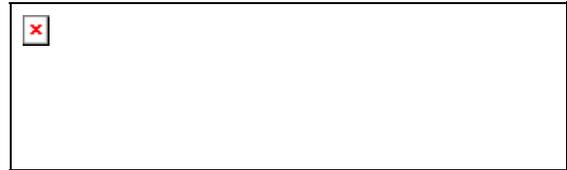




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SUNY/CID
Legislative Strengthening Program/Malawi

QUARTERLY PROGRESS REPORT, VOL. 2/:
QUARTER ENDED JUNE 30, 2007

A. OVERVIEW

In the period under review, judicial pronouncements over the constitutionality of Section 65 of the Constitution dealing with those Members of the National Assembly who have switched political parties took center stage. We believe that this turn of events may influence Project activities over the coming several months. The Supreme Court has finally delivered its interpretation over this matter -- the Speaker can declare a seat vacant of a Member who voluntarily decides to cross the floor. This is unfortunately, not the end of the debate. Those Members affected by the court decision have sought a stay of its implementation. The Opposition, which is in the majority, insists that the injunction be vacated first before the Budget can be debated. This has led to heated debates in the House to the extent that the House has been adjourned indefinitely as the party leaders seek solution.

Over the past three months and notwithstanding the challenges presented by the above events, the Project was able to implement a number of activities. This report firstly provides an analysis of events in the political arena in Malawi that have a bearing on the environment in which the program is being implemented, and it thereafter covers program activities that have been implemented under the period under review.

Highlights of the Quarter

- *Supreme Court delivers its Judgment on Section 65*
- *Study Tour of Members to Canada and the United States*
- *Study Tour of Committee Clerks to Zambia, Kenya and Uganda*
- *Death of Malawi's First Lady*
- *Budget Meeting of Parliament adjourns indefinitely*



Center for International Development
The State University of New York

B. THE POLITICAL CLIMATE

1. Supreme Court delivers its Judgment on Section 65

Last year, the Constitutional Court decided that Section 65 (dealing with what constitutes “crossing the floor” in the House) was not inconsistent with sections 32, 33, 35 and 40 of the Constitution which guarantees the “right to freedom of association, to form, to join, to participate in the activities of, and to recruit members for a political party” among others. The court said the rights provided for in these sections were not absolute and could be enjoyed but subject to certain limits, adding that the framers of the Constitution had a purpose when they enacted Section 65 arguing that a Member could cross the floor even when he joined a party which was not represented in Parliament.

The President was unhappy with this decision as it meant that his DPP party, largely made up of defectors from Opposition parties would be reduced to just the few that got elected during the by-elections. The President appealed the decision of the Constitutional Court and the Supreme Court delivered its long awaited judgment on 15th June, 2007.

In the main, the appeal was unsuccessful. In summing up the Court said:

“...the appeal is unsuccessful on ground one, on the question of the alleged inconsistency of section 65 (1) with sections 32, 33, 35 and 40 of the Constitution. The appeal is also unsuccessful on ground two, on the question of the validity of section 65(1) of the Constitution. The appeal is successful on ground three relating to the undue reliance the court below placed on PAC case. Grounds four and five having not been pursued the decision of the court below is upheld, meaning that Members of the National Assembly elected as independents do not cross the floor when they join a party, represented or not represented, in the National Assembly. Finally, the appeal on ground six partly succeeds and partly fails, the position being that a Member of the National Assembly does not cross the floor merely because he or she has accepted ministerial appointment. He or she may however, be deemed to have done so depending on his or her conduct after being appointed. It all depends on the facts of each case.”

Since the Supreme Court’s judgment, different political parties have petitioned Speaker Chimango to declare vacant the seats of MPs who are deemed to have crossed the floor.

