

## **Plenary Session II**

### **The People's Assembly**

The second plenary session emphasized Parliament's relationship to the outside world. Mr. Hamburg opened the session with a presentation concerning the role of an individual Member of Parliament in balancing the interests of the political party, constituency and personal conviction. Mr. Kubwalo then presented his findings from his participation on the Malawi delegation to South Africa concerning the role of parliamentary committees in seeking public input and information.

#### **Dan Hamburg**

##### **Balancing the Interests of Party, Constituency and Personal Conviction**

Last December, in a speech to the conference held in Blantyre on the subject of the Role of Parliament in Malawi's Constitutional Democracy, Speaker Munyenembe said the following:

The National Assembly is responsible to the people, and its duty is to work in their best interest. The individual member has a duty to his country, his constituency and his party, in that order of priority."

Responsibility to the people. Duty to country. These are big terms that are full of meaning. It is important that the Speaker said that these are the first priorities. But, who can determine the correct or even the best way to meet this responsibility to the people, this duty to the country? The party certainly tries to do this. The constituency sometimes voices its individual and even its collective opinion. But, at the end of the day, it is you, the representative, who must make the determination.

Another way to describe this idea of responsibility to the people and duty to the country is in terms of individual or personal conviction. I think the Speaker was saying that your first priority as a parliamentarian is to determine not what is best for the political party (even though that will certainly be worth considering, particularly if you are elected on a party slate), or what is best for the constituency you represent (though that is also certainly an important consideration, particularly if you are elected directly by a constituency). Your first priority is to determine what is best for the country, for the people as a whole. This is a huge responsibility.

I strongly agree with the Speaker's statement. However, it is in practice that these issues must be resolved. Inevitably, you usually make your decisions in situations that are neither black nor white, but often gray. Your knowledge is always imperfect, and even the best politician is only a human being.

When making difficult decisions in gray areas, you will inevitably encounter criticism. It comes with being a Member of Parliament. You can be criticized if you follow the party line, criticized if you follow your constituency (after all you may have to choose a particular section of your constituency to agree with), and certainly you can be criticized if you follow your innermost conviction about what is right for the country. You must, to some degree, let criticism roll off your back while at the same time try to learn something from criticism where that is appropriate. There is always a grain of truth in criticism. A North American philosopher named Wendell Berry once said, "The mind that is not baffled is not employed. The impeded stream is the one that sings." To me this means that it is all right to not always know what is right because it is only in complexity that we grow. And certainly, your job is full of complexity.



I want to suggest to you that the best way to deal with your situation as leaders and as legislators, to deal with the complexity of your task and the inevitable criticism you will experience, is to strengthen Parliament through having a strong committee system. In the United States legislative model, political parties have been comparatively weak, and committees comparatively strong. I say "have been" because the US is now going through something of a reversal where for the first time in decades, committees have become subservient to a party agenda; specifically, the Republican Party agenda. And that party is doing a good job of using the committee structure to move its agenda forward.

Unfortunately for me and Jim Shannon at the moment, we are Democrats and in the minority. The nature of the Democratic Party in the United States has long been of a coalition of interests that does not necessarily agree on every issue, but is united in its general distaste for the party of wealth and privilege, *i.e.*, the Republicans. The Republicans are also rather far flung, united basically by their distaste of the party of fiscal and moral laxness, *i.e.*, the Democrats. In American style, two-party politics, a successful party must cast a fairly wide net in order to catch enough votes to win a majority. This gives the individual Democrat or Republican some room to maneuver, to act contrary to the party because of a need to cater to the constituency, or to personal conviction. Still, there are certain issues on which party loyalty must figure very heavily. For example, I was always aware as a member of Congress when a so called "party vote" was coming up on the floor. These were votes where the leadership of the party felt it needed support so badly that voting against the party would be considered disloyal.

In my opinion, the crux of your job lies in the gray areas where you have to weigh and balance party, constituency, and individual conviction. This is also where your job should be truly interesting, even compelling. And it is where the courage and the skill of the successful politician is born and develops.

What does all this have to do with the role of committees in Malawi's Parliament? At your conference in Blantyre last December, former Connecticut state representative Thomas Mondani made two statements that I would like to recall for you. He said that "information is the greatest form of power in legislative deliberations" and that you, as parliamentarians, "should not rely on the executive branch" for information. So where should you get your information? In my opinion, you must get it through committees.

It is through committees, through the formal structure of hearings and the informal give-and-take with committee colleagues from all parties, that you can best gain the information you need to make the decisions that it is your job to make. Of course, you cannot sit on every committee. In most legislatures, members can sit on no more than two or three committees. In the United States, the limit is two committees and two subcommittees. In Portugal, a member generally may not belong to more than two committees. In Namibia, there are no restrictions on multiple committee membership but the committees are comparatively weak. A few countries, including Portugal and the United Kingdom, allow a member who is not on a committee to show up, and even to speak.

No individual member of a parliamentary body can know all of the business of the body. But through the committee structure, she or he can know quite a lot about a part of it and know someone else (usually of the same party but not necessarily) who knows a lot about some other significant part of it. When a matter comes up for discussion on the floor, there are experts ready to address it, and to persuade others of the correctness, or lack of correctness, of the committee position. So, committees are democratizing in that they spread out decision making among all members, backbenchers included; empowering in that they put the necessary information into the hands of the decision makers; and finally invaluable as a means of doing the job of a representative of the people.

I would urge you to work to put in place a committee structure where public hearings are held regularly, hearings that bring before the committee ~~Cabinet Ministers, individual members of the public with~~ expertise on the matter under consideration, and representatives of civic organizations and other interest groups. I would also urge that you get out of Zomba and conduct hearings in the field.

The information that comes to you through an appropriately funded, staffed and functioning committee system won't always resolve the dilemmas you face as a representative of the people. There will be times when your arm is successfully bent, and you find that you have to vote with the party. Or when some powerful element of your constituency successfully puts pressure on you to compromise and vote their way. There will also be those times when you must reject both party and constituency to follow your most inner conviction in order to be able to look at yourself in the mirror the next morning.

But without the full airing of ideas, opinions, and information that can only come to a Member of Parliament through a committee structure, you cannot make these decisions with any confidence. Nor will your constituents have the confidence that they have been fully included in your deliberations. Nor will there be a public record of proceedings on which you based the decisions you made, a record that is useful to you, your constituents, and to the future leaders of Malawi.

