

**THE ROLE OF PARLIAMENT
IN MALAWI'S CONSTITUTIONAL
DEMOCRACY**

A NATIONAL DEMOCRATIC INSTITUTE SEMINAR

**KWACHA CONFERENCE CENTRE
BLANTYRE—MALAWI**



HIS EXCELLENCY THE STATE PRESIDENT OF THE REPUBLIC OF MALAWI
MR. BAKILI MULUZI

**THE ROLE OF PARLIAMENT
IN MALAWI'S CONSTITUTIONAL DEMOCRACY**

A NATIONAL DEMOCRATIC INSTITUTE SEMINAR

**KWACHA CONFERENCE CENTRE
BLANTYRE, MALAWI**

DECEMBER 2 AND 3 1994

SEMINAR CHAIRMAN

*The Honourable R.T.C. Munyenyembe
Speaker of Parliament*

KEYNOTE ADDRESS

*The Honourable Justin Malewezi
First Vice-State President*

SEMINAR MODERATORS

*Mr. Roosevelt Gondwe Mr. Roger S. Berry
Clerk of Parliament NDI Program Officer*

SEMINAR RAPPORTEUR

*Mr. E.B. Twea
The High Court of Malawi*

**This NDI Seminar is Funded Under a Grant from
The United States Agency for International Development**

THE ROLE OF PARLIAMENT IN MALAWI'S CONSTITUTIONAL DEMOCRACY

A NATIONAL DEMOCRATIC INSTITUTE SEMINAR

AGENDA

Thursday, December 1

12.00 Noon - 9.00 p.m. Seminar Registration at the Mount Soche
Hotel

Friday, December 2 - Day of Seminar

Audience of 250 people
Members of Parliament, Cabinet Minister, Justices of the High Court,
Principal Secretaries, and others

8.45 : Moderator Roosevelt Gondwe asks all seminar participants
to be seated in the Kwacha Conference Centre Main Hall
:
: Speaker Munyenyembe Escorts the First Vice-State President
Malewezi to the Kwacha Conference Centre Main Hall

9.00 - Welcoming Remarks

: The Honourable R.T.C. Munyenyembe, M.P.
Speaker of Parliament
:
: Mr. Roger S. Berry
National Democratic Institute (NDI)

9.20 - Keynote Address

Malawi's Democratic Transition and the Constitutional Process

: The Right Honourable Justin Malewezi
The First Vice-State President

9.45 : **Plenary Session I**
The Balance of Powers in Malawi : Parliament's Relationship with the Executive and Judicial Branches of Government

: Representatives of Malawi's three branches of government present their perspectives on the relationship between the Legislative, Executive, and Judicial branches and the key issues in Malawi's constitutional review.

Presenters

The Honourable R.T.C. Munyenembe, M.P.
Speaker of Parliament

The Honourable Richard Banda
Chief Justice of the High Court

The Honourable Aleke Banda
Minister of Finance and Economic Planning

10.20 : BREAK

10.30 : **Plenary Session II**
The Balance of Powers: an International Perspective on the Evolving Relationship Between Branches of Government in Presidential and Parliamentary Systems

: Three international participants discuss the evolution of the relationship between branches of government in the United States, Europe and Southern Africa.

Presenters

Ms. Claire Sylvia
Legal Counsel
United States Senate

The Honourable Francois Froment-Meurice
Member of Parliament

Professor Walter Kamba
Dean of the Faculty of Law
University of Namibia

Questions and Answers

12.00 : LUNCH
Buffet in the Kwacha Conference Centre

1.30 : **Plenary Session III**
The Role of a legislature : an International Perspective
on a Legislature's Relationship with the Executive and
Judicial Branches

A panel of international participants describe the role of a Legislature *vis-a-vis* the Executive and Judicial branches in both Presidential and Parliamentary systems. Issues to be discussed include budgetary authority, legislative oversight of executive actions and appointments, and judicial review of legislation.

Presenters

The Honourable James Shannon
Former Congressman
United States

Mr. Tom Mondani
Former State Senator
United States

The Honourable Joao de menezes Ferreira
Member of Parliament
Portugal

Mr. Firoz Cachalia
Member of the PWV Provincial Assembly
South Africa

Questions and Answers

3.15 : TEA BREAK

3.45 : **Plenary Session IV**
Public Participation in the Constitutional Process

: Three Members of Parliament representing Malawi's three major political parties provide an overview of the public consultation process thus far. Two international participants respond with their views on the role of public participation in a constitutional process.

Malawian Presenters

Mr. F.V. Mayinga Mkandawire
Member of Parliament
Alliance for Democracy (AFORD)

Mr. A.G. Makhaira,
Member of Parliament
Parliamentary Constitution Committee ..
United Democratic Front (UDF)

Mr. L.J. Chimango,
Member of Parliament,
Parliamentary Constitution Committee
Malawi Congress Party (MCP)

International Presenters

The Honourable Joao de Menezes Ferreira
Member of Parliament
Portugal

Professor Walter Kamba
Dean of the Faculty of Law
University of Namibia

Questions and Answers

- 5.00 : **Closing Remarks**
- : The Honourable R.T.C. Munyenembe, M.P.
Speaker of Parliament
- : Mr. Roger S. Berry
National Democratic Institute

Saturday, December 3 - Day 2 of the Seminar

Audience of 70 people
54 Members of Parliament, 4 non-parliamentary Ministers, 4 Justices, 4
Principal Secretaries, and 4 Non-governmental Organisations
representatives

- 8.15 : **Plenary Session I**
Introduction to Workshops
- 8.30 : **Workshops**
The Relationship between Branches of Government
Workshops run twice each (8.30-10.00; 10.30-12.00)
- 10.00-10.30 : TEA BREAK
- A. Parliament and the Executive:
A Discussion on the Distribution of Basic Legislative
Powers and Procedures for Oversight
- Issues to be discussed include the relationship of the
Cabinet to Parliament, the role of Parliament in the
appointments process, Parliament's authority in
Budgetary matters, and the role of Parliament in
Foreign Affairs.
- B. Parliament and the Judiciary:
A Discussion on the Relationship between Legislation
and Constitutional Interpretation.