- MCP wants three of its members evicted from the House for serving as Ministers in President Bingu wa Mutharika’s government without the party’s consent;
- UDF wants 37 MPs who left the party and joined the DPP to lose their seats;
- The DPP on the other hand, claims that 47 MPs from the UDF who moved from the government side to the opposition side following the President’s formation of DPP to have crossed the floor and therefore should lose their seats; and
- The Republican Party (RP) wants its former MPs to lose their seats for having joined the DPP.

Ramifications of the Decision:

Following this decision, it is said that the Speaker of Parliament sent out a notice to all those Members who he felt had flouted Section 65 and whose seats he would wish to declare vacant. The Standing Orders require him to provide those affected individuals with the opportunity to be heard. Hence the notice. In the intervening period however, those affected totaling over forty, sought and obtained an injunction restraining the Speaker from so declaring their seats vacant.

This angered the Opposition Parliamentarians who wanted the injunction vacated first before they could debate the Budget which had just been presented to Parliament. On its part, the Government side argued that the matter of the injunction had nothing to do with the Government. This was a matter that had to be left to the Judiciary to resolve. A stalemate thus ensued leading to very rowdy situation leaving the Speaker with very little choice other than adjourning the House indefinitely to allow the party leadership to resolve this matter.

Whilst initially, the commonly-held view was that the DPP would be the greatest affected by the Supreme Court decision, it is increasingly becoming obvious that this may not be necessarily the full picture. There will be many losers, including the whole nation. If by-elections are to be held, it is estimated that the sum of MK1.0 billion will be needed. This disregards the sums of money individual candidates and political parties will need to spend to participate in the elections.

Additionally, because of the decision of the court, even the Speaker's position is now in limbo. The court has effectively said that it has no power to declare any portion of the Constitution invalid. Thus, suggesting that an earlier decision which had expunged the words ***“or has joined any other political party, or association or organization whose objectives or activities are political in nature”*** from Section 65 was in fact no longer good law. In full the section reads:

*“The Speaker shall declare vacant the seat of any member of the National Assembly who was, at the time of his or her election, a member of one political party represented in the National Assembly, other than by that member alone but who has voluntarily ceased to be a member of that party or has joined another political party represented in the National Assembly, **or has joined any other political party, or association or organization whose objectives or activities are political in nature.**”*

Apparently, the Speaker belongs to some regional associations whose objectives are political in nature. Whilst this may not have been intended, the DPP are using it as leverage for arguing for sanity in the implementation of this recent decent. The clergy, have issued a press statement asking for restraint on the part of all stakeholders and suggesting that current status quo be allowed to obtain until the next general elections given the cost of holding by-elections and the fact that there only less than two years to go before the next elections, in any event.

2. Impeachment targets Speaker



The rumor mill is rife that the Speaker of the National Assembly Louis Chimango risks impeachment initiated by opposition MCP and UDF ostensibly to clear the way for the smooth introduction of Impeachment Procedures in the House that will ultimately be used to remove President Mutharika. Although there are many that doubt the veracity of these rumors, it is claimed that the two parties have set up a committee that is looking into this matter. The Honorable the Speaker is perceived to be so sympathetic to the Government that he would not speedily allow the motion to impeach the President. Fuelling the speculation is a letter sent to the Speaker by the MCP

alleging that the Speaker needs to move and show more impartiality in his handling of issues in Parliament.

3. Fights over dates and venues for Political Rallies

Arguing that there would be disturbances should the ruling DPP and opposition UDF hold their respective rallies on the same day – albeit at different venues - the Police and the Army got involved in stopping a political rally of the UDF. There was an outcry that this sent a wrong signal by the

Mutharika administration. Thus, when the Police suggested that another rally of the UDF should not take place, the political landscape was becoming increasingly tilted in favor of the DPP. Reason finally did prevail with the President announcing that all parties must be allowed to hold their rallies without interference.