When you chose to run for office, to be a politician, you chose to put yourself in a position to make tough choices that directly affect, for better or worse, the general welfare of ten million people. Through a formal and structured committee system, one that is open to the public and fully empowered to get the facts, you put yourself in a position to both vote wisely and to defend your vote. At the end of the day, you will be able to say that you did the job you were elected to do, that you acted in keeping with what you truly believed to be the best interests of the people of Malawi.

**J.P. Kubwalo**

**Informed Parliamentary Debate: Incorporating Outside Opinion**

As Malawi's Parliament takes its few early steps in a multi-party dispensation, redefines its role, and divorces itself from the one-party mentality, it becomes more important that we examine what makes a democratic parliament tick. A parliament where members debate issues pertaining to their constituencies as well as issues concerning the nation as a whole is a lively house where everyone should be proud to be a member. It is also a challenge to be a member of such a house.

The Member of Parliament is not a Mr. know-it-all. He has to consult his constituents to be well informed, and to make his contributions in Parliament meaningful. He needs to understand each and every piece of legislation that is passed by the house. He has to protect the interests of his constituents and indeed the whole nation against bills that will be to the disadvantage of the minority. Members also depend on party whips to engage in informed debate. In this presentation, I will discuss the role of party whips and standing committees in influencing informed debates in Parliament.

What is a party whip? A party whip is the eyes and ears of the leadership. He is not a spy. The role of the whip is to ensure that there is discipline among members, and that members are well informed about Government and party stands on impending legislation. It is the whip's responsibility to liaise with members of the other parties. He listens to their views, and irons out problems to come up with legislation that is acceptable. It is clear that the whip must deal with Members of Parliament in his own

camp, but he must also be a link-man between his party and members of the other parties.

Democracy dictates that the general public be able to participate in the legislative process. It would be chaotic to invite everybody to Parliament to discuss, for example, a piece of legislation, so this is where parliamentary committees come in. The acceptable practice in a democratic set-up is for committees to hold public meetings. Therefore, it is necessary to publicize these meetings through the radio, newspapers and posters. Notices containing a detailed agenda must be posted and publicized in good time, at least a week or two before the meeting is to take place.

Outside opinion must be sought so that the advantages and disadvantages of a bill and how the bill might affect the nation or a particular section of the population will be discussed and considered by the committee and Parliament before it is passed. The public contains people of various philosophical, regional, and political perspectives so a full range of participation is important. Businesspeople, youths, women, religious institutions and NGOs should all be consulted and asked to contribute by expressing their views on legislation.

Committees must make it a habit to get in touch with organizations, ministries and people who have technical know-how. As I indicated earlier, public participation in parliamentary debates is a new phenomenon in Malawi. Therefore, there is a need to sensitize people through civic education and public hearings on their right to be heard.

An effective committee will seek feedback from the public to ensure that Members of Parliament are serving the interests of the people they represent, and not their own personal interests. This is an advantage for the Member of Parliament as well because he will be able to make informed contributions in Parliament. His presentation will have come from the people, from the bottom to the top. This is how democracy works.

In this era of transparency and accountability, a committee must maintain a record of testimony and committee proceedings, and must make it available to the public. It is up to the committee to decide whether field visits are required to hold public hearings. If they are required the committee should invite public officials, private professionals and interest groups who may be involved in the subject matter. Government officials conversant with the legislation should also be invited to comment. It goes without saying that committees must maintain a list of interested parties and notify them of scheduled meetings.

In conclusion, committees are the central vehicle through which legislation must pass for scrutiny, debate and modification. They are the access point for the citizens of Malawi to participate and provide input into the legislative process. It is important that through committee hearings the public is able to participate in the formulation of policy and a forum is provided for various people to express their competing and often conflicting viewpoints. If we are able to implement such a process, when legislation is passed it will have undergone a rigorous debate and all of its advantages and disadvantages will have been considered.

## **Questions & Answers**

### **Public Hearings**

Mr. Konje asked how committees can hold public hearings when resources are limited. Mr. Kubwalo



answered that committees can hold hearings while Parliament is in session, but that it was also important to conduct hearings in the field. He suggested that Members of Parliament should be committed to finding some resources for this purpose and that the funding would have to come eventually. Mr. Hamburg added that a field hearing does not have to include all members of a committee, but that the committee can designate two or three members to hold a hearing and report back to the committee. By cutting down the number of members required to hold a hearing, Parliament could save money.

### **Publicizing Issues**

Mr. Matapila Banda asked how the radio could be used to publicize political issues for debate and public consultation. Mr. Hamburg responded by stating that in the United States radio airwaves are considered public property. Since the airwaves are public property, the government can lease them to radio stations with the understanding that the station should carry public announcements without charge. He emphasized the importance of using the radio to reach a large audience. The Speaker added that this issue should be referred to the Committee on Mass Media.

### **Balancing Interests**

Mr. O.I. Mkandawire said that he did not understand the idea of balancing interests. He stated that when MPs come to Parliament they realize that there is a need to compromise, but how does an MP know when he has "balanced" the competing interests? Mr. Hamburg responded that an MP must get as much information and as many different view points as possible in order to make good political decisions. No one is ever certain whether they have struck the right balance, but an MP will only remain an MP in a democratic society as long as his or her constituents believe that he has found a good balance of interests. Every five years your constituents get to decide whether you have voted appropriately.

Mr. Mwamondwe stated that there is still too much partisanship in Parliament. The Speaker replied that voting decisions are always personal, but that each MP must face the consequences of how he or she votes. Mr. Sembereka added that an MP stands for a political party manifesto and should not rely on his or her personal conviction because that would place an MP outside of his or her political mandate. Mr. Hamburg concluded that an MP should be loyal to a political party's manifesto, but that there may be times when an MP should consider other factors. In the end, an MP must look at all the interests and decide what is best for the nation.

### **Secret Ballots**

Mr. Nseula asked whether there are secret ballots in the United States Congress and whether there are times when an MP should vote contrary to public opinion. Mr. Hamburg noted that there are never secret ballots in the United States Congress although sometimes questions that are not particularly controversial are taken by voice vote. He added that there are instances when MPs should vote contrary to public opinion and that it was his opinion that this happened too rarely. Sometimes public opinion is molded in response to short term views. An MP must consider what is best for the country in the long term. Mr. Hamburg concluded that sometimes MPs must make unpopular votes. The Speaker stated that the Standing Orders do not currently allow for secret voting in Parliament.





