Bill, they shall be removed from further consideration.*

Standing Order 202

To comply with the change suggested in Standing Order 201 (5), this Order should be rephrased as follows:

- o **Report Stage**--A Committee, having met to consider a Bill, shall proceed with its consideration, but during such consideration, the Member in charge may, subject to the discretion of the Chairman, move a motion "That the Committee do not proceed further with the Bill". If the motion is carried, the Committee shall then report the Bill to the Assembly *with or without proposed amendments*, as the case may be, and make a special report explaining its proceedings on the Bill, and the special report and the Bill shall be ordered to lie on the Table without question put.

STRENGTHENING COMMITTEES

Standing Order 201 (1)

Reference of Bills to Committee:

To ensure that Committees are truly an active and essential part of the legislative process, it is recommended that this Order be amended to read:

- o When a Bill has been read a second time, *it shall be committed by the Business Committee to the relevant Standing Committee, Select Committee or to a Committee of the whole House.*

Standing Order 201 (4)

Debate in Committee:

We feel strongly that the Committees in the Assembly should not be blocked in their effort to review legislation fully and therefore, should be allowed to discuss both details and principles of legislation. To do otherwise will limit the Committees' effectiveness in handling legislation. The more that can be accomplished in Committee, the less the House will have to deal with as the Committee of the whole, an inevitably inefficient mode of operation. In addition, the approximately 45 Members of Parliament who attended the Mangochi Workshop from June 15-17, 1995, recommended that the Standing Orders be revised to ensure that Committees had jurisdiction encompassing both a review of principles and details of legislation. Therefore, it is suggested that the Order be amended as follows:

- o Any Committee to which a Bill is committed may discuss the general merits, principles *and* details of the Bill.

Standing Order 221 (5)

Public Committee Meetings:

This Order states that a Committee hearing will be in public unless the Committee decides otherwise. We believe that in order to promote the transparency of government, slightly stronger language should be used. In addition, the approximately 45 Members of Parliament who attended the Mangochi Workshop from June 15-17, 1995, recommended that the Standing Orders be revised to permit Committee meetings in camera only in extraordinary circumstances. The following wording is suggested for this Order:

- o All meetings of a Standing or Select Committee shall take place in public *except under extraordinary circumstances. The decision to hold a committee meeting in camera shall be ordered by a vote of the Committee.*

Standing Order 233

Powers of Portfolio Committees:

Although it may be implied, we believe it would be useful to explicitly state that Portfolio Committees have the same powers as Standing Committees, including the review of legislation, in addition to the other powers outlined in this Order. It is suggested that this Order be reworded as follows:

- o **Portfolio Committees**--There shall be established Standing Committees on Agriculture, Education, Trade, Industry and Tourism, Works and Supplies, Finance, Population and Environment, to be known as portfolio committees, each of which, *in addition to the responsibilities and authority of Standing Committees*, shall be severally empowered to--[Note: All that follows in this Order remains as is.]

Standing Order 222 (3)

Committee Authority:

We recommend that this Order include reference to the specific powers granted to Committees in the Malawi Constitution, Chapter VI, Section 60 (3). We also recommend that, to reduce scheduling conflicts, the Committee meetings, while the Assembly is sitting, be set by leave of the Speaker. The following wording is suggested:

- o Standing Committees have powers, *including subpoena powers*, to send for persons, papers and records, and to sit, *by leave of the Speaker*, while the Assembly is sitting or stands adjourned.

MEMBERSHIP OF COMMITTEES

Standing Order 235

To ensure that there is no conflict of interest between legislative duties and executive duties on the part of any Minister serving on a Committee, it is recommended that this Order be amended as such:

- o **Membership of Standing Committees**--The overall membership of Standing Committees must so far as reasonably practicable, be proportional to party membership in the House. Ministers or Deputy Ministers may not be eligible for appointment to Committees concerning their portfolios, *the Public Appointments Committee* or any investigatory committee.

Standing Order 222 (6)

The intent of this Order is unclear, and we wish query it. If the intent is that the membership of subcommittees may be drawn from any Members in the Assembly, then we would suggest that this may not be the most efficient manner in which to conduct Committee business. Subcommittee members drawn from outside the Committee will not have the benefit of the deliberations of the Committee on the matter for which the subcommittee was created. Therefore, it is possible that subcommittees constituted in such a manner would be less effective.

- o We suggest a clear Order which limits subcommittee membership to those on the full Committee, unless extraordinary circumstances apply.