4. Chief Justice retires

The Chief Justice of the Supreme Court of Appeal Hon. Leonard Unyolo retired on June 29. Although historically, Presidential nominations for the top Judicial position had preferred the next in line in terms of seniority at the Supreme Court, the Government has announced that consideration was being to the appointment of Mr. Lovemore Munlo, a former civil servant and judicial officer.

5. Death of the First Lady

Malawi's First Lady, Madame Ethel Mutharika passed away on 28th May 2007 of cancer. She was 63. Malawians will mourn the First Lady for a month. The internment of her remains took place on Saturday 9th June. Despite the rumor mongering that had preceded her death however, the news that she had passed away did catch the Nation by surprise. At the time of her death, Parliament was meeting. Following the news, Parliament adjourned indefinitely. Initially, it was thought that Parliament would reconvene before the burial of the First Lady. Later, it was clear that this would not happen and Parliamentarians were thus advised to return to their Constituencies to reconvene on Wednesday 13th June. This too was changed to 29th June.

The death of the First Lady had temporarily brought all people of Malawi closer together. We witnessed unprecedented show of unity. Even the former President (who - before the death - had not been on very good terms with the President) interrupted his holiday in the United Kingdom to attend the funeral service. The much bigger question though at the time was whether the various players would heed the plea of the clergy in Malawi that the death of the First lady should mark the watershed in the relations of the various political players in this country. This seems to have been answered. It is already back to business as usual with the acrimonious debate that marked the abruptly adjourned last meeting of Parliament.

C. PROGRAM ACTIVITIES

1. Budget Meeting of Parliament

The Budget Meeting commenced on 21st May with a State of the Nation Address by the President, His Excellency Dr. Bingu wa Mutharika. The address, whose theme was *'Towards a National Consensus'*, outlined the successes of the Government in the last three years and in particular highlighted the macroeconomic performance of the economy. He said the economy had posted a growth of 8.5% and inflation had decelerated from 16.6% to 8.2%. The President concluded his address by urging the Members of the National Assembly to approve the 2007/2008 Budget by reminding them of the consequences that would befall the Nation if the National Assembly were to reject it.

The Government had plans to table ten bills most of which are spilling from previous meetings. In the first week of the sitting the government did manage to muster the support for the passage of two Money Bills: *the Thyolo-Bangala Road Loan Authorization Bill* and *the National Water Development Project* which seeks to improve the provision of portable water to the urban-poor in the country's cities and towns.

2. Internship Program

The Project is supporting the National Assembly in the recruitment of a number of young graduates who will be put on an internship program in the National Assembly. Following the publication of an advertisement for the recruitment of 15 interns for a period of six months, the National Assembly has received numerous applications and an assessment committee is evaluating these applications prior to conducting interviews. The Project will liaise with National Assembly on the induction of the interns, their work schedule, supervision and expected deliverables.

3. Reference Books

The Project facilitated the ordering of a number of reference books for the National Assembly through the Home Office in Albany. The first consignment of the books that had been delivered to the field office has since been given to Management of the National Assembly.

4. Study Tour to Canada and the United States

As part of the development of the capacity of Members, the Project had programmed a study tour to Canada and the United States of America in 2007. This took place from 22nd April, to 9th May, 2007. The tour had aimed at providing the delegation with a comparative overview of the Canadian Parliamentary System and the United States (both at State and Federal levels) Legislative System. It was hoped that this experience would constructively help inform Parliament's own reform agenda in Malawi.

Following the study, the delegation made a number of recommendations. Some of these include Parliament's desire to have:

- A fixed calendar for Parliamentary meetings;
- A Budget for Parliamentary meetings and other Parliamentary activities which is protected and guaranteed;
- A New Parliament building which provides adequate office space for Members from which they can discharge their duties.
- Offices in Members' Constituencies as is the case in other Parliaments;
- A Public Appointments Committee with guidelines for the confirmation of public appointees so as to ensure that the process is transparent;
- A clear demarcation between Table and Committee work;
- The Office of the Speaker elevated to third in State protocol listings;
- A Budget Office so as to ensure that Members are able to debate the Budget from an informed position;
- Adequate reference materials,
- The Parliamentary Service Act amended to provide for an oath of secrecy and fidelity for Parliamentary Service Commissioners;
- An Internship program introduced as a matter of urgency;
- Salaries and other benefits of Members provided for in an Act of Parliament,
- All Committees deliberations open to the public;
- Private Members' Bills on various issues, and
- The Budget for the Auditor General's office scrutinized by a Parliamentary Committee before being tabled in the House.