**Working Group A  
Committees and the Process of Parliamentary Review**

Chair: James Shannon

Spokesperson: Mr. F.N. Kunje

Participants

J.B. Mponda Mkandawire  
M.E. Chipala  
R.J. Sembereka  
J.P. Kubwalo  
W.W.M. Nakanga  
J.S. Matapila Banda  
G.E. Zulu  
Sam K. Banda

E.W. Kufeyani  
P. Chibwana  
L.E. Patel  
M.S. Nzunda  
M.K. Moyo  
A.K.M. Pillane  
S.J. Situsi Nkhoma  
G.R.K.L. Mwamondwe

Introduction

This working group was convened to review the ways in which committees can facilitate a process of public consultation and the collection of information on issues coming before Parliament. Delegates discussed these issues and developed proposals for reforms.

Public Consultation

Mr. Shannon began the session by asking what role committees should play in seeking outside opinion in the development of legislation in Parliament. He asked: "What do you think about committees holding public hearings?"

Mr. Mponda Mkandawire replied that "it is high time we proceed in that direction. Currently legislation is published in the Gazette, and that's all. We must reform our procedures to allow parliamentary committees to conduct hearings." Mr. Mwamondwe raised some concerns. He agreed that once a bill is published in the Gazette, committees should take the time to go out and seek the views of the masses, but he said that "financially this will be tough because it will have to be advertised on the radio and in the newspapers in order to inform the people of what is going on. In preparation for the National Constitutional Conference, MPs went out to seek people's views, but the people didn't know anything about the issues. Malawi needs civic education at the grassroots level." Mrs. Patel agreed that civic education is necessary, even for MPs. She said that "bills are introduced without background information. We often do not understand the bill that is being introduced."

Mr. Shannon asked: "When you need information on a bill, how do you get it?" Mr. Zulu replied: "There is no formal method. But, if I had this information I could use it to explain issues to my constituency." Mr. Shannon said that in the United States a member has to take the initiative for seeking information before molding an opinion on an issue. He added that "if you want information to come to you it will never come."

Mr. Kubwalo suggested that there should be a minimum three-week period for committees to conduct public consultations. He added that in many cases it would take longer. Mr. Moyo advocated using parliamentary committees to conduct public consultation, but said that “MPs must first understand what they are doing, and learn how to get feedback from the general public. If there is a specific piece of legislation, committee members should invite interest groups relevant to the issue to come and testify in front of the committee.”

Mr. Kunje suggested that parliament cannot consult the public on all legislative bills because some are technical and difficult to discuss at the local level. Mr. Shannon said that the public cannot be involved in every detail of the legislative process, that MPs need to do their jobs as representatives and make decisions for the good of the country, but nevertheless the public needs to be consulted on the fundamental issues at stake in any piece of legislation. Mr. Nakanga stated that “public consultation through committees is a good idea. Committees should hold discussions at universities and in the whole country to get the views of the people. Legislation affecting the people should be examined by the people. They should express their opinions.”

Mr. J.S. Banda agreed that there should be consultations, but raised some concerns. “Which section of the public do we get information from? At the boma, only educated people participate. We need civic education to allow all the people to participate, and government should use the radio to educate people on issues and encourage participation.” Mr. Sam Banda said that “MPs should be well informed on what is going on in committees. There should be a free flow of information on what is going on concerning any legislation.” He suggested that MBC should waive the charges for airing any information related to public meetings for MPs. “Few people in the constituencies are informed about public meetings and when they are being held. I feel that since the government can't afford to pay for these announcements they should be aired free of charge.” Mr. Mwamondwe added that “Each committee should have a few people assigned to deal with the media to tell them where MPs are going to be holding hearings.”

Mr. Shannon stated that “a committee hearing in the United States is not meant for all the people. The committee goes out and solicits responses from certain groups. These people are the first witnesses to express their views, and this helps the committee members get basic information on the issues involved. It is important to remember that committee hearings are not just to inform the people, but just as importantly to inform the committee members.” He concluded by saying that the witnesses at a committee hearing could either be experts on the subject at hand or people who will be affected by the legislation.

Mr. Mwamondwe said, “The Standing Orders do not contain a mechanism to allow people to meet with parliamentary committees.” Mr. Mponda Mkandawire said that “cabinet ministries currently do the ground work. For example, the ministry on environmental affairs is drafting legislation and is holding in-house hearings here in Mangochi. We need to publicize what the government is doing so people can formulate an opinion and so they can contribute at the committee hearing.” Mr. Kubwalo asked, “How can the ministry be inviting people to their meeting when we have not heard anything about this on the radio?”

Dr. Nzunda responded by saying “I thought we are interested in the legislative process by the National Assembly itself to develop mechanisms for consultations. We should explore ways to set up mechanisms for Parliament to have its own consultation process. We are falling into the usual track of talking about ‘Government-Government-Government’. Why are we complaining that the Government has not given us copies of this or that? There is nothing stopping an MP from walking into a Minister's office and getting the information.”





## Information

Mrs. Patel declared that Parliament should create a research department. She said that when UNICEF held a meeting she was asked to speak on a bill concerning the socialization of children, but she had not been informed about the bill. Dr. Nzunda said that the Attorney General can refer Members of Parliament to the appropriate ministry for getting information on a bill. Mr. Nakanga asked if an MP should have to travel all the way from their constituency to ask a Minister for information. Mr. Moyo suggested that committees should produce newspapers that present information on legislation for circulation to MPs and interest groups. Mr. Kubwalo complained that "in the United States you can ask for information and they get it for you, but here if you ask for information, it takes forever."

Mr. Shannon stated that "The first question is how can MP's get the information they need to discuss the issues." Mr. Mwamondwe suggested that a memorandum containing background information should be attached to each bill. "Committee members and MPs should be very conversant about a bill before it goes to the press." Mr. Moyo added that in South Africa, when a bill is referred to a committee the responsible minister will come and present a paper summarizing the bill and providing background information. He or she also reports about who has been consulted on the bill. "This gives the committee a place to start."

## Parliamentary Schedule and Suspending the Rules

Mr. Shannon asked: "If committees are expected to play a role in incorporating outside opinion, how does this affect the scheduling of parliamentary business?" Mr. M. Banda responded by saying that "committees should be in regular consultation with the Speaker's office to better organize the program. Mr. Sam Banda said that committees should produce a calendar of their work schedule, and it should be distributed to all MPs. Mr. Kubwalo suggested that an administrator would be needed to coordinate the programs. Mr. Shannon concluded that the parties, including minority parties, should be involved in scheduling. Therefore, the whips should be involved in setting committee schedules along with the committee chairs, parliamentary leadership and staff.

