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SUNY/CID Legislative Strengthening Program/Malawi

QUARTERLY PROGRESS REPORT, VOL. 2/3
QUARTER ENDING SEPTEMBER 30, 2007

A. OVERVIEW

During the quarter that ended 30th September, the politics in this country were dominated by two main issues:

- The ramifications of the Supreme Court decision regarding Section 65 of the Constitution; and
- The approval of the National Budget by Parliament.

As a result of the disagreements over what issue was to take precedence over the other, the Budget meeting of Parliament was adjourned several times. This did affect the smooth flow of activities under the Project as there was uncertainty regarding the availability of Parliamentary staff and Members alike. This notwithstanding, this report is able to present the successful implementation of a number of activities.

The report firstly provides an overview of the program activities that have been implemented in the period under review and thereafter covers those activities that are planned for the final quarter of the 2007 calendar year. The report also details other activities that have occurred in the political environment which may impact on the program.

B. HIGHLIGHTS OF THE QUARTER

- *Parliament approves National Budget*
- *President prorogues Budget Meeting of Parliament*
- *Positions for Committee Clerks established*
- *Internship Program Established*
- *Induction Program for University Interns held*
- *National Assembly Launches its Strategic Plan*
- *Parliamentary Web site Launched*

C. PROGRAM ACTIVITIES

1. Parliament approves Budget

Anticipating that consideration of the National Budget would not be completed before the end of the last financial year, the House approved an allocation of K11 billion for one month. The expectation then was

Implemented by the State University of New York Center for International Development
State University Plaza, Albany, New York 12246

that by the end of that month (July), Parliament would have deliberated upon and approved the Budget for the year. This did not happen. On the contrary, Parliament was prematurely adjourned indefinitely following the fall-out over what was to take precedence: *consideration of the National Budget or the delivery of the Speaker's ruling as to the impact of the Supreme Court's interpretation of Section 65 of the Constitution dealing with Members who were deemed to have crossed the floor.*

Mr. Speaker was unable to implement the decision of the Supreme Court because of a stay that had been obtained by the affected Members. The Opposition, who are in the majority in the House, insisted that the injunction ought to be vacated first before the Budget could be debated. As of midnight on 31st July, the Government no longer had Parliamentary authorisation to spend public resources from the consolidated fund. Each passing day therefore brought more pressure on the Executive as the constitutionality of its spending of public resources was being brought into question. It was not surprising therefore to hear that the President had written to the Speaker "**suggesting**" that Parliament be reconvened on Monday 13th August.

For the first two days it did appear like the stalemate would continue. In an unprecedented show of authority however, the Speaker issued a statement from the chair basically stating that debate of Section 65 of the Constitution was not tenable because it was simply *sub judice* to do so as it would be tantamount to debating matters that were before the courts. The law forbids this as does Parliament's own Standing Orders. Every attempt was made by the majority Opposition Members to steer the Speaker away from this position. But he remained resolute.

The following day, the Opposition brought up a new line of argument which was that the Minister of Finance should move a motion for the ratification of the expenditures since 1st August through the passing of a financial resolution. That unless this was done, the Opposition would not debate the Budget. Another deadlock then ensued. The Government argued that they did not want to proceed along this path and wanted the House to press on and discuss the Budget in its entirety. On the other hand, the Opposition claimed that they did not want to be party to an illegal situation where the Government was spending without Parliamentary approval. The Opposition was however, handicapped in that by law it was only the Minister of Finance who could move the financial resolution. The Speaker further ruled that whilst he was of the view that the tabling of the financial resolution was the sensible option in the circumstances, the House had to defer to the Government side as the moving of the motion was legally a matter for the Minister of Finance.

When the Speaker called for contributions to the Budget from the floor on this second day, only the Members on the Government side contributed to the motion. The Opposition Members merely watched and at times even tried to disrupt the proceedings. By the third day, however, the spokespersons from the leading opposition parties agreed to contribute to the Budget debate "under protest". This opened the way for positive contributions from both sides of the House and the Minister of Finance wound up debate on the Budget on Friday, 10th August, 2007. The National Budget was thereafter referred to the Committee of Supply comprising the whole House. The Members scrutinised the Budget allocations vote by vote. By close of business on Wednesday, 12th September the National Assembly had approved this year's National Budget. All but five votes were approved without amendment. The votes that were approved after being amended were the National Assembly, Ministry of Finance, Ministry of Information and Civic Education, Subventions to Statutory Organizations and Office of the Ombudsman.