Challenges:

- *Duration of the Project*

Although there is unanimity of agreement that the Project is greatly benefiting the National Assembly, it is simply impossible for the Project to support the National Assembly to fully

implement all the above recommendations in its remaining life. In the circumstances, the Project will seek to support the holding of a retreat of the Reforms Committee and National Assembly leadership during which the National Assembly can prioritize those reform initiatives that can be implemented during the remaining life of the Project. As well, the Project will continue to liaise with the Clerk of Parliament to, similarly, seek to prioritize reform initiatives that can be implemented during the remaining life of the Project.

- *Inadequate Resources*

The impending end of the Project will present a serious challenge to the continuation of the Project activities. There is thus the risk that some of the gains that have been made over the life of the Project will regrettably be lost. In the first year of the Project, we saw **all** the Parliamentary Committees meet for the first time in the history of multi-party politics. Another first was the unprecedented number of Committee reports currently awaiting adoption by the House. Both these achievements are indicative of the positive impact of Project on the activities of the House. It would be important that advance preparations be made to ensure that there is no serious disruption to the activities of the National Assembly. The construction of the Parliament Building was to be finalized by the end of the Project. This would have allowed a smooth transfer of the Committee Department from the rented offices in Kang'ombe Building to the newly completed Parliament Building. This is now almost certainly unachievable. As part of the ongoing dialogue between SUNY and USAID/Malawi, there is the possibility for a cost-sharing arrangement to be achieved to ensure continued stay in Kang'ombe Building for the Committee Department for a further period whilst the Parliament is being completed.

- *Political Will for Institutional Reforms*

The study tour to Canada and the U.S. was an important step to nurture the political will for reform within the NA and to help embed it in an institutionally correct location – the Reforms Committee. At the same time, this political will is yet to mature and the Project continues to be an important means for nurturing it and providing technical assistance in support of it. It is thus critical that strategies be developed to ameliorate the effects of the potential obstacles to our ability to implement the Project activities outlined below. The Project will draw on its experience and the expertise of its Management Team to meet the challenges posed by the issues outlined above. We are optimistic that with the current strategy of continual regular consultations with the NA leadership and remaining flexible and responsive to their emerging needs, it should be possible to implement the activities that are being planned for Year 2 of the Project.

5. Parliament attends an Anti-Corruption Conference in Johannesburg

The fifth Global Forum is one of the premier international anticorruption events and the only inter-governmental forum regarding anticorruption efforts world-wide. This year, the event was held in Johannesburg, South Africa from April 2-5, 2007. The theme was “Fulfilling our commitments: Effective action against corruption” with a view to addressing the links between corruption and poverty and the strengthening of anticorruption institutions. The overall objective of the event was to discuss practical and effective measures for preventing and fighting corruption. The project sent a delegation of Members to this event.

6. Meetings of Committees

The Project supported meetings of the Defense and Security Committee and the Public Accounts Committee. The latter met to adopt its report for presentation to the full House during its budget sitting which has been adjourned.

A commentary in one of the country's dailies was particularly insightful:

‘We are pleased to learn that the grueling process of questioning controlling officers on the 2002/2003 auditor general’s report is winding up. We gather, public accounts committee (Pac) is going to adopt the report, a process that will end in Parliament where the House is expected to adopt the various recommendations pertaining to the millions of Kwacha that went missing from government coffers.