Standing Order 193 (k)

This Order allows a suspended Member to continue service on a Committee. Although we are not necessarily opposed to this, we wish to query the reasons as it is not standard procedure in other parliaments.

EXTRAORDINARY POWERS FOR MINISTERS WHICH APPEAR ONLY DEFERENTIAL

Standing Order 55 (a)

There are several Orders where Ministers are singled out as having extraordinary powers within the body. While some of these are due to their role in the executive and therefore are necessary, there are others which seem only deferential in nature and which appear to have no other discernible justification. We suggest these be deleted to ensure that Ministers do not have greater authority within the legislature, except when necessary, than other Members.

- o It is recommended that Standing Order 55 (a) be deleted.

Standing Order 79 (b)

There appears to be no justification to give special powers to a Minister under this Order:

- o It is recommended that Standing Order 79 (b) be deleted.

Standing Orders 116, 120, 125 & 126

There appears to be no justification to give special powers to a Minister under these Orders. The following changes are recommended:

- o In Standing Order 116, eliminate the last phrase: When it is provided in any Standing of the Assembly that any business specified by such Order shall be continued, forthwith disposed of, or concluded in any sitting the Assembly shall not be adjourned before such proceedings have been completed, except pursuant to a motion to adjourn ~~proposed by a Minister of the Government~~. [Note: The last phrase could be replaced with a number of options including, "supported by no less than two-thirds of the Members of the Assembly."]
- o In Standing Order 120, reword last phrase: Upon conclusion of all proceedings under Standing Order 116 or 120 or upon the earlier completion or deferment of all business standing upon the Order Paper, Mr. Speaker shall either adjourn the Assembly without question put or, if notice has been given of a matter to be raised upon a motion for the adjournment of the Assembly under the provisions of these Standing Orders, shall call upon a *Member* to move "That the House do now adjourn".
- o Reword Standing Order 125--A *Member* may at any time move a motion proposing to vary the time for the commencement or termination of any sitting.
- o Standing Order 126--It is recommended that this Order be deleted.

Standing Order 199 (1)

We are unclear whether in this Order it is necessary to single out a Minister presenting a Bill and thus wish to query it. If there is no reason to separate out a Minister, then we suggest the following rewording of this Order:

- o In Standing Order 199 (1), eliminate the struck through phrase: **First Reading**--A Bill may be read a first time on such day as the ~~Minister or~~ Member presenting it may notify to the Clerk.

STATEMENT OF QUESTIONS

Standing Order 172

So that the Members may enjoy the immediate relevancy of the response of the President or the Minister to a question, and so that others present, such as the press and public, will have the benefit of the question, we recommend revising this Order to read as follows:

- o *Member to state question in full*-- When the question is reached on the Order Paper, *the Speaker shall announce the number of the question* and call upon the Member in whose name the question stands. The Member so called shall then rise, or, if he is not then in the Assembly, any other Member designated, by notice in writing, to the Clerk by the Member in whose name the question stands may then rise, and *state the question in full*, and the Minister, Deputy Minister or Member questioned shall then give his reply.

PUBLICATION OF PROPOSED AMENDMENTS TO BILLS

New Order to be Adopted

To ensure that Members are well-informed about Bills for which amendments are being proposed, we strongly recommend that the Standing Orders require Bills with proposed amendments to include in its publication all sections, including those to be amended, rather than simply referencing those sections by their numbers. We suggest this Order be included under Part XXVII entitled "Bills." The following wording is suggested:

- o *Publication of Bills with Proposed Amendments*--Every Bill which proposes to amend a section of an Act must reprint, in full, the section to be amended.

The Standing Orders may also wish to prescribe a means of showing this text and the text which is to replace it. If so, we suggest a method whereby the text to be amended is shown in full but deleted matter has been struck through with a narrow line which leaves the text readable. The new text is then shown where it is intended to be inserted in either italics or bold type. An example follows:

Example:

29. The Minister ~~shall not be~~ *is* required to assign ~~any reason for the grant or refusal of any application under this Act and the decision of the Minister on any such application shall not be subject to appeal to or review in any court~~ *a reason, in writing, for the refusal of any application under this Act. The decision of the Minister on any such application is subject to review in the High Court.*

AUTHORITY OF THE SPEAKER

Standing Order 12

It is implicit in the Standing Orders of most legislative bodies, that a Speaker's ruling left standing has the tacit approval of the majority of those present and voting, and in the absence of such approval, an objection raised will determine the support for the ruling. If you feel that it is important to make this explicit, we submit this option for clarifying the matter:

- o The Speaker is responsible for ruling whenever any question arises as to the interpretation or application of a Standing Order and for deciding cases not otherwise provided for. *In response to an objection being raised, the Speaker may elect to present the question to the House, whereupon a majority of the Members present and voting shall decide the issue.*

Standing Order 71

In order to promote the democratic operation of the legislative body, we recommend that the House be given the authority to approve or reject a ruling of the Speaker on a Point of Order. Therefore, we suggest the following paragraph be added under this Order:

- o *(4) A ruling by the Speaker on any Point of Order when raised may be subject to appeal. Any Member may appeal the ruling of the Speaker, and the Speaker's ruling must be sustained by a majority of those Members present and voting. An appeal is not debatable. [Note: Should the Assembly subscribe to a subsidiary parliamentary authority, such as Cushing, Sturgeon or other, this procedure may already be available.]*

PUBLIC PETITIONS

Standing Order 147

To clarify the process for submitting public petitions, we are recommending that the petitions process be more closely linked to the Member of Parliament. It is suggested that this wording be placed before Order 147 and the following Orders renumbered:

- o *Petitions from the public should be presented to a Member of the National Assembly, and that Member should advise and assist the petitioners with regard to the form, documents and other requirements necessary to prepare the petition for presentation to the Assembly.*

MISCELLANEOUS SUGGESTIONS

Standing Order 200 (2)

Limit Time Between First and Second Readings:

To move the legislative process toward Committee deliberation within a reasonable timeframe, we recommend this Order be revised as follows:

- o Amendments may be moved to the question "*That the Bill be now read a second time*" by proposing some specified time not to exceed thirty days from the date of the First Reading of the Bill.

Standing Order 10 (8)

Witnesses to Election Vote:

We recommend that this Order be amended to protect the Clerk from charges of misconduct during the election of the Speaker. The following additional wording is suggested:

- o When all the ballot papers of Members desiring to vote have been placed in the ballot box, the Clerk *together with nonpartisan witnesses* shall examine them and shall forthwith announce to the Assembly the name of the person receiving the greatest number of votes, and shall declare that person to have been elected Speaker, and the person elected shall be taken out of his place by his proposer and seconder and conducted to the Chair.

Standing Order 78

Debate on Motion to Adjourn:

To permit limited debate on the time when a question may be rescheduled, we suggest rewording of this Order:

- o **Adjournment of Debate**--After a question has been proposed, any Member, on being called to speak to that question, may move "That this debate be now adjourned" either to a later hour on the same day or to any other day. *Amendment or debate to the question should be permitted only as to the hour or the date stipulated.*

Standing Order 92

Vote Required, General:

For clarity, we recommend that this Order be rephrased as follows:

- o Questions, *except those otherwise stated in the Constitution or in these Standing Orders*, are determined by a majority of votes Aye or No. Every member is entitled to one vote or to abstain. [Note: If the Question is on passage of a Bill, the vote must be by a majority of the National Assembly as prescribed in Chapter VI, Section 49 (2)(i) of the Malawi Constitution.]

"Leader of the Opposition" Phrase

Since the Malawi National Assembly is, and may in the future be, composed of more than two parties, the notion of an Opposition may not accurately describe their position. Therefore, we recommend that parties be referred to throughout the Standing Orders as majority and minority parties and their Leaders as such.

Standing Order 201 (2), 205 (1) & 205 (2)

Committee Designation:

It is unclear why the word "Select" is before each reference to Committee in these Orders. It is our understanding that these Orders refer to all Committees. If this is true, the following is suggested:

- o It is recommended that all references to Select Committees be deleted from these Orders and that the Orders simply refer to "Committees."

Standing Orders 180 & 182

Technical Amendment:

It appears these two Orders are the same and therefore one should be eliminated.

ORDER IN THE ASSEMBLY

Standing Orders 192 & 193 A-L

The changes to these Orders are not substantive, but instead are meant to simplify the rules for order in the Assembly. This was undertaken at the specific request of the Clerk of Parliament. The following is recommended:

- o **192 (1) Disorderly Conduct:** Mr. Speaker shall order a Member whose conduct is disorderly to withdraw immediately from the Assembly for the remainder of that day's sitting, and the Sergeant-at-Arms shall act on such orders as he may receive from the Chair in pursuance of this Standing Order. Members ordered to withdraw in pursuance of this Standing Order shall forthwith withdraw from the precincts of the Assembly.
 - (2) **Extraordinary Misconduct:** If, however, on any occasion, Mr. Speaker deems that the powers conferred *under paragraph (1)* of this Standing Order are inadequate to deal with the offence, he may name such a Member.
 - (a) *If the offence for which a Member has been named* has been committed by such Member in the Assembly, Mr. Speaker shall forthwith put the question on a motion being made, no amendment, adjournment or debate being allowed, "that such Member (naming him) be suspended from the service of the Assembly."
 - (b) If the offence has been committed in Committee of the whole Assembly, the Chairman shall forthwith suspend the proceedings and report the circumstances to the Assembly, and Mr. Speaker shall thereupon, on motion being made, put the same question, without amendment, adjourning or debate, as if the offence had been committed in the Assembly.
 - (c) A Member who is ordered to withdraw from the Assembly or who is suspended from the service of the Assembly *under this Standing Order* shall forthwith withdraw from the precincts of the Assembly and shall forfeit his right of access to the Parliament Chamber and to any room in which the Assembly or committee of the Assembly is sitting *during the period of his suspension*.
 - (d) Where several Members present have jointly disregarded the authority of the Chair, Mr. Speaker may name them jointly.
 - (e) If any Member, or Members acting jointly, who have been suspended under this Standing Order, shall refuse to obey the directions of Mr. Speaker when ordered so to do, Mr. Speaker shall call the attention of the Members to the fact that recourse to force is necessary in order to compel obedience to his directions and the Member or Members named by him as having refused his directions shall thereupon, and without further question put, be suspended from the service of the Assembly during the remainder of the Session.

(f) On receiving from a Member suspended *under any of the above provisions* of this Standing Order a written expression of regret, Mr. Speaker shall lay it before the Assembly and it shall be entered in the Votes and Proceedings. On a motion being made for the discharge of the order of suspension, the question thereon shall be decided without amendment or debate. If the question is agreed to, the order shall be discharged and the Member shall be readmitted.

(g) Nothing in this Standing Order shall deprive the Assembly of the power of proceeding against any Member in accordance with the provisions of the National Assembly (Powers and Privileges) Act.

(3) ***Grave Disorder:*** In the case of grave disorder, Mr. Speaker may adjourn the Assembly without question put or suspend any sitting for a period to be named by him.

APPENDIX A

Citations from the Malawi Constitution

(f) take all actions incidental to and necessary for the proper exercise of its functions.

(2) For the purposes of this Constitution—

(a) a Government Bill shall be a Bill promulgated by the Government and introduced to Parliament on behalf of the Government;

(b) a Private Bill shall be—

(i) promulgated by an agency that is not part of the Government; and

(ii) introduced to Parliament on behalf of that agency where that agency is mandated by an Act of Parliament so to do;

(c) a Private Member's Bill shall be—

(i) promulgated by a member of Parliament; and

(ii) introduced by that member in the Chamber of which he or she is a member in accordance with the procedure of that Chamber.

67.—(1) The National Assembly shall last for five years from the date of its swearing in and then shall stand dissolved.

Dissolution
of Parliament

(2) Whenever the National Assembly is dissolved a general election of members of the National Assembly shall be held within sixty days of the date of the dissolution and the date of a session of the National Assembly shall be appointed by the President to commence within forty-five days of the date appointed by the Electoral Commission as the polling day for the election or, if more than one polling day is appointed, within forty-five days of the last polling day.

68.—(1) The Senate shall consist of eighty members as follows—

Composition
of the
Senate

(a) one Senator from each District, registered as a voter in that District and elected by the District Council of that District in secret ballot within thirty days of each local government election;

(b) one Senator from each District, being a Chief registered as a voter in that District and elected by a caucus of all the Chiefs of that District in secret ballot within thirty days of each local government election;

(c) thirty-two other Senators who shall be elected by a two-thirds majority of sitting members of the Senate on the basis of nominations by the Nominations Committee provided for in subsection (2) from all of the following sectors—

(i) for the imposition of tax or the alteration of tax;

(ii) for the imposition of any charge upon the Consolidated Fund, or the alteration of any such charge;

(iii) for the payment, issue or withdrawal from the Consolidated Fund of any moneys not charged thereon, or any increase in the amount of such payment, issue or withdrawal; or

(iv) for the composition or remission of any debt due to the Government;

(b) proceed upon any motion or any amendment to a motion the effect of which, in the opinion of the person presiding, would be to make provision for any of the purposes specified in subsection (a); or

(c) receive any petition that, in the opinion of the person presiding, requests that provision be made for any of the purposes.

(2) The Senate shall not have the power to debate or vote upon any motion or receive any Bill to which this section applies except with the recommendation of the Minister responsible for Finance, signified in writing, and may not in any case amend or reject such a motion or Bill.