Dr. Nzunda stated that "the greatest problem is time. The twenty-one day review period is rarely honored. For example, the Export and Shipping bill passed by default because we were busy trying to pass the Constitution. The executive would conduct their own consultation, and then quietly introduce the bill. Then, just before the twenty-one days are up they pack up the National Assembly with thirty or more bills and expect immediate passage. I too have fallen into this trap. We are packed with bills, so they call for a suspension of the rules and for a fast vote." Mr. Mwamondwe emphasized that "This Government is in a hurry to impress, so we let them win by default."

Mr. Pillane argued that "without education we are acting the same as under the MCP government." Mr. Mponda Mkandawire concurred, saying, "Yes, we don't know any other way. We just sit down and let it go." Mr. Shannon asked what is required to suspend the rules. Delegates responded that it only required a simple majority. Mr. Nakanga said, "The speaker puts it to a vote. You hear 'yea...yea...yea' and it goes on." Mr. Sembereka interjected that "we are wasting time trying to talk about the mistakes we have made. Let us start today to make sure that it happens correctly. Let us not waste time accusing each other. Now that we are finally away from government, we can take the time to learn."



Mr. Shannon attempted to summarize the discussion by saying that he thought the “group wants the Government to stop moving bills through so quickly.” Mr. Mwamondwe replied that “we want to educate MPs so that they can reject the application to suspend the Standing Orders.” Mr. Pillani claimed that “if you vote against suspending the rules you always have a black eye for not supporting your party. In the past we always said yes without knowing what we were voting on.” Mr. Mkandawire declared, “Now the Government will know that all legislation must first pass through a committee.”

Mr. Shannon stated that “the Government will learn that they can use this process to their benefit by eliciting public support for their programs.” Mr. Zulu asked whether there are good reasons for suspending the rules. Mr. Shannon answered, “There will be times when suspension of the rules is justified, but when it becomes conventional, it is a problem. MPs must be willing to oppose suspension of the rules unless it is an exception.” Dr. Nzunda suggested that the parliament should tighten the rules for suspension. He stated, “I suspect relying on MPs resistance is not enough.” Mr. Shannon offered that in the United States there must be a two-thirds majority vote to suspend the rules. The participants agreed that the suggested provision would be preferable to the current requirement for a simple majority.

### **Committee Reports**

Mr. Shannon asked, “What is the role of committees in presenting their findings to the Assembly as a whole?” Mr. Mwamondwe replied that the committee informs the Speaker that they wish to address the National Assembly. Committees also put their findings in writing. Mr. Shannon asked if there is usually a minority report. The delegates responded that there was not. Mr. Mwamondwe stated that some MPs have stood up to frustrate the presentation of the report, and Mr. Mponda Mkandawire added that “this is a problem with our learning process”. Mr. Mwamondwe declared that if a member supports a provision in committee, he or she should support it when it goes to the floor. He said that when a committee chair presents a report to the Assembly and the Cabinet Ministers disagree, there is a heated debate and members of the committee change their positions.

### **Committees and Cabinet Ministers**

Mr. Moyo stated that Malawi needs to establish a clearer separation between the legislative and executive branches. “We need to build up a culture of respect to create a rapport between the legislative and executive branches, a better working relationship.” Mr. Shannon responded, “In December we discussed that your Constitution is a hybrid of the parliamentary and presidential systems. If it were a purely parliamentary system, every minister would be an MP and would have to answer to the party. If you had a presidential system, you would have separate institutions. In the presidential system, ministers are not MPs, so they are required to be accountable to elected legislators. Your system is not clear on this relationship between the cabinet and parliament, and the relationship needs to be sorted out. The bottom line is that parliamentary committees must have oversight authority, and ministers must understand this right.”

Mr. Mponda Mkandawire suggested that the working group should recommend that ministers should not be members of parliamentary committees dealing in oversight. He argued that accepting this recommendation would clarify the separation of powers between the executive and the legislature. The recommendation was accepted.

## Transparency

Mr. Shannon asked, "How can committees support the development of a transparent government? Should committee meetings be open to the public and press? Under what circumstances should committee meetings be held *in camera*?" Mr. Zulu suggested that all "unsensitive" information should be open to the public, depending on what legislation is being discussed. Mr. Sam Banda stated that "the committee may resolve that certain topics are going to be discussed *in camera*. If the committee is sensitive on certain issues they should be able to work it out in private." Mr. Kubwalo asked, "At what stage does the committee's discussion become public? Should people see all the quarrelling?"

Mr. Mponda Mkandawire argued that the meetings should be held in private only when the Government requests privacy for reasons of national security. He asked how this issue was addressed in the United States. Mr. Shannon replied that "hearings are open unless there is some exceptional reason for it to be closed. Everyone on a committee has to vote on whether or not to close the meeting."

Mr. Sam Banda said that the Public Accounts Committee held open sessions, but committee sessions on legislative bills are not interesting to the public. Mr. Shannon responded that "the fact that people may not come is not important. A lot of the work you do is not very interesting to the public. However, if the public wants to have access to the meeting they should be allowed." Dr. Nzunda stated that the public is not informed about committee meetings, and that the schedules should be announced on the radio. Mr. Kubwalo questioned whether meetings which might not be understood by the general public should be open. Most of the other delegates in the working group responded that the meetings should be open.

Mr. Mwamondwe questioned whether meetings of the Public Appointments Committee should be open. He said, "Some of the rejections are very embarrassing and personal and the press will get a hold of this and drag them through the mud. We should agree to have interviews after the meetings." Others responded that such a system would not be transparent. Mr. Mponda Mkandawire suggested that it does not have to be embarrassing for someone to be rejected. Mr. Sam Banda stated that "a person shouldn't try to get the position if they know they have a shady past." Mr. M.K. Banda responded, "Sometimes people are not informed that they are going to be put up for these appointments. Why does a person deserve embarrassment when they haven't had anything to do with the nomination?"

Dr. Nzunda said, "This is a very controversial subject, but I believe that openness is essential. I do not support openness because we are clean but because we are dirty. The public should decide if I am too dirty to represent them. The public should know me and decide. The public is more sympathetic than we think." Mr. Sam Banda added, "The appointee, knowing their own muck, should decide whether they are willing to have people know them or whether to withdraw. They should be informed first that they are being nominated, and they should have the option to withdraw before their name goes to the Public Appointments Committee." Mr. Mponda Mkandawire agreed with Mr. Sam Banda. Mr. Nakanga added that journalists should also be invited to cover all meetings and conferences, except when there are secret national security issues under discussion.