Issues to be discussed include the independence of the judiciary, the extent a judiciary may use constitutional provisions in its review of Parliament's legislation, and the timing of judicial review.

12.00 : **LUNCH**
Buffet served at the Kwacha Conference Centre

1.30 : **Plenary Session II**
Reports from the Workshops

Malawian and international representatives nominated by the workshops report on their discussions.

2.30 : **Workshops**
Public Participation in the Constitutional Review

A. Talking to the Public about the Constitution and Incorporating Public Opinion

Issues to be discussed include a review of the consultation process already begun, how to explain what a constitution is to the general public, how to consult the public on issues of importance, and how to improve civic education.

B. Working with NGOs

Issues to be discussed include who should be consulted, identifying issues of concern, and building political coalitions for specific provisions.

5.00 : **Plenary Session II**
Reports from the Workshops : Plans for Public Involvement

Malawian and international representatives nominated by the workshops report on their discussions.

5.30 : **Closing Remarks**

The Honourable R.T.C. Munyenyembe, M.P.
Speaker of Parliament

Mr. Roger S. Berry
National Democratic Institute

**THE NATIONAL DEMOCRATIC INSTITUTE FOR
INTERNATIONAL AFFAIRS**

SEMINAR COORDINATORS

Ms. Patricia J. Keefer
Regional Director for Southern Africa
NDI Johannesburg

Mr. Roger S. Berry
Program Officer
NDI Malawi

Mr. Andrew R. Pflaum
Program Assistant
NDI Malawi

Mr. Brent E. Preston
Program Assistant
NDI Malawi

Ms. Susan Benda
Senior Program Officer for Democratic Governance
NDI Washington

INTERNATIONAL PARTICIPANTS BIOGRAPHIES

James Shannon

The Honourable James Shannon is a former Congressman from Massachusetts who was elected into office in the post Watergate era. In 1984, he ran for the United States Senate, but lost in the Democratic Primary to the eventual winner, Senator John Kerry. Mr. Shannon went on to become the Massachusetts State Attorney General in 1986.

Claire M. Sylvia

Ms. Sylvia has served as the Assistant legal Counsel in the United States Senate since 1989. She served as law clerk to Judge Mariana R. Pfaelzer from 1987 to 1988 when she accepted a position as an attorney at Hall and Phillips. She is a graduate of Harvard Law School, and was admitted to the California bar in 1988.

Thomas P. Mondani

Mr. Mondani has been involved in Connecticut state politics for almost thirty years. From 1966 to 1972 he served in the state's legislature: two terms as a Representative and one term as a Senator. As Executive Director of the Connecticut Education Association (1971 to 1994), Mr. Mondani has worked with both the statehouse and the governor's office concerning his state's education policy, and in 1991 he was appointed to the Board of Governors for Higher Education by Governor Lowell Weicker. In addition to the ongoing posts listed above, Mr. Mondani is currently working as a consultant to the Connecticut state legislature. Mr. Mondani graduated from the University of Connecticut in 1956 and received his masters in education in 1962.

Francois Froment-Meurice

Mr. Froment-Meurice is a French politician and academic with extensive experience in the French Assemblée Nationale and the European Parliament. He served as the leader of the Union du Centre parliamentary group in the French Parliament in 1988 and 1989. He has also held the position of National Secretary of the Centre des Démocrates Sociaux, and served as an advisor to Prime Minister Raymond Barre from 1977 to 1981. Since 1992, he has served as a Deputy in the European Parliament with the European Popular Party. Mr. Froment-Meurice participated in an NDI conference in Russia in July 1994.

Joao de Menezes Ferreira

The Honourable Joao de Menezes Ferreira has been a member of the Portuguese Parliament since 1991. A lawyer by profession, he was a legal advisor to the Portuguese Permanent Representation to the European Community from 1986 to 1991. He was a negotiator for Portuguese Accession to the EEC, and the head of the delegation that drafted the Treaty of Accession and the European Single Act in 1985. He has lectured and written extensively in the field of international and community law. Ferreira, who grew up in France, served with NDI as an election observer in Albania in January 1992 and participated in a parliamentary conference in Romania in October 1993.

Walter Kamba

Professor Kamba is a Professor of Law and Founding Dean of the University of Namibia. Previously, he served as Vice Chancellor and Pro-Vice Chancellor of the University of Zimbabwe. He has studied at both the University of Cape Town and at Yale Law School. Professor Kamba has also received honorary degrees from the University of Dundee in Scotland and the University of Rhode Island.

Firoz Cachalia

Mr. Cachalia has a long history of participation in South Africa's liberation struggle. He was a member of the United Democratic Front, and served on the Constitutional Committee at the CODESA negotiations. He later served on the Drafting Committee at the Multi-party Negotiating Forum. Mr. Cachalia is currently an ANC member of the Provincial Legislature of Pretoria-Witwatersrand-Verëeninging (PWV). He is an ANC Deputy Whip and Chairman of the Public Participation Standing Committee. He is also the PWV representative to the ANC's National Constitutional Commission. Mr. Cachalia received his law degree from the University of Witwatersrand and is in the process of completing a Masters of law at the University of Michigan in the United States.