Under the subvention to the parastatal organizations, the Malawi Broadcasting Corporation and Television Malawi were the hardest hit with token allocations of MK1.00 (less than 1 US cent) each. The Opposition has for a number of years expressed unhappiness with these institutions ostensibly for vilifying the Opposition. It is claimed that the two stations are used by successive governments as a mouth piece of the party in government. It has been suggested that the way to correct the position is for the Opposition to use their numerical strength in Parliament to pass a law that will regulate the operations and assure editorial independence of the public broadcasters. This advice has not been headed so far. There are those who believe that the Opposition expect to do exactly what the Government is doing when/if they come into government.

On a positive note, the trade offs between government and the opposition have led to a substantial increase in Parliamentary funding and, in particular, for Committee work. And so, although by no means totally adequate, the increase in funding of the operations of the National Assembly will assure the Members and other stakeholders of a reasonable level of funding in the year ahead.

2. *The President Prorogues Parliament*

After the passing of the Budget, it was expected that Parliament would now deal with the matter of Section 65 of the Constitution. This was never to be. Although the injunction taken out by the Government MPs was promptly discharged and evidence of the discharge presented to the House, there was no tangible evidence that the injunctions taken out by some Opposition MPs had been discharged. The Government side argued that while waiting for this to be resolved, the House should meanwhile deal with any outstanding business such as bills, etc. The Opposition, on the other hand, objected to this and wanted the House adjourned until the Business Committee had established whether or not the Opposition injunctions had been discharged. Following from the absence of a common position on this issue, the presiding officer adjourned the House in the morning of Friday, 17th August to Monday afternoon.

The Government had repeatedly complained that the Opposition seemed not to care that the constant adjournments of Parliament were costing the tax-payer huge amount of resources. The Budget meeting had already cost the nation over MK300 million at that stage. They claimed that fact that the behavior of the Opposition in not resolving the issue of their own injunctions was being taken by the Government with a bone of contention. In the evening of Friday, and ostensibly under the provisions of Section 59 of the Republican Constitution, the President announced that he had prorogued Parliament. The section under reference requires the President to consult with the Speaker before he could prorogue Parliament. It remains unclear as to what actions were taken to fulfill the need for the consultation with the rumor mill speculating that the Speaker merely received a letter from the President proroguing Parliament without any such consultation. The Opposition is unhappy with this turn of events. They claim that the President cannot be trusted and this is why they had insisted that the matter of section 65 should have been dealt with first before approving the budget.

According to the Standing Orders of Parliament; this prorogation signifies the end to this particular session of Parliament. This means that should Parliament wish to reconvene again, it will be a new session which will need to be opened by the President. It also does mean that any outstanding business from the just-ended session has come to an end and if any such business needs to be concluded, it will need to be re-introduced in the new session of Parliament. It is also claimed that committees of Parliament cannot deliberate as such committees.

3. *Launch of National Assembly Strategic Plan*

The Strategic Plan which has been at various stages of formulation since 2004 was finally launched on 16th August. As it turned out, the timing was fortuitous. The launch happened on the eve of the prorogation of Parliament. The launch was preceded by debate and adoption of the Plan by the National Assembly.

The Plan through its seven pillars will seek to achieve the following reform objectives:

- Secure predictable funding,
- Obtain predictable sitting calendar,
- Improve funding to its committees, and
- Enhance the role of National Assembly in influencing government expenditure and the representative role of the Member of Parliament.

The Speaker, in launching the Plan, urged development and cooperating partners to help the National Assembly to implement the Plan. For our part, we will seek to assist the National Assembly to implement some of these key reforms.