Mr. Shannon concluded that "the presumption should be in the Standing Orders that committee meetings will always be open unless otherwise specified." He added that it is one of the primary purposes of a legislature to conduct open and transparent debate on the country's national issues. The time for closed discussions is in the party caucus when a party is arguing over its policies and positions.

## **Recommendations**

Mr. Kunje presented the following recommendations which were discussed and agreed upon at the end of the working group.

- All legislation should be accompanied by a background memorandum and should be first considered by committees to enrich the proposal.
- Committees should consult with relevant organizations such as universities, the business committees, etc..
- Committees should make an effort to reach the general public.
- Committees should use the mass media to inform the general public about legislation.
- Committees should present findings to the Assembly with both majority and minority views.
- Parliament should properly consider each legislative bill so a two-thirds majority should be required for suspending the rules.
- There should be a calendar for parliamentary business that should be formed in consultation with whips and committee chairs.
- Committees should be open to the public and press except for extraordinary circumstances.
- Parliament should be separate from the executive, so ministers should not be members of committees dealing in oversight.



**Working Group B**  
**Party Whips and the Development of Informed Party Policy**

Chairs: Dan Hamburg  
Pashukeni Shoombe

Spokesperson: F. Nseula

Participants

R.G. Kamlangila	W. Chomo
V.G. Chinere	O.K. Khembo
S.A. Khamfula	L.C. Chaziya
K.A.D. Kalolo	W.K.S Msiska
B.B.C. Majoni	A.G. Makhalira
M. Maseko	L. Kayera
Mayinga Mkandawire	N.P.W. Khonje
M. Kalele	F.C. Kachala
O.I. Mkandawire	

Introduction

This working group was convened to discuss the role of political party whips in channeling communication between the party leadership and the rank-and-file members. Delegates also discussed the selection of party whips and their role in providing a link between each political party and the Assembly, and the formation of parliamentary schedules. Delegates discussed these issues and developed proposals for reform.

Selecting Party Whips

Mr. Hamburg began the discussion by pointing out that whips can vary in strength, even within the same system. "Some party whips in the United States Congress have been assertive and influential while others have been passive. The ANC whip in the Orange Free State provincial legislature in South Africa is also the ANC caucus leader and is a very strong individual within his party."

Mr. Nseula asked how whips are chosen in various systems. Mr. Hamburg and Mrs. Shoombe said that in both the United States and Namibia, whips are elected by their respective party caucuses. In both countries whips have a great deal of power due to their high rank, their position as head of the party caucus, and the staff with which they are provided. Mr. Hamburg emphasized that "because the whip is the leader of the caucus, it is important that he or she be accountable to the caucus. Having the caucus elect their own whips is one way of assuring that accountability."

Mr. O.I. Mkandawire pointed out that party whips in Malawi have been appointed by party leaders, and not elected. Mr. Nseula and Mr. Mayinga Mkandawire suggested that whips should be elected to ensure their accountability to the caucus. Mr. Mayinga Mkandawire also called for the revision of the Standing Orders, which are currently silent on the method of selecting whips. Mr. Nseula made a distinction



between whips and house leaders of the Government, and said that "without a Prime Minister in Parliament, the governing party needs a strong house leader, and the party leadership may want to select such a leader themselves."

Mr. O.I. Mkandawire and Mr. Nseula observed that the election of whips by party caucuses may not be popular with Malawi's political parties. Mr. Chaziya suggested a compromise: "The State President should select the House Leader and the caucuses should elect their own whips." Mrs. Shoombe reminded the working group that the selection of whips and house leaders is subject to certain political realities, regardless of the methods used to select them. "In Namibia, the SWAPO party leadership has a great deal of influence over the whips selection process, even though it is the SWAPO MPs who eventually vote." Mr. Mayinga Mkandawire predicted the same would be true in Malawi, but said, "The lobbying process that occurs before the actual vote is an important part of democracy and ensures that many people have input into the selection process. The election of whips allows for debate and discussion within the party." Mr. Hamburg observed that debate over leadership can strengthen a party and allows for the possibility of removing an unpopular whip, even if removal seldom occurs.

Mr. Msiska said the method of selecting whips ". . . is not a parliamentary issue, it is a party issue." Mr. O.I. Mkandawire concurred, saying, "There is no ideal system for selecting whips. Individual parties should decide how they will choose their whips." Mr. Makhalira agreed, but recommended that the issue of whip selection should be brought to the attention of the parties and the legislature for discussion.

### **Party Whips and Cabinet Ministers**

Mr. Nseula pointed out that in Malawi, whips often hold other party or governmental positions that require them to travel outside the country or attend to other duties. He asked: "In the United States system, are whips busy with other responsibilities?" Mr. Hamburg answered that "in the United States Congress, whips are bound to legislative business. Whips never travel when the legislature is in session." Mrs. Shoombe said that in Namibia, a clearly defined hierarchy allows for deputies to take over when whips are not present at a legislative session. Mr. Makhalira said, "In Malawi, we do not have a clear-cut hierarchy or good communication. Government and party office holders give priority to travel, rather than the business of Parliament." Mr. Nseula agreed, and suggested that government officials send their deputies on trips that conflict with Parliamentary sittings. Mr. Khamfula disagreed, however, saying, "Some of the whips are members of the executive. Who are we to tell them not to travel?"

Mrs. Shoombe pointed to the Namibian experience, saying, "Whips are responsible for disciplining MPs who miss legislative sessions without a legitimate reason, so the whips themselves must be in attendance whenever possible." Mr. Chaziya asked if it is the party or Parliament that imposes this discipline in Namibia. Mrs. Shoombe answered that it is the parties that ensure their MPs attend Parliament. "All SWAPO MPs are required to submit a form to their whip in advance if they will be unable to attend a Parliamentary session. If an MP misses a session without good reason, he or she is fined, and the money goes into the SWAPO election fund."

Mr. Kalele pointed out one of the roots of the problem, saying, "Seniority is a disease in African politics. The same person is a whip, a minister, and the one chosen to travel abroad. Ministers should not be whips." The working group agreed with this suggestion. Mr. Hamburg suggested that whips should set the Parliamentary schedule long in advance. This would also help address the problem of whips and MPs being absent from Parliament due to travel.