However, our appeal is that the vigilance that Pac showed during the public hearings on the report should go well beyond the mere legal procedure of adoption of the report.

We recall vividly how Pac members grilled public officers and punched holes into their responses. Our memories are still fresh on how the parliamentarians exposed the fraud that characterized government operations during the period, drying up government coffers of valuable resources that would have helped improve the country for the better if all the money was used for the intended purposes.

However, all that effort will go down the waste if the parliamentarians chose to take a back seat position after adopting the report. What Malawians expect is action, and concrete action that will yield results that best serve the interest of the nation.

Well meaning Malawians would want to see those alleged to have defrauded and stolen money from government being brought to book to face the long arm of the law. In short, Malawians would want to see justice not only being done, but being pursued to its conclusive end.”

It is gratifying to note that the public is following the work of the various Parliamentary Committees. The Project also supported meetings of five committees who had arranged to meet in order to dispatch some business. These were Legal Affairs, Agriculture, Public Appointments, Budget & Finance and Public Accounts Committees.

7. Review of Standing Orders

The Clerk of Parliament has agreed to the engagement of a local consultant to lead the review process. The former dean of the Law faculty – Dr. Necton Mhura - will take the lead in the carrying out of this assignment which is expected to go beyond mastering the drafting of the new standing orders. We expect that equally important will be the need to fully secure consensus on the part of the various major stakeholders. Given the local political landscape, this promises to be a challenging task. We will look to the National Assembly management to play a pivotal role in this regard.

8. New Assistant – Mervin Mwale

With increasing level of activity in the office, we have recruited an Accountancy Intern who will assist the Project Accountant in ensuring timely submission of reports to Home Office. Mervin Mwale has already proved himself. He is a very enthusiastic and valuable member of the team in the Field Office. He works three days a week, with the rest of his time being applied towards his studies at the Malawi College of Accountancy.

D. TRAINING

1. National Assembly IT Staff

With funding from the Project, three members of staff from the IT Department of the National Assembly are currently being trained in web designing, installation, administration and management of a web site. The training course commenced early in January. After the training, these three members of staff will work hand in hand with a consultant who has already been recruited to design

a website for the Malawi Parliament. Using the skills acquired, the three will ensure that the web site is kept current.

2. Workshop for Committee Clerks.

The Project office facilitated a two-day workshop for committee clerks. This was held on 12th and 13th April. It was built on the success of an initial induction and training session conducted last year. The workshop provided the Committee Clerks with the opportunity for them to acquire new skills on report writing and working as a team.

3. Study Tour for Committee Clerks

As part of their development, the National Assembly, with the support of the Project, sent three sets of committee clerks to Lusaka, Nairobi and Kampala so as to expose the staff to other Parliaments particularly those that are implementing reforms. Ten Committee Clerks in all participated in this week-long visit of the National Assemblies of Zambia, Kenya, and Uganda. Having had six months of practical experience in committee work, the study tour opened an opportunity for them to relate their respective experiences to that obtained elsewhere in the region. The tour also availed them the opportunity to learn from these other jurisdictions. We believe that this experience will broaden their perspective.

E. OTHER MATTERS

1. Acting Team Leader Departs

Following the move of our original Team Leader Ms Martha Myers to Egypt, Ms Anna Sparks has been acting in her place. Ms Sparks will be departing Malawi for Costa Rica on 13th July this year. USAID has announced the appointment of Paul Kaiser as her replacement. We have had the opportunity of working with Mr. Kaiser over the past several months and whilst we will miss Ms Sparks, we are confident that her replacement will ensure smooth transition.

Additionally, Mr. Steven Mwale previously part of the team at CIDA/PEG has joined USAID as Assistant Program Officer for the MCC program.

2. Constitutional Conference

The Malawi Law Commission held a three-day consultative meeting on the Republican Constitution. This was a culmination of a sustained consultative process that had been underway for several months and sought the views of stakeholders on the need or otherwise of amending certain provisions of the Constitution.