58.—(1) Parliament may, with respect to any particular Act of Parliament, delegate to the executive or to the judiciary the power to make subsidiary legislation within the specification and for the purposes laid out in that Act and any subsidiary legislation so made shall be laid before Parliament in accordance with its Standing Orders.

Subsidiary
legislation

(2) Notwithstanding subsection (1), Parliament shall not have the power to delegate any legislative powers which would substantially and significantly affect the fundamental rights and freedoms recognized by this Constitution.

59.—(1) Every session of the National Assembly and of the Senate shall be held at such place within Malawi and shall commence at such time as each Speaker, in consultation with the President, may appoint with respect to the Chamber in which that Speaker presides and the sittings of each Chamber after the commencement of that session shall be held at such times and on such days as that Chamber shall appoint:

Sessions and
sittings

Provided that—

(a) the President, in consultation with the Speaker of the relevant Chamber, may summon, on extraordinary occasions, a meeting of the National Assembly or the Senate; and

(b) the President may, in consultation with the Speaker of the relevant Chamber, prorogue the National Assembly or the Senate.

(2) There shall be at least two sittings of the National Assembly and of the Senate every year.

Privileges and immunities

60.—(1) The Speaker, every Deputy Speaker, every member of the National Assembly and every member of the Senate shall, except in cases of treason, be privileged from arrest while going to, returning from, or while in the precincts of the National Assembly or the Senate, and shall not, in respect of any utterance that forms part of the proceedings in the National Assembly or the Senate, be amenable to any other action or proceedings in any court, tribunal or body other than Parliament.

(2) All official reports and publications of Parliament or of its proceedings or of the proceedings of any committee of the Parliament shall be privileged and utterances made in the Parliament or in any committee thereof wherever published shall be protected by absolute privilege.

(3) The National Assembly and the Senate shall each have the power to conduct investigations and exercise the power to subpoena the attendance of any person or office holder whosoever as required in connexion with the prudent exercise of the respective functions of each Chamber.

Member's interests

61.—(1) A member of the Parliament, where he or she has a direct or indirect material interest in a matter being discussed by the Chamber of which he or she is a member, shall—

(a) disclose such interest to that Chamber; and

(b) not be entitled to vote on that matter without leave of that Chamber.

(2) Where a member of Parliament fails to disclose a material interest in accordance with subsection (1) that member shall be guilty of contempt of the Chamber of which he or she is a member.

Composition of the National Assembly

62.—(1) The National Assembly shall consist of such number of seats, representing every constituency in Malawi, as shall be determined by the Electoral Commission.

(2) Each constituency shall freely elect any person, subject to this Constitution and an Act of Parliament, to represent it as a member of the National Assembly in such manner as may be prescribed by this Constitution or an Act of Parliament.

Malawi Constitution, Chapter VI, Section 59 (2) and 60 (3)

Cited on Pages 1 and 9 of NDI Memorandum, respectively

49.—(1) For the purposes of this Constitution, unless otherwise provided, “Parliament” consists of the National Assembly, the Senate and the President as Head of State. Definitions

(2) Unless otherwise provided in this Constitution, an “Act of Parliament” shall be a Bill which has—

- (i) been laid before and passed by a majority of the National Assembly;
- (ii) been laid before and passed by a majority of the Senate; and
- (iii) been assented to by the President in accordance with this Chapter.

(3) “Chamber” means either the Chamber of the National Assembly or of the Senate.

50.—(1) The quorum of each Chamber shall be formed by the presence at the beginning of any sitting of at least two thirds of the members of that Chamber entitled to vote, not including the Speaker or a presiding member. Quorum

(2) If it is brought to the attention of the Speaker or person acting as Speaker by any member of the Chamber over which he or she is presiding that there are less than the number of members prescribed by the Standing Orders of that Chamber present and after such interval as may be prescribed in the rules of procedure of the Chamber, the Speaker or person acting as Speaker ascertains that the number of members present is still less than that prescribed by the Standing Orders Chamber, he or she shall adjourn the Chamber.

51.—(1) A person shall not be qualified to be nominated or elected as a member of the Parliament unless that person— Qualifications of members of Parliament

(a) is a citizen of the Republic who at the time of nomination has attained—

- (i) the age of twenty-one years, in the case of the National Assembly; and
- (ii) the age of thirty-five years in the case of the Senate.

(b) is able to speak and to read the English language well enough to take an active part in the proceedings of Parliament; and

(c) is registered as a voter in a constituency.