## Parliamentary Schedule

Mr. Chinere and Mr. Chaziya suggested that a whips committee should improve the organization and scheduling of the house. Mr. O.I. Mkandawire pointed out that there is now a Parliamentary Business Committee that is chaired by the Speaker and has whips as members. This committee meets while Parliament is sitting to organize the business of the House. Mr. Chaziya and other participants called for the formalization of this committee. Mr. Msiska said, "I am a member of the Parliamentary Business Committee. This committee consists of the whips and deputy whips from each party, and is set up according to the Standing Orders. We meet every day when Parliament is sitting to discuss the business of the following day." Mr. Chaziya observed that the fact that few of the participants in the working group knew of the existence of this committee illustrated the need to make the committee more active and effective. Mr. Hamburg agreed and said that whips should set the agenda of Parliament weeks in advance, not the day before each session. Mr. Mayinga Mkandawire pointed out that the Standing Orders do not designate the whips as members of the Parliamentary Business Committee, and suggested that the Orders be amended to specifically include whips. The Speaker suggested that he should no longer chair the Parliamentary Business Committee, but this suggestion was rejected by the working group.

Mr. Mayinga Mkandawire observed that whips have been passive in relation to committee work, and do not know what the committees are doing or when they are meeting. Mr. Hamburg said that "Whips should know what their party is thinking and advise committees accordingly." Mr. Majoni replied, "I am Deputy Chief Whip in the MCP, but there is no system in place to transfer information." Mr. Hamburg asserted that it is the whips who should create the system, and Mrs. Shoombe agreed, saying, "A whip needs to be active in organizing his or her own office. Whips need to create their own structures for gathering and disseminating information."

## Recommendations

- Mr. Nseula presented the following recommendations which were discussed and agreed upon at the end of the working group.
- Whips should not be viewed as harsh disciplinarians but rather as facilitators of party positions.
- Political parties should consider having elections for whip offices.
- Cabinet ministers should not serve as party whips due to time constraints, and those who are less busy should take up these positions.
- Party whips are currently too passive.
- Whips from all parties should meet regularly. The Parliamentary Business Committee would meet with the Speaker. The Clerk should be included in these meetings.

## **Plenary Session III**

### **Parliament's Relationship to the Executive**

The second day of the workshop began with a plenary session on Parliament's relationship to the executive branch of government. Mr. Moyo, who was a member of the Malawi Delegation to South Africa, introduced the session with a presentation of his findings. He was followed by Mr. Saki Macozoma, who delivered a keynote speech on the development of parliamentary committees in South Africa's national Parliament. Cabinet Minister Dr. Nzunda presented his views of what issues needed to be considered in Malawi, and the session concluded with questions from the delegates.

#### **Melvin K. Moyo**

#### **Parliament's Relationship to the Executive**

I was fortunate to be a member of the Malawi Delegation to South Africa, and I must report that what we saw in South Africa was an eye-opener. If we implement the lessons we have learned, I truly believe our democracy will be a step further along.

I would like to begin with a reminder that although we, as elected officials, can define a separation of powers between the executive, the legislature and the judiciary, the citizens of our country view us collectively as one government. Therefore, the actions and policies of each branch of government reflect on us collectively. In the eyes of the citizens of Malawi, we are collectively responsible and accountable.

The relationship between the executive and the legislature must be cordial in order for the government, for which we are collectively responsible, to deliver goods and services satisfactorily to the citizens of our country. The executive and legislature should therefore not look at each other as adversaries but rather as complementary parts of a whole. It is important that the different branches of government act in concert with each other in order to fulfill people's expectations. To achieve this, Mr. Chairman, three principles must always be in our minds. These are transparency, accountability, and responsiveness. If members of both the executive and the legislature follow these principles, we can proudly say that we are indeed a government of the people, for the people and by the people.

It is with this background that I would like to recall the statement of the Honourable James Shannon that the oversight function of the legislature over the executive is mainly to facilitate an exchange of notes, and I would like to add that the purpose of this exchange is to ensure that the principles of transparency, accountability, and responsiveness are practiced to the fullest. The legislature has the duty to remind the executive where shortfalls exist in implementing government policy. This is what some people refer to as the checks and balances of government.

In South Africa, we witnessed the important role portfolio committees play in defining the relationship between the legislature and the executive. Each portfolio committee has representatives from all parties in parliament and membership is proportional to a party's overall strength. Portfolio committees are the ideal tools of a legislature because as smaller, more concentrated bodies they have more time to scrutinize and analyze legislation and government policy in a particular area, compared with a committee of the whole House. Smaller groups also provide better forums for negotiating consensus between Members of Parliament. In smaller groups it is possible to voice political differences in a constructive manner and to resolve those differences through discussions that cannot take place in the whole house. Portfolio



committees perform three critical functions: legislative, monitoring, and advisory.

With regard to the legislative function, portfolio committees should do the following. First, a committee should receive and scrutinize bills introduced by the executive. Bills should be accompanied by a substantive background memorandum containing information about the proposal, a list of persons or experts who have been consulted thus far, and briefs on the minister's views on the issue. The bill may be presented to the committee by the appropriate minister. Second, a committee should invite interest groups, experts and those people who might be affected by the bill to present their views. Third, because consultation and collaboration are necessary, a committee might invite the minister or officials from the ministry to make further statements or clarifications on the issue. Finally, a committee may approve, amend or reject a bill depending on the conclusions reached during the committee's deliberations. Bills are then sent back to the minister for revision or presentation to Parliament.

With regard to the monitoring and advisory functions, portfolio committees should help cabinet ministers in overseeing the activities and policies of the ministries. As we all know and appreciate, ministers have busy schedules and may overlook certain details of policy formulation or policy implementation which might be at variance with the intended objectives and plans. The portfolio committees can help cabinet ministers by noting any shortfalls so that corrective action might be taken. In performing these functions, a committee requires a continuous exchange of information both in writing and through verbal testimony.

Committees can also help the ministers in monitoring the use of funds and identifying financial needs. Instead of waiting for the Public Accounts Committee review, which normally comes after much damage has already been done, portfolio committees may advise ministers on any misuse of funds at a much earlier stage when corrective action is possible. A portfolio committee may also assist ministers in making the case for budget allocations when it appears a ministry is underfunded.

Portfolio committees may also be involved in the decision-making process where a ministry intends to make large capital investments. For example, the Defence and Security Committee in the South African national Parliament was fully involved in making a decision with the Ministry of Defence to purchase war ships. Members of the committee accompanied the minister and key ministry officials during discussions with the navy and conducted research on the issue. Perhaps in our circumstances, the Media Committee should have been involved with the research for a television channel in Malawi. In South Africa, we viewed how committees and ministries can work together to produce a better government. We must be careful not to view portfolio committees in the role of policeman. Both MPs and cabinet ministers must work to ensure that the relationship between committees and ministries is improved.