As part of the implementation process, the National Assembly has arranged a series of workshops with stakeholders to explain, sensitize and solicit support for the plan. SUNY's Deputy Chief of Party presented a paper on "Role of the Media in Implementing the Strategic Plan" at the first of these workshops.

4. *Parliamentary Web site Launched*

The National Assembly's *Moto*, is "Getting Parliament to the People". One of the strategies to achieving this had been to develop a web site for Parliament. With funding from the Project, three members of staff from the IT Department of the National Assembly have been trained in web design, installation, administration and management. As planned, the three members of staff working hand in hand with the service provider have now designed the website of the National Assembly. It is expected that the Parliamentary website will be kept up to-date given these local resources. The address of the site is www.parliament.gov.mm.

The National Assembly web site was launched at the launch of the Strategic Plan.

5. *Internship Program*

Following the publication of an advertisement for the recruitment of 15 interns for a period of six months, the National Assembly received close to 700 applications. The follow-on assessment exercise culminated in the identification and recruitment of some 20 interns with the financial support of the Project. An additional two interns are to be supported by CIDA. The challenge that the National Assembly will need to cope with, is to ensure that all these interns are kept fully occupied. The Project will render as much support as can be mustered in this regard.

The National Assembly sought to match the skills and training of the successful applicants to the specific needs of the various Parliamentary Committees. The Interns joined the National Assembly on 1st September.

6. *Induction Program for University Interns*

The National Assembly, with support from the Project, held a one day induction workshop for the newly recruited Interns. The workshop sought to introduce the interns to some of their colleagues within the National Assembly and also induct them in the various aspects of Parliamentary work.

Building on the induction workshop, the Interns visited the Project Offices on a familiarization tour on 7th September. The opportunity was used to train the interns on Team Building and a presentation was also made on Managing Committee Meetings by the Chief of Party and Deputy Chief of Party respectively.

7. *Three more computers moved to Kang'ombe House for Interns*

Responding to a request from the National Assembly, the Project office agreed to move three computers from the Resources Center to the Committee Department offices at Kang'ombe House to be used by the newly recruited interns. This is a second consignment having previously released some five computers a number of months ago. The Resources Center now holds seven computers.

The growing level of activity in the National Assembly Library where the computers were moved to is a source of inspiration that the Beneficiaries find these facilities useful. Thus, we see the relocation of the computers as part of the transition pending the end of the Project in February next year.

8. *Positions for Committee Clerks established*

It had originally been planned that the Project would support the National Assembly to recruit three or four candidate committee clerks until such time as the National Assembly would secure approvals for the creation of these positions within the National Assembly structure. Upon obtaining these approvals, the National Assembly would be eligible to receive funding from the Treasury to pay for salaries of the recruited staff. Given the number of committees that the National Assembly has, a request was received to increase the number of clerks to be supported by the Project to seven.

Whilst the Project was to support these candidate clerks during its life, the plan had always been to support the National Assembly to secure the creation of these positions. We are pleased to report that the seven Candidate Committee clerks have been put on what are known as “non-established positions” by the Government for a period of two years effective August, 2007. This means that their positions are now part of the Government, and the Government will pay the salaries of these clerks during this period as the National Assembly meanwhile finalizes a functional review that was commissioned sometime ago.

This does mean that resources that would otherwise have been used to pay for these clerks can now be allocated to other project activities.

We see this timely creation of the positions for the seven committee clerks as evidence of the Government’s demonstration to abide by its commitments embodied in the Threshold Country Plan.

9. Committee Reports

A number of Committee Reports were presented to the National Assembly at its meeting in April this year. However, it did not have time before it rose to consider these Parliamentary Committee reports. The following reports were re-tabled during the just-ended Budget meeting:

- Report of the Public Appointments Committee for the period June to December, 2006;
- Report of the Public Appointments Committee for the period September, 2005 to June, 2006;
- Report of the Transport and Public Works Committee;
- Report of the International Relations Committee; and
- Report of the Budget and Finance Committee

Of these reports, only the Report of the Public Appointments Committee was adopted by the House.