(2) Notwithstanding subsection (1), no person shall be qualified to be nominated or elected as a member of Parliament who—

(a) owes allegiance to a foreign country;

The Clerk

55. There shall be a Clerk to the National Assembly and a Clerk to the Senate who shall be public officers and shall assist the Speaker of the Chamber to which that Clerk is appointed and perform such other functions and duties as the Speaker may direct.

The right to regulate procedure

56.—(1) Subject to this Constitution, the National Assembly, or the Senate, may by Standing Order or otherwise regulate its own procedure.

(2) Save as otherwise provided in this Constitution, the National Assembly and the Senate may act unless more than two-thirds of all their seats are vacant.

(3) The presence or participation of any person not entitled to be present or to participate in the proceedings of each Chamber shall not invalidate those proceedings.

(4) Each Chamber shall provide access to the press and members of the public, except where a motion is passed with reasons prohibiting public access in the national interest.

(5) The proceedings of Parliament shall be conducted in the English language and such other languages as each Chamber may prescribe in respect of its own proceedings.

(6) Parliament may establish any committees of its members and may form joint committees for the scrutiny of legislation and performance of other functions, except voting on motions and Bills.

(7) In addition to any committee appointed under subsection (6), there shall be a Public Appointments Committee and a Legal Affairs Committee of the National Assembly which shall each—

(a) be appointed by the National Assembly with proportionate representation from all parties represented in the National Assembly;

(b) appointed within thirty days of the first sitting of the National Assembly after a general election and thereafter annually; and

(c) perform such functions as are conferred on them by this Constitution or by an Act of Parliament.

Money Bills

57.—(1) Except upon the recommendation of the Minister responsible for Finance, signified in writing, the National Assembly shall not—

(a) proceed upon any Bill or any amendment to a Bill that, in the opinion of the person presiding, makes provision for any of the following purposes—

APPENDIX B

Mangochi Workshop Report Recommendations

**PARLIAMENT'S ORGANIZATION
THE ROLE OF COMMITTEES AND PARTY WHIPS**

**A National Democratic Institute for International Affairs
Workshop**

**Club Makokola
Mangochi, Malawi**

15-17 June 1995

**NDI is funded under a grant from the
United States Agency for International Development**

Workshop Recommendations

The following are the recommendations agreed upon by the delegates during the final plenary session. They have been tabled in Parliament for future discussion.

Establishing Committees

Parliament should review the current division of committee portfolios so that each cabinet ministry is matched with a parliamentary committee.

Due to financial constraints, Parliament should combine cabinet ministry portfolios to establish a reasonable number of committees.

Parliament's Standing Orders (in particular sections 140, 142, and 145) should be reviewed to establish more clearly the powers of parliamentary committees taking into account the recommendations of this report and the desire to have uniform rules for all committees.

Committees should be provided with professional staff including an advisor on gender issues. A research department should be available to Members of Parliament.

Parliament should have its own legal counsel and committees should be empowered to hire legal counsel on a permanent or temporary basis.

Committee Membership and Leadership

To strengthen the accountability of committees to Parliament and to establish more establish the relationship between cabinet ministries and parliamentary committees, cabinet ministers should not be members of portfolio and oversight committees.

Committee chairs and vice chairs should be elected by committee members, but the chair of the Public Accounts Committee should be reserved for a member of the opposition.

The term of office for committee members and chairs should coincide with the term of Parliament although parties should be free to change their membership on committees at any time according to the rules of the party caucus.

Cabinet ministers should have a liaison officer to the committee responsible for the ministry's portfolio.

The current size of committee membership is appropriate.

Transparency of Government

Committee meetings should be open to the public and press except under extraordinary circumstances. The decision to hold a committee meeting *in camera* should be taken by a vote of the committee. Rule 160 of the Standing Orders should be rephrased to emphasize that the normal procedure is to hold committee meetings in public.

All committee members should be free to talk to the press about committee meetings and reports, except for cases when the committee meeting was held *in camera*. To clarify committee positions to the press, committees should issue official press releases after each meeting.

Rule 176 of the Standing Orders should be revised to emphasize that sittings of the Assembly should be held *in camera* only under extraordinary circumstances and that visitors to the Assembly should be removed only if they are creating a disturbance.

Public Participation and Consultation

A primary function of parliamentary committees is to seek the views of people outside of parliament on legislative and oversight issues.

Committees should plan into their schedules time for consulting the public.

Committee should use the mass media to inform the public about legislation.

Committee Report to the Assembly

Committees should present reports including both majority and minority views.