The Conference was attended by close to 300 participants from a wide cross section of the Malawian society. It was facilitated by expert presentations by a number of local experts. This conference was to provide further feedback to the Special Law Commission after which it is to finalize its report in readiness for the Ministry of Justice to take up the report for presentation to Cabinet and later to the National Assembly.

The reintroduction of the Senate, the reintroduction of the Recall provision that would enable the electorate to recall its MP, the refinement of the “crossing the floor provision”, and the review of the qualification of MPs are some of the hotly contested issues under debate. The biggest challenge is whether the House will be able to enact into law those changes that threaten their own tenure.

Further, the UDF seemed less than happy with a number of tentative conclusions/recommendations and left no one in any doubt regarding their position. The Party was particularly not amused with

the interpretation placed by the Special Law Commission on Section 83 (3) dealing with Presidential term limits. The Special Law Commission's view is that the former President – who is current Chairman of UDF and their candidate in the 2009 Presidential race - cannot stand in 2009 having served two consecutive terms previously. This interpretation has been viewed by UDF as being politically motivated and designed to remove the former President from the 2009 presidential race. The UDF went so far as to challenge the composition and objectivity of the Special Law Commission alleging that all the members of the Commission were deliberately chosen for their leaning to the government, a claim that is not widely shared.

F. UPCOMING EVENTS – THIRD QUARTER 2007:

The Project has agreed to fund the following upcoming activities:

1. Launch of Strategic Plan

The National Assembly plans to launch its Strategic Plan during the Budget meeting of Parliament. The Project is working with Management to organize a retreat for staff and Members with the view to secure “ownership” of the plan and also to get an order of priority to the many activities contemplated in the report in readiness for implementation.

The National Assembly had planned to launch its Strategic Plan during the last meeting of Parliament in April. However, this had to be shelved given the rather abrupt manner in which the proceedings at that meeting were concluded. Management of the National Assembly has announced its desire to undertake the formal launch when Parliament reconvenes. The Project will provide some assistance with this launch.

2. Budget and Finance Committee Retreat - Review of Budget

The project had arranged a two-day retreat for the Budget & Finance Committee and all Committee Chairpersons of Parliamentary Committees. The objective of the workshop was to explain the details and ramifications of the Budget (immediately upon the Minister tabling it) in order to assist Members in understanding it and thereby enabling them to contribute meaningfully on the floor of the House. Two consultant economists have been recruited to assist with this exercise, with the retreat slated for early in the next quarter.

3. Retreat of Business Committee & other Chairs

While the Parliamentary Service Commission constitutes the formal leadership of Parliament, the Office of the Clerk is equally a very critical element in the implementation of the PSC directives as is the Business Committee and the Reforms Committee. The Project plans a retreat for these critical organs of the National Assembly. This initiative will ensure that all major stakeholders understand the newly prepared Strategic Plan and for these stakeholders to have the opportunity of providing clear guidance on their priorities; and also create mechanism for monitoring the implementation of the SP. This opportunity will also enable them to fully understand the SP and what their roles will be in its implementation.

4. Indicator Data Collection

The outcome of the Budget meeting will greatly impact on the performance indicators of the Project. Traditionally, Parliamentary approvals have been taken for granted. With the current make-up of Parliament and the work that this Project is doing, this is no longer the case. In the 2006/2007 Budget for instance, of the 54 budgetary votes, 13 or 24% were successfully amended by the National Assembly. As an ongoing activity, the Project collects data on how business turns out in the National Assembly. This meeting of Parliament is no different.

5. Internet Research Training for Clerks

Following a request from National Assembly, the office is working on having one-day training on Internet Research for Committee Clerks with some assistance from USAID.

6. Review of Committee Handbook

Consultations are underway with Chief Clerk Assistant (Head of the Committee Department) on reviewing the Handbook. The Handbook will have consequential amendments arising from the review of Standing Orders.