10. Meetings of Committees

- *Budget and Finance Committee Retreat - Review of Budget*



Budget & Finance Workshop in session in Salima

The Project supported the holding of a two-day workshop for the Budget & Finance Committee and all Chairpersons of Parliamentary Committees. The objective of the workshop was to explain the details and ramifications of the 2007/8 National Budget delivered by the Minister of Finance on 15th June, 2007. This was to assist Members in obtaining an understanding of the proposed budget and thereby equip them to contribute meaningfully on the floor of the House. Two consultant economists - an academician from Chancellor College's Economics Department and a practicing economist in private practice - were recruited to assist with this exercise.

The Members hailed the workshop as having been very enriching particularly as the consultants presented both theoretical and practical perspectives in the analysis of the Budget ranging from macro economic fundamentals to in-depth sector expenditure analyses in Education, Health and Agriculture.

- *Legal Affairs Committee*

The Legal Affairs Committee supported by the Project held a two-day meeting to review the Criminal Procedure and Evidence Code. A High Court Judge and Malawi's Solicitor-General assisted the committee in the review. The Solicitor General confirmed that the session will certainly lead to the redrafting of some of the sections of the CP&EC following submissions from the Members. However, there were other concerns that were as a result of misunderstanding on the part of the Members which have since been resolved. For instance, the Members had wanted to scrap off the Statute books the power that a police officer has to make an arrest without a warrant if he believes that a felony has been committed. When the High Court judge explained the circumstances in which this would be done, the Members were reasonably happy to retain the provision. Most were fearful that the Government could use this for political ends.



Meeting of the Legal Affairs Committee

C. UPCOMING EVENTS – FOURTH QUARTER 2007:

1. *Review of Standing Orders and Committee Handbook*

Given the ever-evolving political landscape, the assignment that seeks to overhaul the Standing Orders promises to be a challenging task. Two legal consultants have been identified. Management of the National Assembly believe that an efficient mechanism for securing general consensus on various points may lie in a retreat that would seek to rope-in all the staff directly involved in this assignment. The thinking is that the consultants would facilitate the meeting with the view to obtaining the various

viewpoints of the staff members on the very critical areas and simultaneously secure any opposing views on these suggestions. This process would provide some material on the basis of which the consultants would then go out to the major political actors for feedback.

The progress is painstakingly slow as the National Assembly secretariat is developing a framework which will guide the review process to avoid fallout with the Executive. In the current political environment the level of suspicion is high between the Executive and the Legislature. The National Assembly is thus keen to ensure that there is a buy-in by all major stakeholders into this exercise.

The review of Standing Orders will, most likely, lead to consequential amendments to the Committee Handbook.

2. *Pressing Government Business*

Following the prorogation of Parliament, there has been a lot of speculation that the need for to pass some bills and to secure confirmation of some public appointments for the positions of Chief Justice and Auditor General may point to the early re-convening of Parliament.

- *Confirmation of Public Appointments*

There had been some speculation that after passing the Budget, the Government would submit the names of the new Chief Justice and Auditor General for approval by the House. The current Accountant General, Mr. Kampanje, has been named as a likely candidate for the Auditor General position. On the other hand, Hon. Lovemore Munlo has been mentioned for the top Judicial position. Both are very experienced individuals with impeccable references. However, given the local political landscape, it is difficult to speculate how - on the day - things will pan out.

- *Outstanding Bills*

Additionally, the Government has an ambitious project that seeks to connect Malawi's electricity national grid to a Hydro Electric Plant in Mozambique. Malawi is borrowing some US\$250.0 million from the World Bank. One of the conditions of effectiveness for this loan is a Loan Authorization Bill being passed by Parliament. The Budget meeting of Parliament was prorogued before this Bill was considered and yet this inter-connection is important to the Government.

3. *Indicator Data Collection*

As the Project draws to a close, in addition to implementing outstanding activities, emphasis will also be put on data collection in respect of the Performance, Monitoring and Evaluation Plan. Work is also underway to finalize the drawing up of draft TORs for an independent monitoring and evaluation consultant.

4. *Internet Research Training for Interns & Clerks*

The Project is coordinating the holding of one-day training on Internet Research for 20 Committee Clerks and Interns by USAID. This training will be held at the United States Information Services. The first training session will be held on 11th October.