Considering the benefits of collaboration between Parliament and the executive branch, it is necessary that we quickly improve the operation of portfolio committees. One may ask how differences are ironed out in the portfolio committee setting. There is need for ongoing consultation between committee members and their parties, and whips should play a role in facilitating this consultation. Whips need to be kept informed by their party members of what is happening in committees. They in turn need to keep their party leaders informed, and finally they must play a role in negotiating compromises between parties. Therefore, whips need to be members who have the support of their party's MPs. They should be conversant with their party's policy positions, and they must be skillful negotiators with open minds. They should be able to interact with MPs from their own party and also those from other parties. They should be information seekers and they must be "on the ball" all the time.

Mr. Chairman, Parliament is an important link between the public and the executive. Portfolio



committees are a means of making that link stronger and more enduring.

**Saki Macozoma**

**The Development of Parliament's Relationship to the Executive in South Africa**

I will speak today in five parts as follows: first, the situation as we found it in South Africa; second, how we sought to transform Parliament; third, the current relationship between the legislature and the executive; fourth, the route of legislation; and fifth, how money bills are dealt with.

To describe the situation as we found it in South Africa, it is important to have a sense of the history of our Parliament. Unfortunately, it is a history of non-responsiveness. The history of South Africa's legislative institutions began in 1657 when the Dutch colonialists established a separate society, challenging the power of the Dutch East India Company. Complaints about the non-responsiveness of government in South Africa are not new. Even back in 1866, an editor of a newspaper wrote about the lack of responsiveness of the Cape Colony government. In 1948, the National Party's policy of apartheid further shifted the power of government away from the people, and in 1970 this shift in power was further entrenched when an executive presidency was introduced while keeping the parliamentary rules of a Westminster system.

Serious complaints about the non-responsiveness of government were common after 1989. Parliamentary committees would identify problems without getting any response and this created a high level of frustration. For example, the Government had authorized what was known as the Moss Gas Project which was an expensive white elephant costing about twelve billion rand. The Public Accounts Committee wanted to commission a review and made this request year after year without response. The non-responsiveness of government created much frustration among members of the National Party as well as the opposition.

The new Parliament in South Africa was founded on a residue of the rules of the Westminster system and a balance of powers where the executive controlled the government. The desire to transform Parliament arose out of the need to democratize both government and society. This is exemplified by the Reconstruction and Development Program White Paper which states that democracy is an active process enabling everyone in society to participate in the reconstruction of South Africa. The democratization process is based on four key principles which are: transparency; accountability; participation; and empowerment. Each of these principles serves to define an open and responsive relationship between the new government and the people of South Africa.

In order to implement the principles of transparency, accountability, participation, and empowerment into practice, the first challenge was to resolve the relationship between the legislature and the executive. The relationship with the judiciary is also important, but due to the inevitable linkages between the legislative and executive branches this is the more complicated relationship to resolve.

The Constitution declares that the executive branch is accountable to Parliament. In the past, accountability happened after the fact, but now portfolio committees are given powers to monitor cabinet ministries on a continual basis. Rule 152 (1)(2) of South Africa's Standing Orders defines the jurisdiction of portfolio committees as follows: "The portfolio committee shall monitor, investigate and make inquiry into any aspect of a program of a government department and may liaise with department officials." The



jurisdiction granted by this rule is broad enough so that no government department may complain that some area of oversight is outside the jurisdiction of a portfolio committee.

Rule 53 of the Standing Orders defines the powers of portfolio committees to carry out their duties. It states that committees have the power to summon witnesses under oath, to summon anyone in society to give evidence (this is subject to the assent of the Speaker to prevent overambitious committees), and to engage legal counsel when necessary. One other rule that is important to note concerns the rules of committee procedure. Rule 46 states that the chair of a committee defines the rules of the committee. Giving committees the ability to make their own rules prevents a situation where members of the committee, who are not necessarily lawyers, get trapped in legal procedure.

In establishing accountability for government departments, it is generally recognized that the cabinet minister is the political head of the department, and as such is responsible for the policy direction. The person directly accountable for the administration of the ministry is the Director General. While a minister is ultimately accountable for the actions of his department, people in the legislative branch recognize that one man or woman cannot be responsible for everything that happens. Therefore, the relationship is not personalized, but is based on developing ways to best carry out the business of government.

The most important area to work out between the legislature and the executive is the process of developing and passing legislation. In South Africa, the cabinet continues to be primarily responsible for developing legislation, but Parliament is now fully engaged in the process and is capable of developing legislation on its own. When legislation is first developed by the cabinet, it goes through a cabinet committee before being sent to Parliament. After the first reading, it is referred to a portfolio committee. Members of Parliament do not discuss the bill at the first reading. The minister responsible for the legislation simply makes a presentation on the objectives of the proposal. The portfolio committee then deliberates on the bill. The committee can take as much time as it needs although its members are subject to pressures from their political parties. The committee can call back the minister or the subordinates in the ministry to testify further and answer questions.

We in South Africa are in the process of implementing new rules concerning the legislative process. These rules will ensure that Members of Parliament are fully engaged in the legislative process and are empowered to make informed decisions. Rules 145 through 155 in our Standing Orders include the following provisions:

- Before a bill is submitted to Parliament, it must be published in the Government Gazette;
- All bills submitted to Parliament must be accompanied by a detailed memorandum explaining the objectives and provisions of the bill;
- The general public must be given three weeks to make submissions on a legislative bill. The public must be notified of the time when submissions will be accepted.

If the executive feels that a particular bill must be considered urgently, it may ask the appropriate committee to waive the requirement for publishing it in the Gazette. The committee may accept or reject the request.

Rule 149 states that each party shall be given three minutes to comment on a bill at the first reading. The



point is that the first reading is meant for only short, general comments before the bill is referred to a committee. Upon receiving the referral, a committee shall arrange for a period of three weeks for the public to make submissions concerning a bill. The committee must notify the public through the mass media stating the time period for making submissions.

When a committee has completed its deliberations on a bill, it submits a report to the Assembly. The committee may recommend that the report be considered before the second reading to allow members to make their presentations before the political parties take control of the process. Rule 150 also provides for the submission of minority reports when there are dissenting views in the committee.

The consequence of these new rules is that cabinet ministries must be more flexible and open to allow for public participation in the legislative process. Parliamentary committees must be given time to consult the public, to sort through their findings, and to produce a report on any piece of legislation.