Committee members should be free to voice views both in committee and on the floor and should not be bound by the position of the committee.

When recommending changes to legislation, committees should produce a version B of the bill to illustrate the suggested amendments.

Legislation

All legislation introduced in Parliament should be accompanied by a substantive memorandum explaining the objectives and provisions of the bill.

All legislation should be referred to a portfolio committee which should report back to the Assembly before the second reading. The Speaker should be able to refer legislation to a portfolio committee once that legislation has been published in the Gazette. Therefore, legislation could be referred to committees either before or after the first reading, depending on whether the Assembly is in session.

Delegates recognize that it is a primary responsibility of the executive to initiate legislation, but the executive should also respect Parliament's role in reviewing and enacting legislation and allow for adequate time to carry out these responsibilities.

Committee jurisdiction concerning the review of legislation encompasses both a review of the principles and details of legislation. Rule 120 of the Standing Orders should be amended accordingly.

It is the right of individual Members of Parliament and parliamentary committees to introduce legislation,

and Parliament should establish an infrastructure to support the introduction of private bills and committee bills.

Parliament should properly consider each legislative bill. Therefore, the Standing Orders should provide that a two-thirds majority shall be required for suspending the rules.

Bills should be numbered consecutively and bill numbers should not be repeated during a term of parliament.

Budget and Money Bills

The Budget and money bills should be given special treatment.

Parliamentary committees should be included in the development of the budget. The Budget Committee should work with the Ministry of Finance on the overall direction of the budget, and each portfolio committee should work and consult with the relevant cabinet ministries on the programs that are to be included in that particular ministry's budget.

When the budget is introduced, it should be accompanied by a detailed memorandum clearly illustrating budget allocations program by program.

After passing the introduction of the budget, each portfolio committee should review the relevant section of the budget and report to the Assembly before final votes are taken on that particular section.

Parliament should review the current budget process and examine the lessons of the South African example for including parliamentary committees in the budget process.

Party Whips

Whips should not be viewed as harsh disciplinarians, but rather as facilitators of the development of party positions.

Whips need to be active in Parliament and responsive to their party members. Therefore the party caucus should play a greater role in the selection of whips, and parties should consider elections for these offices.

Cabinet ministers should not serve as whips due to time constraints.

When Parliament is in session, whips from each party should meet regularly, at least once a week, to discuss the schedule and parliamentary business.

Scheduling

There should be a calendar for parliamentary business, and scheduling should be done on a monthly basis. The calendar should take into account time for sessions of the whole house, party caucus meetings, committee meetings and should give due regard to consultations with the public.

The Speaker should develop the parliamentary calendar in consultation with the Leader of the House, the Leader of the Opposition, other party leaders in parliament, party whips, and the Clerk of Parliament. Rule 140 of the Standing Orders should be revised accordingly. Committee chairs should meet regularly with the party whips to discuss scheduling issues.

Once legislation has been published in the Gazette, committees should be given at least three weeks to consult the public.

Except under urgent circumstances, notices and agendas for committee meetings should be sent at least two weeks in advance to allow committee members to consult with their party caucuses.

Party whips, in consultation with the Speaker, should devise a system for withholding allowances from Members of Parliament who are absent from meetings without a valid excuse.

MEMORANDUM

TO: The Honourable Mapopa Chipeta, Chairman, Procedures Committee
Members, Parliamentary Procedures Committee
Mr. Roosevelt Gondwe, Clerk of Parliament
The Honourable R.T.C. Munyenyembe, Speaker of Assembly
FROM: Brian Kidney, Consultant, and Traci Cook, Director, NDI/Malawi
DATE: March 20, 1996
SUBJ: Parliamentary Procedures Committee Meeting

We again would like to thank the members of the Procedures Committee for the honor of addressing them on our recently submitted commentary on the new draft Standing Orders of the Malawi National Assembly. As a follow-up to today's meeting, we have revised Orders or suggested additional Orders to respond to the specific concerns of the Committee. We offer the following as an amendment to our previously submitted report.