D. *OTHER MATTERS*

1. *Hon David Faiti dies*

Former Minister of Economic Planning and Development David Faiti, who was also Member of Parliament, died on Sunday, 15th July. Honorable Faiti made his first appearance in Parliament after winning the 2004 general elections on a Republican Party ticket and was leader of RP in the House. Honorable Faiti had a heart transplant in 2004 in South Africa but had been experiencing problems since then. He was 45.

2. *Member Convicted of Assault*

Hon. Njobvuyalema, Chair of the Public Appointments Committee, who was facing an assault charge has been convicted of the offence. Judging by previous cases, he is almost certainly going to lose his seat. For that reason, he is said to have applied to the Constitutional Court to determine whether a conviction for assault can be said to amount to an offence touching on “honesty or moral turpitude” for which one can be disqualified to remain in the House.

3. *Talk of Dr. Muluzi’s Running Mate*

A recently formed political party – the New Republican Party – has formed an alliance with the UDF in readiness for the 2009 Presidential and General elections. This is an off-shoot of the Republican Party which had initially partnered up with the DPP. Most of the RP’s MPs continue to support the Government in the House. Its former President, Gwanda Chakuamba, is supporting the former President, Bakili Muluzi, as presidential candidate in the 2009 polls. Recently, he called for the leader of the Opposition – John Tembo - to accept the position of running mate to Muluzi. This has not been well-received by the Leader of Opposition. He sees himself being the leader of the biggest party in Parliament assuming the Presidential nomination with the UDF offering the running mate candidate.

4. *Financial Intelligence Unit*

Following the enactment of the Money laundering and Proceeds of Serious crimes and Terrorist Financing Act in August 2006, the Government with technical assistance from the MCC, has established a Financial Intelligence Unit (FIU). As per Government Gazette number .23 dated 17th July, 2007, the Act is now operational with effect from 25th August 2006.

In terms of section 11 of the Act, the FIU is an autonomous national agency which has authority to receive, request and analyze suspicious transaction reports from financial institutions. If, on the basis of its analysis, the FIU has determined that there is a possible element of money laundering or financing of terrorist activities, it is required to submit a report to the appropriate law enforcement authority.

Despite this development, the FIU still awaits the appointment of its Director.

5. *Minister of Information being probed for Corruption*

On his return from a State visit to Taiwan, the President announced that the Minister of Information and Civic Education, Hon. Patricia Kaliati, would be investigated for alleged corruption. This is a direct reaction to an allegation made in the National Assembly over reports that the Minister took a bribe in the granting of a concession of Nyika-Vwaza Ecotourism Reserve.

Calls by the Opposition for her to resign to pave way for the investigations have fallen on deaf ears. She claims that she is no longer Minister of the department where the alleged crime was committed and at any rate, it is the President’s prerogative to relieve her the ministerial position if the President believes that this would facilitate the investigations.

6. *ACB Acting Director Interdicted*

About a year ago, the Mutharika Government had proposed Police Commissioner responsible for Prosecutions and Legal Services, Tumalisye Ndovi to the position of Director of the Anti Corruption Bureau. The appointment is, by law, subject to the confirmation of the Public Appointments Committee. The PAC declined to give its confirmation claiming that whilst the individual was *qualified*, he was however *unsuitable*. Although Mr Ndovi’s appointment was not confirmed, the Government nonetheless kept him at the ACB in an acting capacity since August last year despite calls for his removal by the Opposition. It is said that the Government had hoped that the PAC would relent and ultimately confirm him. This did not happen.

During the just-ended session of Parliament an allegation was made by an Opposition MP that Mr. Ndovi was receiving two salaries: one from the Police and another from the ACB. It appears there was some truth as Mr. Ndovi claims, in response, that although the Police was remitting his salary to his bank, he never used the money at all. The Government has responded by interdicting him. This will allow investigations to be carried out.

From the look of things, the emergence of this matter may have provided an honorable way out for the Government. Having removed Mr. Ndovi from this position, it can now recommend someone else without appearing to have backed down from its initial position to retain him at ACB.