Rules 169 through 176 outline special procedures for money bills. Because money bills are vital to the financial security of the nation they must be handled carefully. The amendment of money bills is difficult given our circumstances of fiscal discipline. In South Africa, the Government budgets on an eighteen month cycle, and the portfolio committees are included early in the budget development process. Members of a committee will meet with the relevant cabinet minister and other officials from the ministry to discuss program funding. Once a consensus has been reached the program proposals are delivered to a functional committee which examines budget allocations for a group of related portfolios. The members of this functional committee look at what is available and divide the money between portfolios. By the time the budget is completed, each committee has had intensive input into the budget process.

These new rules, which have been created in South Africa's Parliament, serve to address the detachment of government from the people. Each rule exists to make government more open and accountable.

**Dr. M. Nzunda**  
**Issues for Malawi**

I have concerns about the route of legislation in Malawi, and I think there is a lot we can learn from the South Africa example. In Malawi, the development of a bill starts in a ministry. A general proposal is then taken from the particular ministry to the cabinet for approval in principle. I do not think this is an appropriate function for the cabinet. A cabinet ministry should be empowered to fully research an issue and present fully developed proposals to the cabinet.

Anyway, once the principle for a proposal is approved the ministry develops the proposal and gives it to the Attorney General's office to create the legislative bill. The proposal in bill form then goes once again to the cabinet for approval. If it is determined to be too technical, the bill will be referred to a cabinet committee which will report back to the cabinet. This process is too cumbersome. I am also concerned about the slowness in publishing legislation for the purpose of getting comment from the public and for involving Parliament. People in the Attorney General's office are not used to the new dispensation and this must change.

If we are to have a true democracy, we must improve our system to carefully consider each piece of legislation. Our current Standing Orders say that parliamentary committees should not look at the principles of a legislative bill. If that is the case, then why do we have committees? This does not make



any sense. It must be changed.

Our Constitution clearly states that it is the responsibility of the executive to formulate policy and of the legislature to enact legislation. Section 8 of the Constitution states: "The legislature when enacting all laws shall reflect in its deliberations the interests of all the people of Malawi and shall further the values explicit or implicit in this Constitution." I do not see how a legislature may take on this enactment process without the involvement of portfolio committees.

As we enter the second year of our democracy, there has been a feeling that the executive is not keen on parliamentary committees. It is understandable that the executive perhaps felt insecure about parliament when there was an AFORD/MCP alliance. The ruling party was left in the position of being the minority on each committee. This was perhaps an untenable situation. Moreover, the controversial membership of two important committees, Defense and Security as well as Mass Media, contributed to a tense relationship. I think it is important that the delegates at this workshop and MPs in general support mechanisms to increase and improve consultation between committees and cabinet ministries. That is our greatest challenge.

## **Questions & Answers**

### **Resolving Disagreements Between Committees and Ministries**

Mr. Chidule asked Saki Macozoma how disagreements are resolved between committees and cabinet ministries. Mr. Macozoma responded that there are different stages where a disagreement can be resolved. First of all, the disagreement must be genuine in terms of jurisdiction. For example, a committee member could not raise a question concerning aviation in a fisheries bill. The rules would prohibit that type of issue arising. However, genuine disagreements occur and the committee and party structures must work to resolve them. Mr. Macozoma explained that in the Truth and Reconciliation Bill the cabinet forged a compromise allowing for some hearings to be held in secret. When this bill reached the portfolio committee, members argued strongly for open hearings. Since there was a sharp disagreement, the ANC referred the issue to the party caucus which came back with a position in support of the committee. The cabinet then had to renegotiate, and the bill was amended to allow for open hearings. If the caucus had not been able to resolve the issue, it would have been subsequently referred to the National Executive which would have attempted to find a resolution of the issue.

### **Cabinet Responses to Parliamentary Questions**

Mr. Matapila Banda asked how MPs can get the Government to act upon the suggestions MPs submit to the Government. Mr. Macozoma responded that in South Africa there is an accounting officer who follows up on suggestions submitted to the executive. The executive must report within sixty days on a request. If no reply is made, then further steps may be taken by a committee including the cutting off of funds.

### **Committee Meeting Schedule**

Mr. Matapila Banda asked how often parliamentary committees meet in South Africa. Mr. Macozoma



replied that most committees meet for at least two hours each week Parliament is in session. If the committee is needed to work on legislation it may meet more often. It is the responsibility of the committee chair to be aware of what legislation is coming and to keep members informed.

### **Committee Oversight**

Mr. Chinere asked what Parliament can do when a ministry refuses to cooperate with a committee that is exercising its oversight function. Mr. Macozoma responded that this type of situation has not yet happened in South Africa, but that they have come close. He said that ministries usually find it in their interest to cooperate because portfolio committees can exert their authority in determining the resources a ministry receives. Also, if the minister and the committee chair who are disagreeing belong to the same party, the issue can be referred to the party caucus to compel a minister to comply.

Mr. Nseula added that it is very important for the cabinet to understand its responsibilities to accept parliamentary oversight. He said that members must accept that transparency is not always comfortable, but it is necessary. If the Government is considering a new television station, then shouldn't a portfolio committee be involved in the process? Shouldn't the committee on energy play a role in deciding fuel issues? If a committee is involved, the minister will know that he or she has support from the committee members.

Mr. Macozoma replied that consultation between committees and ministries is important and must become part of the working habits of government. On media issues, South Africa's government established an Independent Broadcasting Authority, which is an independent corporation under the mandate of Parliament. This corporation must report to Parliament. It is empowered to grant television licenses, but if Parliament feels that the corporation has broken the principles laid out for it, then Parliament can call for testimony and take action. In other areas such as energy, issues are normally resolved informally between the cabinet minister and the committee members, but cooperation is imperative.

### **Presidential Accountability to Parliament**

Mr. Mayinga Mkandawire asked how a President is accountable to Parliament when he or she is directly elected. Mr. Shannon responded that it is the job of the legislature to directly represent the people. The President also represents the people, but it is impossible for him to continually consult 177 constituencies. The President must face an election every five years, but he must also be accountable to the people between elections through the legislature. Mr. Macozoma added that in this area the principle of separation of powers is diluted because the two branches are mutually dependent. So far as the President wants to use taxpayers money, he must account for its programs to the legislature.

### **Official Secrets**

Dr. Nzunda questioned whether South Africa has an Official Secrets Act as Malawi does for its cabinet. Mr. Macozoma replied that every government needs to protect official secrets, but the question is where do you draw the line. If a minister is called to a committee meeting and is asked to divulge secrets, the committee meeting can be held *in camera* with the permission of the Speaker.