AMENDMENTS TO PREVIOUS NDI MEMORANDUM ENTITLED "REVIEW OF THE NEW DRAFT STANDING ORDERS OF THE MALAWI NATIONAL ASSEMBLY"

On pages 3 and 5 of the original report under the subject heading, "The Issue of Time," we recommend that Standing Orders 87 and 132 (h) now read as follows:

- o Standing Order 87--On the second reading of any Bill, the responsible Minister and the Leaders of the parties which are not the majority party in the Assembly may speak for no longer than 15 minutes. On presentation of the Budget, the responsible Minister without interruption may speak for more than 30 minutes. The Leaders of the parties which are not the majority party in the Assembly may speak without interruption for no longer than 30 minutes. Additional time may be granted by leave of the Speaker. Following presentation of the Budget, the designated spokespersons for the parties which are not the majority party shall have not less than four days in which prepare their response. In addition, the spokespersons shall be allowed to speak prior to the beginning of general debate.
- o Standing Order 132 (h)--**Address in Reply**--Where a meeting of the Assembly has commenced by an opening address from the President, the House shall debate a motion on the address and on any amendments proposed thereto. The motion "That this House do now consider His Excellency's speech" shall be moved by one Member and seconded by another Member and the debate thereon shall not exceed seven sitting days. General debate by Members shall not exceed six sitting days. During the period of general debate, Ministers will not be permitted to speak. Response of Ministers will follow general debate and shall not to exceed one sitting day.

On page 5 of the original report under the subject heading, "21 Day Publication Rule," we recommend that Standing Order 194 (3) now read as follows:

- o **Urgent bills submitted to Business Committee**--Where, in the opinion of the responsible Minister, a Government Bill is so urgent or of such nature as not to permit compliance with publication within 21 days, the Minister shall present the Bill to the Business Committee with a request for suspension. As soon as practicable after receipt of the Bill and the request, the Committee shall, on motion, vote on the request. The Committee shall report the Bill with its recommendation to the Assembly for its determination. A vote of two-thirds of those Members of the Assembly present and voting shall be required to suspend the 21 day publication rule.

On page 8 of the original report under the subject heading, "Strengthening Committees," we recommend that Standing Order 201 (1) now read as follows:

- o When a Bill has been read a second time, it shall be referred by the Clerk to the relevant Standing Committee, Select Committee or to a Committee of the whole House.

On page 9 of the original report under the subject heading, "Membership of Committees," we recommend that Standing Order 235 now read as follows:

- o **Membership of Standing Committees**--The overall membership of Standing Committees must so far as reasonably practicable, be proportional to party membership in the House. Ministers or Deputy Ministers may not be eligible for appointment to Standing or Select Committees.

We recommend that Standing Order 166, not referenced in the original report, be revised as follows:

- o The time allotted for questions to Ministers is 90 minutes after which time Members may have no more than 30 minutes to request points of clarification. The time allotted for questions to the President is thirty minutes.

We recommend that the following rule be added to the Standing Orders to comply with requirements set forth in Chapter VIII, Section 88 (3) of the Malawi Constitution.

- o The declaration of assets, liabilities and business interests of the President and Cabinet members, and those of their spouses, shall be delivered to the Speaker of the National Assembly who shall immediately upon receipt deposit the documents with the Registrar.

We would like to call the Committee's attention to Chapter VIII, Section 86 (2) and Section 87 (7) of the Malawi Constitution.

- o These sections state that the Standing Orders of Parliament should prescribe a procedure for impeachment of the President and the First Vice-President. Section 86 (2) of the Constitution places certain restrictions on the procedure for impeachment. These include requirements: that the procedures are in full accord with the principles of natural justice; that indictment and conviction by impeachment shall only be on the grounds of serious violation of the Constitution or serious breach of the written laws of the republic that either occurred or came to light during the term of office; that indictment on impeachment shall require the affirmative vote of two-thirds of the Members of the National Assembly in a Committee of the whole House; that conviction on impeachment shall require the affirmative vote of two-thirds of the Members of both Chambers; that conviction in cases of impeachment shall cause the removal, and disqualification from future office, of the office holder; and that conviction by way of impeachment shall not act as a bar to legal proceedings. In addition, Section 87 (7) requires that the Standing Orders reflect a procedure for choosing a medical board in the event of a charge of mental incapacity.

Procedures in parliaments throughout the world vary widely in their approach to impeachment. These include everything from the Ghana model of utilizing the courts through a constitutional tribunal to some of the state models in the U.S. whereby the lower House prepares the indictment and the upper House sits in judgement. In the absence of additional guidance by the Constitution, we feel that the Assembly has some latitude in selecting a model for impeachment procedures from the many available. It would seem to be implied from the Constitution that the power for impeachment rests with the Parliament. In view of the various procedures in place for impeachment in other countries, we feel we cannot recommend one over the other without further direction from the Committee. Obviously, this is a very important matter which merits considerable discussion.

We hope the above reflects the conclusions which were drawn from today's lively debate during the Procedures Committee meeting. Again, we remain ready to answer any further questions the Committee or other Members may have.